



Ernie Fletcher  
Governor

Teresa J. Hill, Secretary  
Environmental and Public  
Protection Cabinet

Timothy J. LeDonne  
Commissioner  
Department of Public Protection

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Mark David Goss  
Chairman

John W. Clay  
Vice Chairman

Caroline Pitt Clark  
Commissioner

October 31, 2007

Ms. Beth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
Post Office Box 615  
Frankfort, Kentucky 40602

Re: Case No. 2007-00374

Dear Ms. O'Donnell:

On October 29, 2007, the Commission's Division of Consumer Services received by mail numerous documents relating to the proposed sale of the Monticello Electric Plant Board to South Kentucky Rural Electric Cooperative Corporation. Due to the substantive nature of these documents, they should be placed in the official case file.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Quang D. Nguyen".

Quang Nguyen  
Staff Attorney

RGR:v

cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
57TH JUDICIAL CIRCUIT  
WAYNE CIRCUIT COURT  
CASE NO. 07-CI-00346

FILED  
RICHARD R. MORROW, CLERK  
SEP 11 2007  
WAYNE CIRCUIT DISTRICT COURTS  
BY: RB D.C.

ELECTRIC PLANT BOARD OF THE  
CITY OF MONTICELLO, KENTUCKY  
P.O. BOX 657  
MONTICELLO, KY 42633

PLAINTIFF

VS: PETITION FOR DECLARATION OF RIGHTS

HERBERT, HERBERT & PACK  
and  
H. JEFFERSON HERBERT, JR.  
ATTORNEYS AT LAW  
133 NORTH PUBLIC SQUARE  
P.O. BOX 1000  
GLASGOW, KENTUCKY 42142-1000

DEFENDANTS

\* \* \* \* \*

Comes the Plaintiff, Electric Plant Board of the City of Monticello, Kentucky, by and through counsel and for its Petition for Declaration of Rights pursuant to KRS Chapter 418, does state and allege as follows, to-wit:

1. That Plaintiff is a political arm or branch of the City of Monticello and presently operating under the Little TVA Act pursuant to a contract among the Electric Plant Board of the City of Monticello, the City of Monticello and TVA.

2. That on the 11<sup>th</sup> day of January, 2007 the Electric Plant Board of the City of Monticello adopted a resolution pertaining to the sale of the assets of the Electric Plant of the City of

AGC-105  
5-90

COMMONWEALTH OF KENTUCKY  
Court of Justice

CR 4.02; CR OFFICIAL FORM 1

CASE NO. 07-CI-00346

COURT Circuit

COUNTY Wayne

CIVIL SUMMONS

ELECTRIC PLANT BOARD OF THE  
CITY OF MONTICELLO, KENTUCKY

PLAINTIFF

VS:

HERBERT, HERBERT & PACK, et al

DEFENDANTS

THE COMMONWEALTH OF KENTUCKY

TO THE ABOVE-NAMED DEFENDANT: SERVE: HON. H. HERBERT JEFFERSON, JR.

FOR AND ON BEHALF OF  
HERBERT, HERBERT & PACK  
ATTORNEYS AT LAW  
135 NORTH PUBLIC SQUARE  
P.O. BOX 1000  
GLASGOW, KENTUCKY 42142-1000

You are hereby notified that a legal action has been filed against you in this court demanding relief as shown on the document delivered to you with this summons. Unless a written defense is made by you or by an attorney in your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding such relief against you or his (their) attorney(s) are shown on the document delivered to you with this summons.

Date: Sept 11, 2007

Clerk: Richard R Morrison

By: Rusta Beutram

PROOF OF SERVICE

This summons was served by delivering a true copy and the complaint (or other initiating document) to: \_\_\_\_\_

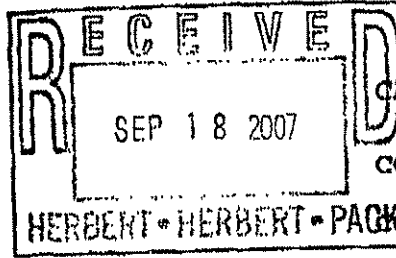
This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Served by: \_\_\_\_\_

