



LG&E Energy LLC
220 West Main Street (40202)
P.O. Box 32030
Louisville, Kentucky 40232

December 7, 2005

Ms. Elizabeth O'Donnell
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40601

RECEIVED

DEC 07 2005

PUBLIC SERVICE
COMMISSION

Dear Ms. O'Donnell:

In accordance with the Commission's Order in **Case Number 2005-00349** enclosed herewith for filing are two copies of the franchise agreement with the city of **Winchester**. The City passed Ordinance No. 20-2005 on October 18, 2005.

We would appreciate acknowledgment of the receipt of this information as a record for our file.

Sincerely,

John Wolfram
Manager, Regulatory Affairs

JW:mjr

Enclosures

CITY OF WINCHESTER, KENTUCKY
ORDINANCE NO. 20-2005

SUMMARY

AN ORDINANCE AWARDING A TEN (10) YEAR ELECTRIC FRANCHISE TO KENTUCKY UTILITIES COMPANY FOR THE OPERATION OF AN ELECTRIC SYSTEM WITHIN THE CONFINES OF THE CITY OF WINCHESTER, BASED UPON AND SUBJECT TO THE CONDITIONS OF ORDINANCE NO. 17-2005

I hereby certify that the foregoing is an accurate summary of the contents of the above-entitled Ordinance.



William A. Dykeman, City Attorney

CITY OF WINCHESTER, KENTUCKY
ORDINANCE NO. 20-2005

AN ORDINANCE AWARDING A TEN (10) YEAR ELECTRIC FRANCHISE TO KENTUCKY UTILITIES COMPANY FOR THE OPERATION OF AN ELECTRIC SYSTEM WITHIN THE CONFINES OF THE CITY OF WINCHESTER, BASED UPON AND SUBJECT TO THE CONDITIONS OF ORDINANCE NO. 17-2005

WHEREAS, the City of Winchester by virtue of Ordinance No. 17-2005 heretofore passed by the Commission of the City of Winchester has advertised for bids to award a franchise for the use of certain streets, alleys and public grounds of the City of Winchester, Kentucky, for the purpose of owning, operating, equipping and maintaining a system for the transmission and distribution of electric energy, together with customer service standards addended to the franchise; and

WHEREAS, Kentucky Utilities Company has been granted a Certificate of Convenience and Necessity by the Commonwealth of Kentucky Public Service Commission (Case No. 2005-00348-September 8, 2005) that authorizes Kentucky Utilities Company to bid on a franchise for electric services offered by the City of Winchester; and

WHEREAS, Kentucky Utilities Company was the sole bidder of the electric franchise and has agreed to the terms as set forth in described in Ordinance No. 17-2005.

NOW, THEREFORE, BE IT ORDAINED BY THE WINCHESTER CITY COMMISSION THE FOLLOWING:

Section 1. That Kentucky Utilities Company be and is hereby awarded a ten (10) year electric franchise for operation of an electric system facility within the confines of the City of Winchester based upon and subject to the terms, specifications, restrictions and obligations set forth in Ordinance No. 17-2005 together with customer service standards to be addended to the franchise.

Section 2. That the Mayor of the City of Winchester is hereby authorized and directed to execute any documents pertaining thereof, and City Staff is authorized to perform any and all acts pursuant to the implementation of the electric franchise.

Section 3. That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

Section 4. That this Ordinance shall be effective on the date of its passage.

Introduced and given first reading at a meeting of the Board of Commissioners of the City of Winchester, Kentucky held on October 4, 2005 and adopted, after second reading, at a meeting of said Board held on October 18, 2005.

Roll call as follows:

Mayor Dodd Dixon - *yes*
Commissioner Rick Beach - *yes*
Commissioner Kenny Book - *yes*
Commissioner Shannon Cox - *yes*
Commissioner JoEllen Reed - *yes*



Dodd D. Dixon, Mayor

ATTEST:



Marilyn Rowe, City Clerk

Reviewed by William A. Dykeman, City Attorney

October 3, 2005

FRANCHISE AGREEMENT

WHEREAS, the above-referenced Ordinance requires that the City and the Company execute this Agreement;

NOW, THEREFORE, in consideration of the faithful performance and strict observance by the Company and the City of all terms, provisions, conditions, obligations and reservations set forth herein, it is hereby agreed between the parties as follows:

1. **Reaffirmation of Grant and Acceptance.** The City hereby reaffirms its grant to the Company of the Franchise and rights to construct, operate, maintain, install, use and lay pipes, wire, manholes, ducts, structures, stations, towers, amplifiers, poles, overhead conductors and devices, underground conductors and devices, transformers, and any other apparatus, equipment and facilities (collectively, "Equipment") necessary, essential, and/or used or useful to the distribution and sale of electric service through the City and to any other town or any portion of the county or to any other county ("Services").

Additionally, the Company shall have the right to use the streets with its service and maintenance vehicles in furtherance of the Franchise. Prior to beginning the construction or installation of any new Equipment under the Franchise, the Company shall obtain any necessary governmental permits for such construction or installation, copies of which it shall provide to the City. Work performed by the Company under the Franchise shall be performed in a workmanlike manner and in such a way as not to unnecessarily interfere with the public's use of City streets. Whenever the surface of any City street is opened, it must be restored at the expense of the Company within a reasonable time to a condition comparable to what it was prior to the opening thereof.

2. **Definitions.** Terms not defined but referred to herein shall be construed to reflect a common usage or the common usage as would apply in the electric service industry.

