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JUN 28 2012

PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CLARK ENERGY COOPERATIVE,)
INC. FOR A CERTIFICATE OF CONVENIENCE)
AND NECESSITY TO APPLY FOR AND OBTAIN)
A FRANCHISE IN THE TERRITORIAL LIMITS OF) CASE NO. 2012-
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT)
OF FAYETTE COUNTY KENTUCKY FOR ELECTRIC)
UTILITY SERVICE)

Applicant, Clark Energy Cooperative, Inc., respectfully submits the following application pursuant to KRS 278.020(3) and 807 KAR Chapter 5, as follows:

1. Applicant is an electric cooperative engaging in the business of retail electric service in portions of Fayette County, Kentucky, and other areas in Kentucky with its mailing address being 2640 Ironworks Road, P.O. Box 748, Winchester, Kentucky 40392-0748.

2. Copies of applicant's Articles of Incorporation are attached as Exhibit "A".

3. The name of the governmental agency offering the franchise is the Lexington-Fayette Urban County Government of Lexington, Fayette County, Kentucky. A copy of the franchise ordinance is attached as Exhibit "B" and incorporated by reference herein. Bids are due the 2nd day of July, 2012.

4. The franchise offered for bid is for electric service within the territorial area now served by applicant within the limits of Lexington-Fayette Urban County Government in Fayette

County, Kentucky. The need and demand exists for retail electric service in the franchise area.

5. Applicant has certified territory pursuant to KRS 278.017 which is located within the boundary of Lexington-Fayette Urban County Government in Fayette County, Kentucky, and in which territory applicant is currently providing retail electric service to any and all customers who require electric energy. The map or maps of the certified territory of applicant are filed with the Public Service Commission as required by KRS 278.017. The need and demand for retail electric service exists in the franchised area because applicant has provided retail electric service to existing consumers for many years and will provide retail service for new development within the certified territory of applicant in Fayette County, Kentucky.

6. The franchise ordinance permits Lexington-Fayette Urban County Government to assess a franchise fee of 3% of the gross annual revenues received by the applicant from electric service provided within Fayette County, Kentucky.

7. Applicant desires to apply for, bid, and obtain the heretofore mentioned franchise for its duly certified territory conditioned upon this Commission issuing a certificate of convenience and necessity showing there is a demand and need for the electric service sought to be rendered pursuant to KRS 278.020(3).

WHEREFORE, applicant Clark Energy Cooperative, Inc., respectfully requests that the Public Service Commission of Kentucky grant a certificate of convenience and necessity authorizing Clark Energy Cooperative, Inc. to apply for and obtain the electric utility franchise for the territory in Fayette County, Kentucky, and a determination that there is a demand and need for the electric service sought to be rendered.

DATED: This 28 day of June, 2012.

CLARK ENERGY COOPERATIVE, INC.

By: Paul G. Embs Jr
**PAUL G. EMBS, President
and C.E.O.**

P.O. BOX 748
Winchester, Kentucky 40392-0748

GRANT, ROSE & PUMPHREY

By: John S. Pumphrey
JOHN S. PUMPHREY

51 South Main Street
Winchester, Kentucky 40391
Attorneys for Applicant,
Clark Energy Cooperative, Inc.

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AMENDMENT OF ARTICLES OF INCORPORATION
OF
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

APR 23 9 03 AM '97

JOHN T. ...
SECRETARY
CLARK RURAL ELECTRIC COOPERATIVE CORPORATION
John T. ...

KNOW ALL MEN BY THESE PRESENTS:

That we, Overt L. Carroll, President, and William N. Curry, Secretary, of Clark Rural Electric Cooperative Corporation (hereinafter called the "Corporation") do hereby certify:

That at a meeting of the Directors of the Corporation duly held on the 22nd day of April, 1997, in conformity with the constitution and laws of the Commonwealth of Kentucky, it was unanimously resolved that the amendments of the Articles of Incorporation of the Corporation hereinafter set forth be approved and recommended to the members for approval.

Further, at a meeting of the members of the Corporation duly held on the 12th day of May, 1997, in conformity with the constitution and laws of the Commonwealth of Kentucky, the following amendments of the Articles of Incorporation of the Corporation were adopted by a majority of the votes entitled to be cast by the members present in person and voting at said meeting:

1. Article I of the Articles of Incorporation shall be amended to read as follows:

ARTICLE I

The name of the Corporation shall be Clark Energy Cooperative, Inc.

2. Article II of the Articles of Incorporation shall be amended to read as follows:

Hold GR&P

ARTICLE II

The purpose for which the Corporation is organized is to produce, transmit, distribute, furnish, supply or sell electric energy to its members and non-members to the extent permitted by Kentucky law, and to engage in the transaction of any and all lawful activities authorized for Kentucky corporations pursuant to Kentucky law.

3. Section 2 (a) of Article VIII of the Articles of Incorporation shall be amended to read as follows:

ARTICLE VIII

Section 2.

(a) Signing the membership application specified in the bylaws:

4. Section 4 of Article VIII of the Articles of Incorporation shall be amended to read as follows:

ARTICLE VIII

Section 4. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by law, or these Articles of Incorporation. No proxy voting shall be valid. If a husband and wife hold a joint membership they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote of a meeting of the members.

IN WITNESS WHEREOF, Overt L. Carroll and William N. Curry have made, signed and acknowledged these Amendments of Articles of Incorporation of Clark Rural Electric Cooperative Corporation (hereafter "Clark Energy Corporation, Inc."), in triplicate originals, this the 22 day of May, 1997.

CLARK RURAL ELECTRIC COOPERATIVE CORPORATION, INC.

By: [Signature]
Overt L. Carroll, President

ATTEST:

[Signature]
William N. Curry
Secretary

STATE OF KENTUCKY)
COUNTY OF CLARK)

I, Dana J. Graham, Notary Public within and for the State and County aforesaid do certify that on this date the foregoing instrument of writing was produced to me in my County by Clark Rural Electric Cooperative Corporation by its authorized representatives, Overt L. Carroll, President, and William N. Curry, Secretary, parties thereto, and was by them signed, acknowledged and delivered as and for their free act and deed and the free act and deed of Clark Rural Electric Cooperative Corporation.