AOC-105  
5-90

COMMONWEALTH OF KENTUCKY  
Court of Justice

CR 4.02; CR OFFICIAL FORM 1



CASE NO. 07-CI-00346

COURT Circuit

COUNTY Wayne

**CIVIL SUMMONS**

ELECTRIC PLANT BOARD OF THE  
CITY OF MONTICELLO, KENTUCKY

PLAINTIFF

VS:

HERBERT, HERBERT & PACK, et al

DEFENDANTS

THE COMMONWEALTH OF KENTUCKY

TO THE ABOVE-NAMED DEFENDANT: SERVE: HON. H. HERBERT JEFFERSON, JR.  
 FOR AND ON BEHALF OF  
 HERBERT, HERBERT & PACK  
 ATTORNEYS AT LAW  
 135 NORTH PUBLIC SQUARE  
 P.O. BOX 1000  
 GLASGOW, KENTUCKY 42142-1000

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The name(s) and address(es) of the party or parties demanding such relief against you or his (their) attorney(s) are shown on the document delivered to you with this summons.

Date: Sept 11 2007

Clerk: Richard R. Morrison

By: Krista Beaman

**PROOF OF SERVICE**

This summons was served by delivering a true copy and the complaint (or other initiating document) to: \_\_\_\_\_

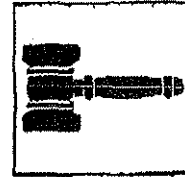
This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Served by: \_\_\_\_\_

RECEIVED

SEP 11 2007

**PHILLIPS AND PHILLIPS**



**ATTORNEY AT LAW**

Van F. Phillips

Public Square - P.O. Box 391 - Monticello, Kentucky 42633 -  
Phone (606) 348-5591 or (606) 348-8887 - Fax (606) 348-8887

**FACSIMILE TRANSMISSION**

**TO: H. JEFFERSON HERBERT, JR.  
HERBERT, HERBERT & PACK**

**FAX NO. 270-651-3317**

**FROM: VAN F. PHILLIPS**

**FAX NO. 606-348-8887**

**DATE: September 11, 2007**

**SUBJECT: OPEN RECORDS REQUEST /  
ELECTRIC PLANT BOARD OF THE CITY OF MONTICELLO, KENTUCKY**

**PAGES: THIS DOCUMENT CONTAINS\_\_ PAGES, INCLUDING COVER LETTER**

Dear Jeff:

The Electric Plant Board directed that I file a Declaratory Judgment action in the Wayne Circuit Court seeking guidance from the Circuit Judge as to what documents should be provided you and your law firm and what documents are exempt under the Open Records Act.

I filed the Declaratory Judgment Petition today and the Clerk will be sending you a copy by certified mail.

Jeff, the Electric Plant Board believed this to be the best course of action since it was unclear what documents might fall within possible invasion of privacy or preliminary matters exempted under the Open Records Act.

Thanking you for your cooperation, I remain . . .

Very truly yours,

*[Handwritten Signature]*  
Van F. Phillips

VFP/rwf

cc: Gary Dishman

ALL COMMUNICATION HEREIN IS DEEMED CONFIDENTIAL AND IF ERRONEOUSLY RECEIVED RECEIVED SHOULD BE IMMEDIATELY RETURNED TO PHILLIPS & PHILLIPS AT THE ABOVE ADDRESS. IF YOU DO NOT RECEIVE ALL OF THESE PAGES, PLEASE NOTIFY ME IMMEDIATELY.

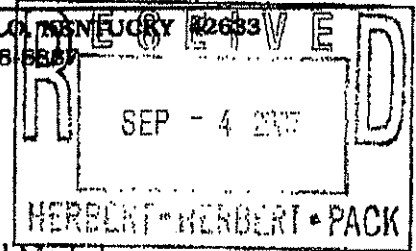
A

# PHILLIPS & PHILLIPS

## Attorneys At Law

VAN F. PHILLIPS  
ATTORNEY  
BRUCE H. PHILLIPS  
1915-1998

PUBLIC SQUARE - POST OFFICE BOX 391 - MONTICELLO, KENTUCKY 42633  
TELEPHONE: (606) 348-5591 or (606) 348-8887  
FAX: (606) 348-8887



August 31, 2007

Original Mailed  
Copy VIA Fax #270-651-3317

Hon. H. Jefferson Herbert, Jr.  
Herbert, Herbert & Pack  
P.O. Box 1000  
Glasgow, Kentucky 42142

In Re: Request for Information from the Monticello Electric Plant Board

Dear Mr. Herbert:

This is to advise that I met with Gary Dishman of the Electric Plant Board of the City of Monticello, Kentucky on Wednesday, August 29, 2007 concerning your request for certain information from the Electric Plant Board.