3. **Term of Franchise; Termination.** The Franchise shall be exclusive and shall continue for a period of ten years from and after the effective date of this Agreement, as set forth in Section 5. The Company may, at its option, terminate the Franchise and this Agreement upon five (5) days' written notice if (a) the City breaches any of its obligations hereunder and such breach is not cured within thirty (30) days of the Company's notice to the City of such breach; (b) the Company is not permitted to pass through to affected customers all fees payable by it under Sections 9 and 10 herein; or (c) the City creates or amends any ordinance or regulation which, in the Company's sole discretion, would have the effect of (i) substantially altering, amending or adding to the terms of this Agreement, (ii) substantially impairing the Company's ability to perform its obligations under the Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission. Without diminishing the Company's rights under this Section 3, the City agrees that to the extent it desires to pass or amend an ordinance or regulation which could have the effect of substantially (i) altering, amending,

or adding to the terms of this Agreement; (ii) impairing the Company's ability to perform its obligations under the Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission, that it will first discuss such proposed ordinance or regulation with the Company and the parties shall negotiate in good faith regarding the same.

4. **Territorial Extent of the Franchise.** The Company is authorized to operate throughout all the territory within the corporate limits of the City for which it has a certificate of public convenience and necessity under state law.

5. **Effective Date.** This Agreement shall become effective 90 days after the execution hereof.

6. **Compliance With City Regulations.** Subject to Section 3 hereof, the Company will comply with all applicable provisions of lawful City ordinances and regulations (including any amendments thereto), unless such provisions (i) conflict with or impair the Company's ability to comply with any rule, regulation or order issued by the Kentucky Public Service Commission related to the Company's rates or services, or otherwise (ii) are preempted by the action of any authority with jurisdiction over the Company. To the extent any such provision requires the Company to incur costs in excess of those identified under either "Fee Option 2" or "Fee Option 3" set forth in Section 9 below, the Company shall be required to comply therewith only if and to the extent the Company is authorized by the Kentucky Public Service Commission (or its successor) to pass through such costs to the entities served by it inside the City's corporate limits.

7. **Rights Reserved by City.** Subject to the above provisions, the Franchise is expressly subject to the right of the City: (i) to repeal the same for misuse, nonuse, or the Company's failure to comply with applicable local, state or federal laws; (ii) to impose such other regulations as may be determined by the City to be conducive to the safety, welfare and morals of the public; and/or (iii) to control and regulate the use of its streets, roads, alleys, bridges, public places and space about and beneath them.

8. **Liability and Indemnification.** The Company shall indemnify, defend, and hold harmless the City from and against claims by third parties asserted against the City that the Company's use of the public streets or the presence or operation of the Company's Equipment on or along said streets has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by the City's negligence or misconduct.

9. **Franchise Fees.** As compensation for the Franchise granted to the Company, the City shall receive payment in accordance with one of three payment options, as set forth below. The City must notify the Company of the option it has selected within 10 days after the execution of this Agreement.

Fee Option 1: a total annual fee of up to three (3) percent of gross receipts per year from the Company's sale of electricity to all entities inside the City's corporate limits that are served under the Company's residential and commercial revenue classifications, as defined in the Company's system of accounts and reported to the Kentucky Public Service Commission (or its successor); *provided, however,* that such fee shall be payable by the Company only if and to the extent the Company is authorized by the Kentucky Public Service Commission (or its successor) to pass through such fee to all electricity-consuming entities served by it inside the City's corporate limits. The amount payable to the City for each full calendar quarter during which this Franchise is in effect shall be computed on the basis of revenues received during such quarter, and payment shall be made within 60 days after the close of the quarter. The amount which may be payable to the City for a portion of a calendar quarter at the commencement or termination of the term of this Franchise shall be computed on the basis of revenues received during such calendar quarter and shall be payable not more than 60 days after the termination of the quarter which includes the period for which payment is made. It shall be the City's sole responsibility to provide the Company a list, in an electronic format acceptable to the Company, of all electricity-consuming entities within the City's corporate limits that are to be served by the Company, and the Company shall bear no responsibility for incomplete or inaccurate lists.

Fee Option 2: A total fixed annual payment, as set forth below, payable on the date this Agreement is executed and upon each annual anniversary date thereafter.

Fee Option 3: A total one-time payment, as set forth below, payable on the date this Agreement is executed.

Class of City Ranking	Option 2 Annual Payment Per City	Option 3 One-time Payment Per City
2nd Class	\$ 1,000	\$ 6,240
3rd Class	\$ 500	\$ 3,120
4th Class	\$ 300	\$ 1,872
5th Class	\$ 200	\$ 1,248
6th Class	\$ 100	\$ 624

10. **Other Fees.** Any other fees assessed to the Company in connection with the Company's use of the City's public ways, including fees associated with permits and licenses of whatever nature, shall be payable by the Company only if and to the extent the Company is authorized by the Kentucky Public Service Commission (or its successor) to pass through such fees to the entities served by it inside the City's corporate limits.

11. **Insurance Bonds.** The Company shall maintain in force through the term of the Franchise both general liability insurance and motor vehicle insurance, in accordance with all applicable laws and regulations.

12. **Rate Regulation.** The Company agrees to charge such rate or rates as may from time to time be fixed by the Kentucky Public Service Commission or any successor regulatory body.

13. **Service Quality and Reliability.** The Company agrees that, during the term of this Franchise, all "Service Quality and Reliability" commitments set forth in the order issued May 15, 2000 by the Kentucky Public Service Commission in Case No. 2000-095 (pages 19-20) shall remain in full force and effect as applied to the City.

14. **Telecommunications Act.** The Company agrees that, during the term of this Franchise, it will comply with all applicable provisions of the Telecommunications Act of 1996 including more specifically the non-discriminatory access to pole attachment provisions contained within 47 U.S.C. Section 224. Further, the Company agrees to exercise reasonable efforts to accommodate any future request by a cable television system or provider or the City to attach its cable television-related equipment to the Company's poles, provided such request is in compliance with all applicable laws, ordinances and regulations.