My commission expires: April 15, 2000

Witness my hand on this the 22 day of May, 1997.

[Signature]
Notary Public, State at Large

PREPARED BY THE UNDERSIGNED
MEMBER OF THE LAW FIRM OF
GRANT, ROSE & PUMPHREY
51 SOUTH MAIN STREET, WINCHESTER,
KENTUCKY 40391 - (606) 744-6828

Robert Lee Rose

DOCUMENT NO: 43057
RECORDED ON MAY 27, 1997 02:25:42PM
TOTAL FEES: \$11.00
COUNTY CLERK: ANITA JONES
COUNTY: CLARK COUNTY
DEPUTY CLERK: DONNA BLACK

BOOK 14 PAGE 317

STATE OF KENTUCKY)
) SS.
COUNTY OF CLARK)

I, Linville Jackson, Clerk of the Clark County Court, do certify that the foregoing Amendment to the Charter of the Joint Board of Education of the Kentucky and Louisville Conferences of the Methodist Episcopal Church South, was on the 23rd day of February, 1940, produced to me in said county, certified as above, and was lodged for record February 23rd, 1940, whereupon the same and this and the preceding certificate have been recorded in my office.
Given under my hand this the 23rd day of February, 1940.

LINVILLE JACKSON, Clerk
By Linville Jackson D.C.

AMENDMENT OF ARTICLES OF INCORPORATION
OF CLARK RURAL ELECTRIC COOPERATIVE
CORPORATION.

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF CLARK.....)

KNOW ALL MEN BY THESE PRESENTS:

That we, J. Hughes Evans, President, and E. Ward May, Secretary, President and Secretary, respectively of Clark Rural Electric Cooperative Corporation (hereinafter called the "Corporation") do hereby certify:

That at a meeting of the Directors of the Corporation duly held on the 5th day of March, 1940, in conformity with the constitution and laws of the Commonwealth of Kentucky it was unanimously resolved that the amendments to the Articles of Incorporation of the Corporation hereinafter set forth be approved and submitted to the members.

Further, that at a meeting of the members of the Corporation duly held on the 5th day of March, 1940, in conformity with the constitution and laws of the Commonwealth of Kentucky the following amendments of the Articles of Incorporation of the Corporation were adopted by a majority of all the members of the Corporation:

1. Article V of the Articles of Incorporation shall be amended to read as follows:

"ARTICLE V

The number of directors of the Corporation shall be not less than five (5) nor more than eleven (11). Unless otherwise provided in the by laws, the number of directors shall be nine (9)!

2. Section 2 of Article VIII of the Articles of Incorporation shall be amended to read as follows:

"Section 2. Any person, firm, corporation or body politic may become a member in the Corporation by:

- (a) paying the membership fee specified in the bylaws;
- (b) agreeing to purchase from the Corporation electric energy as specified in the bylaws; and

(c) agreeing to comply with and be bound by these Articles of Incorporation and by laws of the Corporation and any amendments thereto and such rules and regulations as may from time to time be adopted by the Board of directors;

provided, however, that no person, firm corporation or body politic shall become a member unless and until he or it has been accepted for membership by the board of directors or the members in the manner provided for the bylaws. No person, firm corporation or body politic may on more than one (1) membership in the corporation.

A husband and wife may jointly become a member and their application for joint membership may be accepted in accordance with the foregoing provisions of this Section, provided the husband and wife comply jointly with the foregoing provisions of the above subdivisions (a), (b), (c)."

3. Section 3 of Article VIII shall be deleted and the following substituted therefor:

"Section 3. Membership in the Corporation shall be terminated by death, cessation of existence, expulsion or withdrawal of the member as provided in the bylaws of the Corporation. Termination of membership in any manner shall operate as a release of all right, title and interest of the member in the property and assets of the Corporation; provided, however, that such termination of membership shall not release the member or his estate from the debts or liabilities of such member to the Corporation."

4. Section 4 of Article VIII shall be deleted and the following shall be substituted therefor;

" SECTION 4 . Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person or by proxy, except as otherwise provided by law, or these Articles of Incorporation. No proxy shall be valid after sixty (60) days from the date of its execution, and the person so appointed may not vote at any meeting other than the one designated in the proxy or any adjournment or adjournments of such meeting. No person shall vote as proxy for more than three (3) members at any meeting of the members except upon the question of amendment of the Articles of Incorporation to increase the number of counties in which the Corporation may operate or on the question of mortgaging or otherwise encumbering any of the Corporation's property to secure loans made or to be made to the Corporation by the United States of America or any agency or instrumentality therefor, in either of which cases a person may hold an unlimited number of proxies. a husband and wife hold a joint membership they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members.

5. Section 5 of Article VIII shall be deleted and the following submitted therefor:

" Section 5. The private property of the members of the Corporation shall be exempt from execution for the debts of the Corporation and no member or incorporator shall be individually liable or responsible for any debts or liabilities of the Corporation."

6. Section 6 of Article VIII shall be deleted and the following substituted therefor:

"Section 6 The bylaws of the Corporation may fix other terms and conditions upon which persons shall be admitted to and retain membership in the Corporation not inconsistent with there Articles of Incorporation or the Act under which the Corporation is organized."

7. Sections 7,8,9 and 10 of Article VIII shall be deleted.

8. Section 1 of Article IX shall be deleted and Section 2 of Article IX shall be Section 1.

9. Section 3 of Article IX shall be deleted and the following substituted therefor:

"Section 2 Directors of the Corporation shall be members therefor."

10. Article X shall be deleted.

11- Article XI shall be changed to Article X.

IN WITNESS WHEREOF, I hereunto subscribe my name this 5th day of March, 1940.

(CORPORATE SEAL)

J. Hughes Evans
President

Attest: E. Ward May
Secretary

STATE OF KENTUCKY }
COUNTY OF CLARK }

I, Nola D. Thompson, a Notary Public in and for said County and State do hereby certify that this instrument of writing from J. Hughes Evans and E. Ward May was this day produced to me the above parties and was acknowledged to be their act and deed.