Since the request concerns various documents, correspondence, reports, studies, minutes, costs analysis, opinion of counsels, proposals and other information, Gary believes that a special called meeting of the Electric Plant Board needs to be held to consider this request. Gary is tentatively going to set this meeting for next Wednesday or Thursday. As soon as the Board considers the request and determines how to respond, I will contact you.

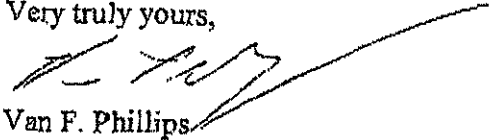
Since your request covers so many documents and extensive information it is believed that the Board should act on this request because there are documents of a private nature that may be deemed an invasion of privacy or of a preliminary nature which could be exempted under the Open Records Act. We also want to make sure that there is no violation of attorney client privilege in the release of any of this requested information.

I should have direction from the Board of Directors of the Electric Plant Board by Wednesday or Thursday of next week in an effort to respond to your request.

If you have any questions please do not hesitate to contact me.

Thanking you for your cooperation, I remain . . .

Very truly yours,

  
Van F. Phillips

VFP/rwf  
cc: Gary Dishman

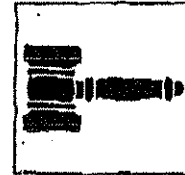
# PHILLIPS AND PHILLIPS

ATTORNEY AT LAW

Van F. Phillips

Public Square - P.O. Box 391 - Monticello, Kentucky 42633 -  
Phone (606) 348-5591 or (606) 348-8887 - Fax (606) 348-8887

FACSIMILE TRANSMISSION



TO: H. JEFFERSON HERBERT, JR.  
HERBERT, HERBERT & PAK

FAX NO. 270-651-3317

FROM: VAN F. PHILLIPS

FAX NO. 606-348-8887

DATE: AUGUST 24, 2007

SUBJECT: OPEN RECORDS REQUEST /  
ELECTRIC PLANT BOARD OF THE CITY OF MONTICELLO, KENTUCKY

PAGES: THIS DOCUMENT CONTAINS 2 PAGES, INCLUDING COVER LETTER

Dear Jefferson:

Gary Dishman of the Electric Plant Board of the City of Monticello, Kentucky has contacted me concerning your August 21, 2007 request for certain information pursuant to the Kentucky Open Records Law.

I have instructed Gary to commence making copies of the information that may be provided you pursuant to KRS 61.870 et. seq. I also need a few extra days to review this information with Gary to determine if there is any material contained therein that should be exempted by KRS 61.878.

It is the Electric Plant Board's position to provide the information allowed under the Open Records Act but to make sure that the exclusions such as privacy issues or other recognized exemptions are protected.

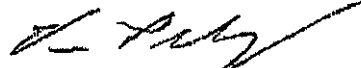
I will be meeting with Gary the first part of next week in an effort to comply with your request and attempt to respond with the appropriate records by the end of next week.

I will have Gary keep up with all copies made and mail you a statement with the records.



Thanking you for your cooperation, I remain . . .

Very truly yours,



Van F. Phillips

VFP/rwf  
cc: Gary Dishman

ALL COMMUNICATION HEREIN IS DEEMED CONFIDENTIAL AND IF ERRONEOUSLY RECEIVED  
RECEIVED SHOULD BE IMMEDIATELY RETURNED TO PHILLIPS & PHILLIPS AT THE ABOVE  
ADDRESS. IF YOU DO NOT RECEIVE ALL OF THESE PAGES, PLEASE NOTIFY ME IMMEDIATELY.