Given under my hand and seal this 5th day of March, 1940.
My Commission expires Sept 23, 1942

Nola D. Thompson
Notary Public in and for Clark
County, Kentucky

(SEAL)

Appro: & Recorded
3-18-40
George Glen Hatcher
Sect State
By By C. W. McKay
Chief Corp Clk.

COMMONWEALTH OF KENTUCKY }
COUNTY OF CLARK..... }

I, Linville Jackson, Clerk of the Clark County Court, do certify the foregoing Amendment of Articles of Incorporation of Clark Rural Electric Cooperative Corporation was on the 19th day of March, 1940, produced to me in my office, certified as above, and was ordered to be recorded, whereupon the same and the preceding certificate have been duly recorded in my office.

Given under my hand this the 19th day of March, 1940.

LINVILLE JACKSON, Clerk
Clark County Court, Ky.
By *Linville Jackson* D.C.

ORIGINAL COPY
FILED AND RECORDED

Date Mar 25 1949

George Glenn Hatcher,
Secretary of State of Kentucky
Frankfort, Kentucky.

By S.L.L. Deputy.

STATE OF KENTUCKY)
) SS.
COUNTY OF CLARK)

I, Linville Jackson, Clerk of the Clark County Court, do certify that the foregoing Statement of Intent to Dissolve of R. P. Scobee & Son Co. Incorporated, was on the 25th. day of March, 1949, produced to me in said County, certified as above, and was lodged for record March 25, 1949. Whereupon the same and this and the preceding certificate have been recorded in my office.

Given under my hand this, the 19th. day of April, 1949.

LINVILLE JACKSON, Clerk

By William S. Gentry D.C.

*Ex. 22 to memo under P.C.A
6/4/49*

Amendment of Articles of Incorporation

of

CLARK RURAL ELECTRIC COOPERATIVE CORPORATION

Commonwealth of Kentucky)
County of Clark) SS.

KNOW ALL MEN BY THESE PRESENTS:

That we, J. L. Skinner, President, and E. E. Curry, Secretary, President and Secretary, respectively of Clark Rural Electric Cooperative Corporation (hereinafter called the "Corporation") do hereby certify:

That at a meeting of the Directors of the Corporation duly held on the 8th day of March, 1949, with eight of nine members present in conformity with the constitution and laws of the Commonwealth of Kentucky it was unanimously resolved that the amendments to the Articles of Incorporation of the Corporation hereinafter set forth be approved and submitted to the members.

Further, that at a meeting of the members of the Corporation duly held on the 8th day of March, 1949, in conformity with the constitution and laws of the Commonwealth of Kentucky the following amendments of the Articles of Incorporation of the Corporation were adopted by a majority of all the members of the Corporation:

1. Section 3 of Article VIII of the Articles of Incorporation be amended to read as follows:

Section 3. Membership in the Corporation shall be terminated by death, cessation of existence, expulsion or withdrawal of the member as provided in the bylaws of the Corporation. Termination of membership in any manner shall not release the member or his estate from the debts or liabilities of such member to the Corporation.

Section 4 of Article VIII of the Articles of Incorporation be amended to read as follows:

Section 4. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person or by proxy, except as otherwise provided by law, or these Articles of Incorporation. No proxy shall be valid after (60) days from the date of its execution, and the person so appointed may not vote at any meeting other than the one designated in the proxy of any adjournment or adjournments of such meeting. No person shall vote as proxy for more than three (3) members at any meeting of the members except upon the question of mortgaging or otherwise encumbering any of the Corporation's property to secure loans made or to be made to the Corporation by the United States of America or any agency or instrumentality thereof, or on the question of any amendment to these Articles of Incorporation, in either or all of which cases a person may hold and vote an unlimited number of proxies. If a husband and wife hold a joint membership they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote of a meeting of the members.

IN WITNESS WHEREOF, I hereunto subscribe my name this 31st day of March, 1949.

(Corporate Seal) J. L. Skinner
President

Attest: E. E. Curry
Secretary

STATE OF KENTUCKY)
COUNTY OF CLARK)

I, Ruth R. Prater, a Notary Public in and for said county and state do hereby certify that this instrument of writing from J. L. Skinner and E. E. Curry was this day produced to me by the above parties and was acknowledged by the said J. L. Skinner and E. E. Curry to be their act and deed.

Given under my hand and seal this 31st day of March, 1949.

My commission expires March 9, 1950.

(SEAL) Ruth P. Prater
Notary Public in and for Clark
County, Kentucky.

Receipt is acknowledged of a certified copy of Amendment of Articles of Incorporation of Clark Rural Electric Cooperative Corporation. It has been placed on file in the office of the Dean of the College of Agriculture and Home Economics, University of Kentucky.

April 27, 1949.

Thomas Cooper, Dean

ORIGINAL COPY
FILED AND RECORDED

Date: April 11, 1949.
George Glenn Hatcher
Secretary of State of Kentucky
Frankfort, Kentucky.

By L.E.
Deputy.

STATE OF KENTUCKY)
COUNTY OF CLARK)

I, Linville Jackson, Clerk of the Clark County Court, do certify that the foregoing Amended Articles of Incorporation of Clark Rural Electric Cooperative Corporation was on the 13th. day of May, 1949, produced to me in said County, certified as above, and was lodged for record May 13, 1949. Whereupon the same and this and the preceding certificate have been recorded in my office.

Given under my hand this, the 14th. day of May, 1949.

LINVILLE JACKSON, Clerk

By W. D. L. Linsley D.C.

Articles of Incorporation
of
Clark Rural Electric Cooperative Corporation

The incorporators whose names are hereto signed, being natural persons and citizens of the Commonwealth of Kentucky, have executed these articles of Incorporation for the purpose of forming a cooperative corporation not organized for pecuniary profit pursuant to the "Rural Electric Cooperative Corporation Act" which was passed by the General Assembly of Kentucky at special session, 1936, and approved on January 15, 1938, in accordance with the various provisions:

Article I.

The name of the Corporation shall be "Clark Rural Electric Cooperative Corporation".

Article II.

The purpose or purposes for which the corporation is formed are to promote and encourage the fullest possible use of electric energy in the Commonwealth of Kentucky by making electric energy available by production, transmission or distribution, or both, to or by otherwise securing the same for the inhabitants of and persons in rural areas of the Commonwealth of Kentucky at the lowest cost consistent with sound business methods and prudent management of the business of the Corporation and also by making available to the said inhabitants as aforesaid electrical devices, equipment, wiring, appliances, fixtures and supplies and all kinds of tools, equipment and machinery (including any fixtures or property or both which may by its use be conducive to a more complete use of electricity or electric energy) created by electricity or electric energy and, without limiting the generality of the foregoing:

(a) To generate, manufacture, purchase, acquire and accumulate electrical energy for its members and non-members to be sold, permitted by the

act under which the Corporation is formed and to transmit, distribute, furnish, sell and dispose of such electric energy to its members and non-members to the extent permitted by the act under which the Corporation is formed, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, fixtures, apparatus, equipment and electric transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes;

(k) To acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, licenses, rights of way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Corporation;

(l) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of any and all real and personal property or any interest therein necessary, useful or appropriate to enable the Corporation to accomplish any or all of its purposes;

(m) To assist its members to use their premises and include therein electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and, in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install and repair electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and to receive, acquire, endorse, pledge, guarantee, hypothecate, transfer or otherwise dispose of notes and other evidence of indebtedness and all securities therefor;

(n) To borrow money to use for the purposes of the Corporation and the

or for any of the other objects or purposes of the Corporation to secure the payment of such bonds, notes or other evidences of indebtedness by mortgage or mortgages, or deed or deeds of trust upon, or by the pledge of or other lien upon, any or all of the property, rights, privileges or interests of the Corporation, wherever situated, acquired or to be acquired;

(f) To do and perform, either for itself or its members, any and all acts and things, and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by the Act under which the Corporation is formed, and to exercise any of its powers anywhere.

Article III.

The principal office of the Corporation shall be located at Winchester, in the County of Clark, Commonwealth of Kentucky.

Article IV.

The operations of the Corporation are to be conducted in the County of Clark, and in such other Counties as such operations may from time to time become necessary or desirable in the interest of this Corporation or of its members.

Article V.

The number of directors of the Corporation shall be seven.

Article VI.

The names and post office addresses of the directors who are to manage the affairs of the Corporation until the first annual meeting of the members or until their successors shall have been elected and shall have qualified, are:

<u>Name</u>	<u>Post Office Address</u>
J. H. Under Sewers	Winchester, Ky., R. F. D. # 1
E. Ward May	Winchester, Ky., R. F. D. # 1
J. S. Skinner	Winchester, Ky., R. F. D. # 1
Ernest W. Robinson	Winchester, Ky., R. F. D. # 3
Alf J. Ballard	Winchester, Ky., R. F. D. # 3
Bruce W. Davis	Lexington, Ky., R. F. D. # 7
Virgil Barnes	Mt. Sterling, Ky., R. F. D. # 1

Article VII.

The duration of the Corporation is: perpetual.

Article VIII.

Section 1. The corporation shall have no capital stock, and the property rights and interests of each member shall be equal.

Section II. the subscribers to these Articles of Incorporation shall be members of the corporation. In addition to the under-
signed incorporators any person, firm, association, corporation, business trust, partnership or body politic may become a member in the Corporation by:

(a) paying in full such membership fee as shall be specified in the By-Laws of the Corporation; (b) agreeing to purchase from the Corporation the amount of electric energy hereinafter in Section 3 of this Article specified, and (c) agreeing to comply with and be bound by these Articles of Incorporation and the By-Laws of the Corporation and any amendments thereto and by such rules and regulations as may from time to time be adopted by the Board of Directors of the Corporation; provided, however, that no person, firm, association, corporation, business trust, partnership or body politic except the undersigned incorporators, or any person, firm, association, corporation, business trust, partnership or body politic accepted as a member at any meeting of the Board of Directors of the Corporation, shall be a member unless and until he or it has been accepted for membership by the affirmative vote of a majority of the members of the Board of Directors of the Corporation.

Section 3. Each member shall, as soon as electric energy shall be available, purchase from the Corporation monthly at least the minimum amount of electric energy which shall from time to time be determined by a resolution of the Board of Directors of the Corporation and shall pay therefore, and for all additional electric energy used by such member, the price which from time to time shall be fixed therefor by resolution of the Board of Directors. Each member shall also pay all obligations which may from time to time become due and payable by such member to the Corporation as and when the same shall become due and payable.

Section 4. The Board of Directors may, by the affirmative vote of not less than two-thirds (2/3) of the members thereof, expel any member of the Corporation

of the provisions of the Articles of Incorporation or the By-Laws of the Corporation or any rules or regulations adopted from time to time by the Board of Directors, Any member so expelled may be reinstated as a member by a vote of the members at any annual or special meeting of the members.

The action of the members with respect to any such reinstatement shall be final.

Section 5, Any member of the Corporation may withdraw from membership upon payment in full of all of his debts and liabilities to the Corporation and upon compliance with and performance of such terms and conditions as the Board of Directors may prescribe.

Section 6, Membership in the Corporation and the certificate representing the same shall not be transferable, and upon the death, cessation of existence, expulsion or withdrawal of a member, the membership of such member shall thereupon terminate, and his or its certificate of membership shall be surrendered to the Corporation, subject to the payment of all debts and liabilities of a member to the Corporation, upon any such termination of membership and the surrender of his or its membership certificate, the Corporation shall pay such member or his personal representatives, an amount equal to the membership fee paid by such member. Termination of membership by death, cessation of existence, expulsion or withdrawal shall operate as a release of all right, title and interest of the member in the property and assets of the Corporation; provided, however, that such termination of membership shall not release the member from the debts or liabilities of such member to the Corporation.