H. JEFFERSON HERBERT, JR.  
BETTY REECE HERBERT  
BRIAN K. PACK

**HERBERT , HERBERT & PACK**  
Attorneys at Law

135 North Public Square  
P.O. Box 1000  
Glasgow, Kentucky 42142-1000  
Office: (270) 651-9000  
Fax: (270) 651-3317  
E-mail: h&hlaw@glasgow-ky.com

August 7, 2007

Via Facsimile 606/348-8446  
Hard Copy to Follow

**Monticello Electric Plant Board**  
**ATTN: Gary Dishman**  
P.O. Box 657  
Monticello, Kentucky 42633

RE: Electric Plant Board of the City of Monticello, Kentucky

Dear Mr. Dishman:

Pursuant to the Kentucky Open Records Law, KRS 61.870 et seq., I am hereby requesting that I be provided with copies of the following, whether in paper or electronic form:

1. All proposals or contracts tendered to, or actually entered into, between the Electric Plant Board of the City of Monticello, Kentucky (hereinafter MEPB), with South Kentucky Rural Electric Cooperative Corporation (hereinafter SKRECC), or any other person, corporation, partnership, or entity of any kind, for the purchase of all or substantially all of the assets of MEPB.

2. All correspondence between the MEPB and SKRECC, and between MEPB and the City of Monticello, Kentucky, or any of its elected officials or employees, which refers in any way to the purchase, or prospective purchase of all or substantially all of the assets of the MEPB.

3. All engineering reports, or reports or studies of any other consultant (whether prepared at the request of MEPB or any other entity) relating to the feasibility of the sale of all or substantially all of the assets of the MEPB.

4. All minutes of every regular and special meeting of the Board of Directors of the MEPB from January 1, 2006, to the present date.

5. Any studies by any entity, including, but not limited to, any employee of MEPB, of the prospective future cost of electricity to the rate payers of the

City of Monticello, and any comparative studies or forecasts purporting to predict the cost of power to such customers based upon MEPB continuing to operate or purchase its power at wholesale from TVA, as opposed to MEPB customers being served at any time in the future by SKRECC.

6. Any opinion of counsel, whether retained by MEPB, or any other entity, expressing an opinion as to the legality of the sale procedure proposed by MEPB.

7. Any proposals received by MEPB since January 1, 2006, from any entity for the sale of wholesale electric energy to MEPB.

Given that I am requesting these copies to be provided by mail, I understand that you can require me to pay for such copies, at a cost not to exceed \$0.10 per page, as well as the cost of postage, in advance of providing the copies to me. Accordingly, I would appreciate your advising me as quickly as possible what that cost will be, in order that I might promptly get those funds into your hands.

Sincerely yours,

HERBERT, HERBERT & PACK

H. Jefferson Herbert, Jr.

Monticello to South Kentucky RECC pursuant to a contract setting forth the terms and conditions of the sale subject to an election of the qualified voters of the City of Monticello to be held on Tuesday, November 6, 2007 and said resolution was submitted and tendered to the City Council of the City of Monticello, Kentucky on January 23, 2007.

3. That on or about the 11<sup>th</sup> day of January, 2007, Plaintiff entered into a contract with South Kentucky Rural Electric Cooperative Corporation of Somerset, Kentucky wherein an agreement was reached to sell the majority of the assets, including real estate lying and being in Wayne County, Kentucky, of the Electric Plant Board of the City of Monticello to South Kentucky RECC for the sum of \$4,686,000.00 subject to a referendum to be held on November 6, 2007 for the qualified voters of the City of Monticello, Kentucky to approve or disapprove this sale.

4. That on the 9<sup>th</sup> day of April, 2007 the City of Monticello, Kentucky adopted an ordinance consistent with the resolution submitted to it by the Electric Plant Board of the City of Monticello, Kentucky agreeing that the proposed sale of the assets of the Electric Plant of the City of Monticello to South Kentucky RECC should be submitted to the qualified voters of the City of Monticello, Kentucky to be held on November 6, 2007.