In case of a lost, destroyed or mutilated certificate, a new certificate may be issued therefor upon such terms and such indemnity to the Corporation as the Board of Directors may prescribe.

Section 7, Membership in the Corporation shall be evidenced by a certificate of membership which shall be in such form and shall contain such provisions as shall be determined by the Board of Directors not contrary to or inconsistent with the Articles of Incorporation or the By-Laws of the Corporation. Such certificate shall be signed by the President and by the Secretary of the Corporation and shall be sealed with its corporate seal.

Section 8, No membership shall be issued for less than the membership fee specified in the By-Laws of the Corporation.

fully paid for in cash and such payment has been deposited with the Treasurer of the Corporation.

Section 9. No member shall be entitled to more than one (1) vote upon each matter submitted to a vote at any meeting of the members of the Corporation nor shall the members of the Corporation be entitled to vote by proxy. No proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting of the members unless it shall designate the particular meeting at which it is to be voted. The presence of a member at a meeting of the members shall constitute the execution of a proxy and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if he had not executed a proxy.

Articles 18

Section 1. The By-Laws of the Corporation may fix such other terms and conditions upon which members shall be admitted to and retain membership in the Corporation not inconsistent with the Articles of Incorporation or the Act under which it is organized.

Section 2. The Board of Directors shall have power to make and adopt such rules and regulations not inconsistent with these Articles of Incorporation or the By-Laws of the Corporation as it may deem advisable for the management, administration and regulation of the business and affairs of the Corporation.

Section 3. Neither the incorporators nor any other member of the Corporation shall be personally responsible for any debt, obligation or liability of the Corporation.

Section 4. Directors of the Corporation shall be members thereof.

Article X.

Subject to the provisions of any mortgage given by the Corporation and within sixty (60) days after the expiration of each fiscal year the Board of Directors, after paying or providing for the payment of all operating expenses of the Corporation including an amount for prospective operating expenses for a reasonable period, and all interest

at the end of the fiscal year but which shall not be paid, and after paying or making provisions for the payment of all taxes, insurance and all other non-operating expenses which shall have become due and be unpaid, and all taxes, insurance and all other non-operating expenses which shall have accrued at the end of the fiscal year but which shall not be then due, shall apply the revenues and receipts of the Corporation remaining thereafter for the following purposes and in the following order of priority:

1. the establishment and maintenance of a reserve for the payment of interest on and principal of all outstanding notes, bonds or other evidences of indebtedness of the Corporation in an amount which shall equal the amount of principal and interest required to be paid in respect of such notes, bonds or other evidences of indebtedness during the ensuing fiscal year;

2. the establishment and maintenance of a general reserve fund for working capital, insurance, taxes, new construction, depreciation, obsolescence, and contingencies in an amount which the Board of Directors shall deem reasonable;

3. the establishment and maintenance of a reserve for an educational fund to be used for teaching cooperation in an amount not to exceed five per cent (5%) of the balance of the revenue and receipts of the Corporation remaining after the reserves hereinabove provided for have been established;

and all revenues and receipts not needed for the above and foregoing purposes shall be returned, paid or debited to the members as a patronage dividend or refund on the basis and in the manner provided in the act under which the Corporation is organized, provided, however, that in no case shall any such patronage dividend or refund be returned, paid or debited to any member who is indebted to the Corporation until such indebtedness is paid or arrangements in respect thereof satisfactory to the Board of Directors shall have been made.

Article XI.

The Corporation may amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by law.

In witness whereof, we hereto subscribe our names
this 15th day of March 1908,

J. Hughes Evans
E. W. May
J. B. Skinner

vs. George Thomas
Crescent Davis
Virgil Barnes

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State of Kentucky)
County of Clark) ss

I, George Thomas, a Notary Public in and for said County and State do hereby certify that this instrument of writing from Hughes Evans, E. Ward May, J. S. DeWine, Gerald W. Robinson, A. J. Ballard, Crescent Davis and Virgil Barnes, was this day produced to me by the above parties and was acknowledged by the said J. Hughes Evans, E. Ward May, J. S. DeWine, Gerald W. Robinson, A. J. Ballard, Crescent Davis and Virgil Barnes to be their act and deed.

Given under my hand and seal this 15th day of March, 1938.

My commission expires October 20, 1938.

(Seal)

George Thomas
Notary Public in and for
Clark County, Kentucky

State of Kentucky) set.

I, Charles D. Arnett, Secretary of State of the Commonwealth of Kentucky, have examined the within Articles of Incorporation of the Clark Rural Electric Cooperative Corporation and have found same legal and valid. I hereby approve said Articles of Incorporation and I hereby certify that one of the five copies filed with me has been retained by me as Secretary of State of the Commonwealth of Kentucky and recorded in my office in Articles of Incorporation Book, and that I have delivered four copies of these Articles of Incorporation to the Incorporators of this Corporation.

In Witness Whereof, I have hereunto set my hand and affixed my seal.

Done at Frankfort, Kentucky, this March 16th 1938.

Charles D. Arnett
Secretary of State
By C. W. Roberts
Chief Corporation Clerk.

Commonwealth of Kentucky
Office of the
Secretary of State
Certificate

I, Charles D. Bennett, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of Articles of Incorporation of Clark Rural Electric Cooperative Corporation, filed in this office Nov. 16, 1935.

In witness whereof, I have hereunto set my hand and affixed my official seal.

Done at Frankfort this 10th day of March, 1935

Charles D. Bennett
Secretary of State
By Lee S. Adams
Assistant

(Seal)

March 16, 1935

I, Thomas Cooper, Dean of the College of Agriculture, University of Kentucky, do certify that on this March 16, 1935, there has been filed in my office as Dean of the College of Agriculture, Articles of Incorporation of the Clark Rural Electric Cooperative Corporation and that the foregoing writing is an exact copy of said Articles of Incorporation as the same are on file in my office.

In witness whereof, I have hereunto set my hand, this 10th day of March, 1935.

Thomas Cooper
Dean, College of Agriculture
University of Kentucky

State of Kentucky
County of Clark

I, Linnell Johnson, Clerk of the Clark Co. Court, Ky, do certify that the foregoing Articles of Incorporation of Clark Rural Electric Cooperative Corporation, was on the 16 day of March, 1935, produced to me in my office and that to be recorded, whereupon the same and that the preceding certificates have been recorded in my office.

Witness under my hand this April 16, 1935

Linnell Johnson, Clerk
By James H. Ramsey & C.

ORDINANCE NO. 72-2011

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE ELECTRIC FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHTS-OF-WAY OF FAYETTE COUNTY FOR A SIX (6) MONTH DURATION, WITH AN ADDITIONAL EXTENSION OF TIME NOT TO EXCEED SIX (6) MONTHS IF A LONG TERM FRANCHISE IS NOT OFFERED PRIOR TO EXPIRATION, IN RETURN FOR PAYMENT TO THE URBAN COUNTY GOVERNMENT OF THE SUM OF AT LEAST THREE PERCENT (3%) OF EACH FRANCHISEE'S GROSS ANNUAL REVENUES RECEIVED FROM ELECTRIC SERVICE PROVIDED WITHIN FAYETTE COUNTY; AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; A PERFORMANCE BOND; INDEMNIFICATION; INSURANCE; ACCESS TO PROPERTY AND INSPECTIONS; REPORTING; AUDITS; NOTICE OF FILINGS WITH THE PUBLIC SERVICE COMMISSION; CANCELLATION OR TERMINATION; PENALTIES FOR VIOLATIONS; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created a non-exclusive franchise to acquire, lay, maintain and operate in the public streets, alleys, avenues, public roads, highways, sidewalks and other public ways of the Lexington-Fayette Urban County Government, a system or works for the generation, transmission and distribution of electrical energy from points either within or without the corporate limits of this Urban County, to this Urban County and the inhabitants thereof, and from and through this Urban County to persons, corporations and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; to erect and maintain poles or other structures, wires and other apparatus necessary for the operation of said system in, upon, over, under, across and along each and all of the streets, avenues, alleys, rights-of-way and public places (not including parks, greenways, and other public areas not traditionally used for public egress) within the present and future corporate limits of this Urban County (the "Rights-of-way"), subject to all the provisions of this Ordinance. This Ordinance does not excuse the franchisee from complying with any and all existing and future local laws and ordinances, as may be amended, including but not limited to the terms and provisions of Chapters 17, 17B, and 17C of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), or the provisions of its zoning ordinance, if applicable, which are incorporated herein by reference, and shall apply as if fully set forth herein to the extent that there is no express conflict with the terms or provisions of this

Ordinance, or a direct conflict with federal or state law. This franchise does not include the right or privilege to provide for the operation of a telephone communication system, including telephone exchange service (as defined by 47 USC Section 153(47)) and exchange access (as defined by 47 USC Sec. 153 (16)), data transmission, cable service (as defined by 47 USC Section 522(6)) or open video service (as defined by 47 USC Section 76.1500(a)), unless such services are used exclusively within the Company and not for revenue.

Section 2 - The person, firm or corporation that shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company" herein. The Lexington-Fayette Urban County Government shall be referred to as the "Government". The definitions and terminology contained in the provisions of the Code are hereby incorporated herein by reference.

Section 3 - The Company acquiring this franchise shall have the right and privilege of laying, maintaining and operating a system or works for the generation, transmission and distribution of electrical energy for the sale of same for light, heat, power and other purposes, to erect and maintain poles or other structures, wires and other apparatus necessary for the operation of said system in, along and under the Rights-of-way within the corporate boundaries of the Government as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon, or reserved to the Government, including but not limited to those contained in the Code.

Section 4 - In addition to complying with the requirements contained in federal or state law or regulation, and the Code, the Company agrees that:

(a) All working facilities and conditions used during construction, installation and maintenance of Facilities shall comply with the standards of the Occupational Safety and Health Administration;

(b) It shall construct and operate the system and related Facilities in accordance with all generally accepted related industry codes and standards that are applicable;

(c) All construction shall be performed in a workmanlike manner, and all materials, equipment, and/or Facilities used or installed shall be in compliance with industry standards;

(d) In the construction or reconstruction or maintenance or removal of any of said Facilities, the Company shall have due regard for the rights of the Government and others, and shall not unduly interfere with, or in any way damage the property of the Government or others under, on, or above the ground. The Company shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of the Rights-of-way.

(e) The minimum clearance of wires and cables above the Rights-of-way and the placement of any underground facilities shall conform to accepted good engineering practices or national standards as recognized by the Kentucky Public Service Commission.

Section 5 – The Company shall comply with all of the requirements of the Code, and more specifically, Section 17C-19 of the Code and the provisions of the zoning ordinance, if applicable pertaining to Government construction and/or street projects.

Section 6 – In addition to any performance bond(s) required pursuant to Section 17C-23 of the Code, the Company may be required to provide a performance guarantee for significant projects with construction costs of one hundred thousand (\$100,000.00) or more involving the Rights-of-way. This performance guarantee shall be set in an amount and duration to be determined by the Director upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such performance guarantee exceed two hundred thousand dollars (\$200,000.00).

Section 7 – As consideration for the granting of this franchise, the Company agrees it shall defend, indemnify, and hold harmless the Government consistent with the

indemnification and hold harmless provisions as set forth in Section 17C-17 of the Code, or as it may be amended in the future. This obligation to defend, indemnify, and hold harmless does not include defending, indemnifying and holding harmless the Government for its own negligent acts.

Section 8 - The Company shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or applicant for employment because of race, color, religion, national origin, sex, age or physical handicap.