5. That on the 16<sup>th</sup> day of July, 2007 the Mayor of the City of Monticello, Kentucky certified the City's Ordinance to the Wayne County Clerk requesting that the qualified voters of the City of Monticello, Kentucky on November 6, 2007 vote on the following question:

"Are you in favor of the sale or disposition of the Electric Plant, for the consideration of Four Million Six Hundred Eighty-Six Thousand Dollars (\$4,686,000.00) to South Kentucky RECC?"

6. That on the 21<sup>st</sup> day of August, 2007 the Plaintiff received a fax from Defendants, H. Jefferson Herbert, Jr. and Herbert, Herbert & Pack Law Firm, 135 North Public Square, P.O. Box 1000, Glasgow, KY 42142 requesting, pursuant to the Kentucky Open Records Law, KRS 61.870 et seq., all proposals, contracts, correspondences, engineering reports or reports or studies of other consultants, minutes from January 1, 2006, any studies by any entity concerning prospective future costs of electricity, opinion of counsels concerning the legalities of sale, any proposals received by Plaintiff since January 1, 2006 for the sale of wholesale electrical energy; a copy of said letter attached hereto and made a part hereof and marked "Exhibit A".

7. That as a result of the aforesaid request for the information stated above and the Electric Plant Board's concern

that by providing all or part of the information requested could result in providing information that could be deemed a personal nature and an invasion of personal privacy or of a preliminary nature or recommendation and other confidential information that could be within the exemptions that are provided in KRS 61.878, the Electric Plant Board did, on September 6, 2007, authorize the filing of this petition for declaration of rights seeking guidance and direction from the Wayne Circuit Court as to what documents and information may be provided the Defendants and what should be retained by Plaintiff due to some or all of the requested information possibly being of a private, confidential or preliminary nature and a possible invasion of privacy and specifically exempted from the Open Records Act.

8. Plaintiff in no way desires to ignore or circumvent the requirements of the Open Records Act as set forth in KRS Chapter 61.870 et seq but due to the very broad and voluminous request by Defendants of the documents and information set forth in its August 21, 2007 letter of request, Plaintiff desires to make sure that it does not violate any privacy rights of others or do anything or provide any information that would be deemed or recognized as an exemption or exception pursuant to the Open Records Act.

9. As a result of this broad request and the implications that

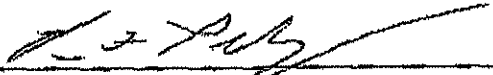
it may have on other individuals or entities in this matter, Plaintiff believes that an actual and justiciable controversy exists requiring Plaintiff to seek guidance and direction from the Wayne Circuit Court and a declaration of rights as to what documents and information should be provided Defendants or what should be retained by Plaintiff pursuant to the exemptions set forth in KRS 61.878.

Wherefore Plaintiff demands judgment as follows, to-wit:


1. That this Court find that there is an actual and justiciable controversy as a result of Defendants' broad request for the information as set forth in its August 21, 2007 letter of request and whether or not certain of the documents and information now in the possession of Plaintiff pertaining to the proposed sale of assets to South Kentucky RECC and to be submitted to the qualified voters of the City of Monticello, Kentucky fall within the exemptions of the open records act as set forth in KRS 61.878.

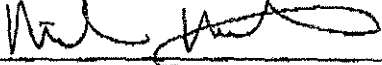
2. That this Court make a binding declaration of rights as to what documents and information should be provided Defendants pursuant to its written request under the Open Records Act versus what documents and information should be retained by Plaintiff pursuant to the exemptions set forth in the Open Records Act pursuant to KRS 61.878.

3. For any and all other orders and relief to which Plaintiff may appear entitled including any costs associated herein that may be recoverable.

  
\_\_\_\_\_  
VAN F. PHILLIPS  
PHILLIPS & PHILLIPS  
P.O. BOX 391  
MONTICELLO, KENTUCKY 42633  
606-348-5591  
ATTORNEY FOR PLAINTIFF

Come Gary Dishman, Superintendent of the Electric Plant Board of the City of Monticello, Kentucky and Mike Anderson, Chairman of the Electric Plant Board and state that they have read the foregoing Petition and find same to be true and correct to the best of their knowledge and belief.


  
\_\_\_\_\_  
GARY DISHMAN, SUPERINTENDENT

  
\_\_\_\_\_  
MIKE ANDERSON, CHAIRMAN OF THE  
ELECTRIC PLANT BOARD

STATE OF KENTUCKY  
COUNTY OF WAYNE

Subscribed and sworn to before me as being true and correct by Gary Dishman, Superintendent of the Electric Plant Board of the City of Monticello, Kentucky and Mike Anderson, Chairman of the Electric Plant Board, on this 11<sup>th</sup>, day of September, 2007.

My Comm. Expires: 2/24/2010

  
\_\_\_\_\_  
NOTARY PUBLIC





# PHILLIPS & PHILLIPS

## Attorneys At Law

VAN F. PHILLIPS  
ATTORNEY  
BRUCE H. PHILLIPS  
1915-1998

PUBLIC SQUARE - POST OFFICE BOX 891 - MONTICELLO, KENTUCKY 42633  
TELEPHONE: (606) 348-8891 or (606) 348-8887  
FAX: (606) 348-8887

October 5, 2007

Original Mailed  
Copy VIA Fax #270-651-3317

Hon. H. Jefferson Herbert, Jr.  
Herbert, Herbert & Pack  
P.O. Box 1000  
Glasgow, Kentucky 42142

In Re: **Open Records Request / Electric Plant Board of the City of Monticello, KY**

Dear Mr. Herbert, Jr.:

Thank you for your October 4, 2007 letter.

As you indicated in your letter you have reviewed the Complaint filed by the Electric Plant Board requesting Court guidance and what to deliver to you or what should be exempted under the Open Records Act. As indicated in the lawsuit there maybe various things in the contract and request for proposals and minutes that may or may not fall within the invasion of privacy or preliminary nature exemptions of the Open Records Act but the Electric Plant Board wants to make sure it does not violate the Act in providing this information to you.

The Electric Plant Board in no way wants to wilfully violate the Open Records Act but believes that it is in the best interest of all parties to get Court intervention in determining the information that clearly should be provided you pursuant to your request but also the documents and information that may be deemed an invasion of privacy or preliminary nature or other exemptions specifically set forth in the Open Records Act.

Therefore the Electric Plant Board would again defer to the Wayne Circuit Court to rule on this matter as a safe guard to all parties involved in this matter.

Thanking you for your cooperation, I remain . . .

Very truly yours,

  
Van F. Phillips

VFP/rwf  
cc: Gary Dishman

RECEIVED  
126

# HERBERT, HERBERT & PACK

Attorneys at Law

H. JEFFERSON HERBERT, JR.  
BETTY REECE HERBERT  
BRIAN K. PACK

135 North Public Square  
P.O. Box 1000  
Glasgow, Kentucky 42142-1000  
Office: (270) 651-9000  
Fax: (270) 651-3317  
E-mail: h&hlaw@glasgow-ky.com

October 8, 2007

Ms. Annette C. DuPont-Ewing  
Municipal Electric Power Association of Kentucky, Inc.  
110 A East Todd Street  
Frankfort, KY 40601

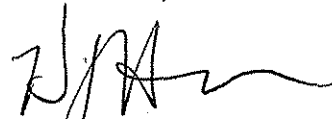
RE: City of Monticello EPB vs. Herbert, Herbert & Pack, and H. Jefferson Herbert, Jr. -  
Open Records Request Matter

Dear Annette:

Enclosed is a copy of the Answer we have filed in the above matter.

Sincerely yours,

HERBERT, HERBERT & PACK



H. Jefferson Herbert, Jr.

HJH:dmt  
F:\LAW\MEPAK\dupont-ewing.wpd

COMMONWEALTH OF KENTUCKY  
WAYNE CIRCUIT COURT  
CIVIL ACTION NO: 07-CI-00346

ELECTRIC PLANT BOARD OF THE  
CITY OF MONTICELLO, KENTUCKY

PLAINTIFF

VS.