Section 9 - The Company agrees to procure and maintain throughout the term of this franchise and any extension thereof, commercial general liability insurance in the principal amount of at least One Million dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000.00) aggregate, with an insurance company authorized to do business in the Commonwealth of Kentucky with the provision, "it is agreed and understood that the Lexington-Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insureds, in the same manner as if a separate policy had been issued, under the provision of the policies required to be issued during the term of this franchise or as otherwise required by this Ordinance." All insurance policies shall be broad form in nature and shall be through a company with an A.M. Best Rating of "A" or better, admitted to do business in Kentucky, and the contract shall be non-cancelable without at least thirty (30) days advance written notice by registered mail to the Government from the insurance company and shall provide the Government with a certificate of insurance evidencing the insurance policy required by this section. The certificate shall state that the insurance policy shall not be canceled, materially changed or non-renewed until after thirty (30) days written notice has been provided to the Government; however, insurance may be canceled and replaced with a policy that continues to meet or exceed the requirements of this section. The Company may satisfy the insurance requirements and conditions of this section under a self-insurance plan that is acceptable to the Government's Division of Risk Management.

Section 10 – (a) The Government, through its Mayor or his designee, or through such assistants as the Government may employ or designate, may, at all reasonable times, and at the Government's expense, have the right to inspect such books and records of the Company as are necessary for the Government to verify the accuracy of the amounts paid by the Company to the Government under this franchise. This provision shall survive the term of any franchise agreement awarded pursuant to this Ordinance for a period of one (1) year. In the event that the Government determines that it desires an audit of this franchise, the Company agrees to comply with all reasonable requests of the Government pertaining to obtaining any necessary information or documentation from the Company. If such audit or review is performed in connection with the granting or renewal of a franchise, a sale or transfer of control, or a modification, the Company shall reimburse the Government for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants. Any additional amount due to the Government as a result of the Government's audit shall be paid within ten (10) days following written notice to the Company by the Government which notice shall include a copy of the audit report.

(b) The Company agrees further to furnish the Mayor or his designee timely written notice of its filing an application with the Public Service Commission for an increase in general base rates concurrent with said filing. Should the Government choose to intervene in such Commission action, the Company shall not oppose such intervention, and the Government shall be given access to records related to said application, as required by the Commission.

(c) The Company agrees to provide Government and/or its Council with information pertaining to its provision of services pursuant to this franchise upon reasonable request. This may include, but is not necessarily limited to attending public meeting(s) involving some or all of the Council in order to provide such information upon reasonable advance notice.

Section 11 - (a) The franchise hereby created is being offered to allow the Government to complete audits of its incumbent franchisees and draft a longer-term

franchise to be offered for bid, and shall be for a period of six (6) months from the date of acceptance by the Urban County Council, with the option on the part of the Government to extend the period of time up to an additional six (6) months as necessary in order to accommodate the above. Any franchise agreement entered into pursuant to this ordinance will automatically expire upon the offering and acceptance of a longer-term franchise of the same nature.

(b) This franchise is not exclusive and the Government reserves the right to grant similar franchises to more than one Company.

(c) This franchise creates no vested rights in the Company and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk. If the Company is not granted a new franchise upon the expiration of the term for which the franchise is granted, or if the Company's franchise is terminated or cancelled, as provided for herein, the Government shall have the right to require the Company to remove at its own expense all portions of the system from all public rights-of-way within the confines of Fayette County.

(d) No assignment of this franchise or the electric transmission and distribution system subject to this franchise shall take place without at least sixty (60) days advance written to the Government, and consent by the Government, which consent shall not be unreasonably withheld. The Company shall not object to the Government's intervention and participation in any action before the Public Service Commission involving the transfer of control of the Company.

Section 12 - (a) If, after the Company is provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works or his designee, the Government finds that the Company has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Commissioner shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.

(1) For failure to commence removal of any pending construction project within thirty (30) days of receiving notice from the Government that the franchise has

expired and will not be renewed, the Company shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues;

(2) For failure to provide data and reports requested by the Government and as required by this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues;

(3) For failure to pay the franchise fee when due pursuant to Section 18 of this Ordinance, or any itemized bill presented by the Government pursuant to Section 5 of this Ordinance or this section, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. However, this provision shall not apply if interest is assessed by the Government pursuant to Section 19(c).

(b) If the Company fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.

(c) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 14 of this Ordinance.

Section 13 – The Government reserves all rights it might presently have, or which it may hereafter acquire, to regulate the Company's rates and services. The parties acknowledge the general regulatory authority that the Kentucky Public Service Commission has been provided in this area. The rights of all subscribers are defined by the Customer Bill of Rights, which is contained in the Company's tariffs. The Company will abide by any all Commission orders and/or tariffs pertaining to service and operations in Fayette County. As further consideration for the granting of this franchise, the

Company shall work with the Government to improve the identification and replacement or repair of nonfunctioning street lights.

Section 14 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any material provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;

(2) Willfully attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;

(3) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of the franchise;

(4) Is experiencing a foreclosure or other judicial sale of all or a substantial part of the Company's facilities located within Fayette County. The Company shall provide the Government at least thirty (30) days advance written notice of such foreclosure or sale;

(5) Is no longer able to provide regular and customary uninterrupted service to its customers in the franchise area.

(b) Prior to attempting to terminate or cancel this franchise pursuant to this section, the Mayor or his designee, or the Urban County Council shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 14(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(1) It shall be a defense to any attempt to terminate and cancel the franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(4) If the Council determines such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the Council may fix.

Section 15 – The Council shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

(a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Company.

Section 16 - It shall be the duty of the Mayor or his designee to offer for sale at public auction said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor after he or she has given due notice thereof by publication or advertisement as required by law.

Section 17 – Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or his designee upon the date(s) and at the times(s) fixed by him or her in said publication(s) or advertisement(s) for receiving same. Thereafter, the Mayor shall report and submit to the Urban County Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The Urban County Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the Urban County Council, it may direct, by resolution or ordinance, said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.

(a) Each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars (\$500.00) to cover the Government's cost of advertising and other administrative expenses incurred. In the event that the total amount submitted by all bidders exceeds the Government's actual costs, it will refund the overcharge to each Company on a pro rata basis within thirty (30) days.

(b) In addition, any bid submitted by a corporation or person not already owning within the territorial limits of Fayette County a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Government reserves the right to review any of bidder's supporting documentation which

justifies bidder's determination of said estimated cost. Such deposit need not be made by a corporation or person already owning within the territorial limits of Fayette County a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance.