ANSWER AND COUNTERCLAIM

HERBERT, HERBERT & PACK and  
H. JEFFERSON HERBERT, JR., ATTORNEY AT LAW

DEFENDANTS

\*\*\*\*\*

Comes the Defendant, Hon. H. Jefferson Herbert, Jr., individually and as partner of Herbert, Herbert & Pack (hereinafter collectively referred to as Defendant), and for his Answer and Counterclaim to the Petition for Declaration of Rights filed by the Plaintiff, Electric Plant Board of the City of Monticello, Kentucky, (hereinafter referred to as Plaintiff), states as follows:

**FIRST DEFENSE**

1. Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, and 5.
2. In relation to Paragraph 6 of the Petitioner, the Defendant states that the Open Records Request made by this Defendant dated August 21, 2007, speaks for itself. To the extent that the allegations contained in Paragraph 6 are inconsistent with the August 21, 2007, request, said allegations are denied.
3. Defendant denies the allegations contained in Paragraphs 7, 8, and 9 of the Petition.
4. Either specifically, or because Defendant lacks knowledge or information sufficient to form a belief as to the veracity thereof, each and every allegation of Plaintiff's Petition not admitted herein are denied.

## SECOND DEFENSE

As an affirmative defense to the Petition, this Defendant pleads the provisions of KRS 61.870 et. seq.

## THIRD DEFENSE

As an affirmative defense to the Petition, this Defendant pleads the Plaintiff's failure to exhaust administrative remedies.

## FOURTH DEFENSE

As an affirmative defense to the Petition, this Defendant asserts that the Plaintiff in bad faith has failed to provide copies of the documents requested which cannot reasonably be the subject of any exception to the Open Records Act contained in KRS 61.870 et. seq.

## COUNTERCLAIM

Comes the Defendant, H. Jefferson Herbert, Jr., individually and as partner of Herbert, Herbert & Pack, and for his Counterclaim against Plaintiff, state as follows:

1. That on or about August 21, 2007, H. Jefferson Herbert, Jr., made an open records request to the Plaintiff which is attached as Exhibit A to the Petition herein.
2. That in violation of KRS 61.870 et. seq., Plaintiff has failed to disclose or allow this Defendant to view any of the records requested.
3. That the Plaintiff has failed to make a good faith effort to distinguish between what records could contain information subject to an exception to the Open Records Request contained in KRS 61.870 et. seq., from the documents that do not contain any information excepted from the Open Records Request and clearly subject to disclosure to this Defendant.
4. That the Plaintiff's failure to disclose these records is a willful violation of KRS

61.870 to 61.884, thus justifying the award of costs, including reasonable attorney fees, incurred in connection with this legal action pursuant to KRS 61.882(5).

WHEREFORE, Defendant, H. Jefferson Herbert, Jr., individually, and as partner of Herbert, Herbert & Pack, prays as follows:

1. That the Petition against this Defendant be dismissed, or, alternatively, for injunctive relief requiring Plaintiff to release the documents requested in the August 21, 2007, Open Records Request;

2. For Judgment against the Plaintiff in an amount not to exceed \$25.00 for each day that the Defendant has been denied the right to inspect or copy said public records pursuant to KRS 61.882(5);

3. For an award of reasonable attorney fees pursuant to KRS 61.882(5);

4. For an award of court costs and other litigation expenses pursuant to KRS 61.882(5);

5. For this proceeding to take precedent on the docket and for an expedited hearing and trial at the earliest practical date pursuant to KRS 61.882(4); and

6. For any and all other proper relief to which this Defendants appear to be entitled.

HERBERT, HERBERT & PACK  
135 North Public Square  
P. O. Box 1000  
Glasgow, KY 42142-1000  
(270) 651-9000  
(270) 651-3317 - Fax

By:



H. Jefferson Herbert, Jr.  
Brian K. Pack

**CERTIFICATE OF SERVICE**

It is hereby certified that the above and foregoing was this 5 day of October 2007,  
served by mail upon:

**Original To:**

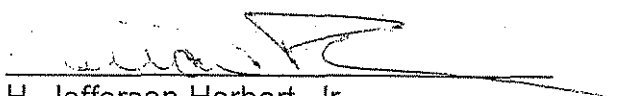
Mr. Richard R. Morrow  
Wayne Circuit Court Clerk  
109 N. Main St  
Monticello KY 42633