Section 18 - (a) In consideration for the granting of the franchise the Company agrees to pay to the Government a franchise fee in a sum equal to three percent (3%) of the gross annual revenues received by the Company from electric service provided by the Company within Fayette County. The term gross annual revenues is intended to include revenue received from customers within Fayette County supplied under residential, commercial, industrial, public street and highway lighting, and other public authorities classifications. It shall also include any revenue that is otherwise derived from the use of the Company's facilities that are located in the Rights-of-way, if explicitly approved by the Kentucky Public Service Commission. The Company shall file all documents necessary for approval of this franchise agreement and/or its associated fees with the Kentucky Public Service Commission within ten (10) working days after the acceptance of the franchise by the Government, and shall provide the Government with copies of any such filed documents. The Company is otherwise required to continue submitting payments to the Government under the terms of its existing tariff and/or franchise until such time as this tariff approval is obtained.

(b) As further consideration for the granting of this franchise, the Company shall work with the Government to provide of redundant power feeds/lines sufficient to meet operational needs from separate power substations to all Government facilities housing security, communications, and or information technology services.

(c) As further consideration for the granting of this franchise, the Company shall permit the Government to utilize its pole, conduit, or raceway space at no charge when such space is vacant or available for public safety or governmental purposes. If such space is not available, then the Company shall make such space available on the most favorable terms extended to any other customer. This provision shall not supersede any existing or future agreement that the Government has with the Company pertaining to the use of the Company's space.

(d) If, after a period of sixty (60) days from the filing of Company's application or tariff, the Kentucky Public Service Commission has made no final determination concerning the prompt and satisfactory recovery of amounts payable under this Section by the Company, then the Company's obligation to pay the amount specified in Section 18(a) shall be suspended, provided the Company shall first give the Government ten (10) days written notice of its intention to suspend payment pending the decision of the said Commission. In the event of suspension of the Company's obligation as herein provided, the Government shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company. Notwithstanding the above, any Company that had a previously existing franchise with the Government shall continue to pay the fees established pursuant to its previous franchise until the amounts payable issue is resolved.

(e) In the event the sale of electricity is deregulated within the Commonwealth of Kentucky, and deregulation results in a material shortfall of revenue to the Government, the Government shall have the option of terminating the franchise agreement with the Company. If the franchise agreement is terminated by the Government pursuant to this provision, the Government and the Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise agreement to the Company.

(f) In addition to the franchise fees in Section 18(a), the Company is also required to pay the Government an additional amount intended to adequately compensate the Government for its permitting and inspection of the Company's construction activities in the Rights-of-way pursuant to Section 17C-22 of the Code. This amount is to be paid separately to the Government at the time and under the terms as set forth in Chapter 17C of the Code. The Company may seek tariff approval from the Kentucky Public Service Commission for the recovery of such payments as set forth in Section 18(a). Notwithstanding the foregoing, the Company may elect to pay for its permit fees upon application for each respective permit upon approval of the Director. These permitting fees are subject to change during the term of the franchise based upon an audit of the actual cost of permitting for the Government or a change in the amount of

the respective permitting fees found in Section 17C-22 of the Code. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.

(g) To the extent the Company actually incurs other reasonable incremental costs in connection with its compliance with the Government's ordinances; the Government agrees that the Company may recover such amounts from its customers pursuant to the terms of a tariff filed with an approved by the Kentucky Public Service Commission, if otherwise permitted by law.

Section 19 - (a) Payment of any amount due under this Ordinance shall be made on a monthly basis or quarterly basis within thirty (30) days of the end of the preceding payment period. Such payments shall be monthly unless the Company has historically paid the Government on a quarterly basis. In the event of suspension of the Company's obligation pursuant to Section 18(b) herein, said suspension shall not have application to any amount due hereunder for the preceding calendar month, and the gross income received by the Company during any such suspension period shall be excluded from the Company's annual gross revenues for the purpose of calculating amounts due under Section 18(a) herein.

(b) No acceptance of any franchise fee payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim the Government may have for future or additional sums pursuant to this Ordinance. Any additional amount due to the Government as a result of the Government's audit pursuant to Section 10(a) shall be paid within ten (10) days following written notice to the Company by the Government which notice shall include a copy of the audit report. If as a result of such audit or review the Government determines that the Company has underpaid its franchise fee by five percent (5%) or more for any payment period then in addition to making full payment of the relevant obligation, the Company shall reimburse the Government for all of the reasonable costs associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants.

(c) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged

from such date at the annual rate of eight percent (8%). Overpayments discovered by the Government or the Company shall be an adjustment on the next monthly payment without interest.

Section 20 – Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for payments contained in Sections 18 and 19, which shall be considered as a condition of this franchise. Any check deposited by an unsuccessful bidder shall be returned when the Urban County Council shall have accepted the bid or bids, which in its judgment is or are the highest and best.

Section 21 -- Any violation by the Company, its vendee, Lessee, or successor of the material provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth in Section 14.

Section 22 - The Company shall have the authority to trim trees that are located within or overhang the Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other Facilities of the Company. Any trimming, removal or other disturbance of trees shall conform to all lawful ordinances, requirements and directives of the Government, including but not limited to the Government's Street Tree Ordinance (Chapter 17B of the Code of Ordinances), and the Company shall make available upon reasonable request of the Government, information regarding its tree trimming practices. In the event that the Company fails to timely and sufficiently respond to a legitimate and reasonable complaint regarding its failure to trim such trees, and such complaint is made known to the Government, the Government shall contact the Company with respect to such matter and attempt to reach a satisfactory result. Notwithstanding the foregoing, this provision in no way limits any existing or future lawful rights that the Government may have with respect to such trees.

Section 23 - This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or a franchise shall be in a court of competent jurisdiction in Fayette County, Kentucky.

Section 24 - This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

Section 25 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

Section 26 - The franchise created by this Ordinance shall become effective when the Urban County Council accepts the bid(s) for it.

Section 27 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 23, 2011

/s/ Jim Gray
MAYOR

ATTEST:

/s/ Susan Lamb
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 30, 2011-1t

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