**Copy To:**

Hon. Van F. Phillips  
PHILLIPS & PHILLIPS  
P.O. Box 391  
Monticello, KY 42633  
Counsel for Plaintiff

HERBERT, HERBERT & PACK

By:

  
H. Jefferson Herbert, Jr.  
Brian K. Pack

**HERBERT, HERBERT & PACK**

Attorneys at Law

October 17, 2007

Hon. Greg Stumbo, Attorney General  
Commonwealth of Kentucky  
Capitol Building, Suite 118  
700 Capitol Avenue  
Frankfort KY 40601-3449

H. JEFFERSON HERBERT, JR.  
BETTY REECE HERBERT  
BRIAN K. PACK

135 North Public Square  
P.O. Box 1000  
Glasgow, Kentucky 42142-1000  
Office: (270) 651-9000  
Fax: (270) 651-3317  
Email: hhpc@glasgow-ky.com

**VIA FED EX, OVERNIGHT DELIVERY**

RE: Appeal/Request for Review of Denial by Electric Plant Board of the City of Monticello, Kentucky, of Request for Inspection of Public Records

Dear General Stumbo:

This letter constitutes a formal request, pursuant to KRS 61.880, for your review of a denial by the Electric Plant Board of the City of Monticello, Kentucky, of a request for copies of public records, made pursuant to KRS 61.870, *et seq.*

The Electric Plant Board of the City of Monticello, Kentucky (hereinafter referred to as MEPB) is the entity by which the City of Monticello owns and operates a municipally owned electric system. Specifically, the MEPB is organized and operates pursuant to the "Little TVA Act," KRS 96.550-.900. It clearly is a "public agency" within the meaning of KRS 61.870.

On August 21, 2007, I made a request to the MEPB for copies of certain public records. That request was in the form of a letter from me to the MEPB, to the attention of Gary Dishman, its General Manager. It was sent both by fax, as well as regular mail. A copy of that formal request is attached to this letter.

On August 24, 2007, I received a response from the MEPB, through its attorney, Hon. Van F. Phillips. A copy of that response is attached to this letter.

On August 31, 2007, ten days after my original request, I received a further response from Hon. Van F. Phillips, essentially denying my request for copies of the records identified in my letter of August 21, 2007, or certainly declining to produce them within the time required by the Kentucky Open Records Law. Such copies have not, to this date, been produced.

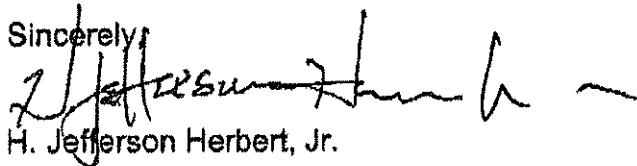
The undersigned has been advised that the MEPB has adopted a Resolution proposing to sell the MEPB facilities to South Kentucky RECC, "pursuant to a contract setting forth the terms and conditions of the sale subject to an election of the qualified voters of the City of Monticello to be held on Tuesday, November 6, 2007," which is to be voted on by the residents of the City of Monticello on November 6, 2007. As you can see from my request, that very contract was among the documents which I requested, as well as other documents relating to that proposed sale.



Clearly the totality of the documents requested in my letter are subject to production by the Kentucky Open Records Law, and the refusal of MEPB to produce such records is a blatant attempt to conceal from the public the terms of the sale which it seeks to have approved, and to further conceal from the public whether in fact applicable Kentucky Law was complied with in connection with the proposed sale. I enclose also a copy of the informal opinion of Assistant Attorney General, James M. Herrick, relating to the appropriate procedure to be followed for the sale of the assets of MEPB.

I am requesting a review of my Open Records Request and a decision of the Office of the Attorney General as to whether MEPB violated the Kentucky Open Records Law. Due to the time constraints identified above, I would ask for an expedited opinion on this matter.

Sincerely,



H. Jefferson Herbert, Jr.

CC: Hon. Van F. Phillips

F:\LAW\MEPAK\Monticello\attorneygeneral.wpd



Letter to the Editor of the Monticello

Ms. Melody Phelps, Editor  
The Wayne County Outlook  
109 East Columbia Street  
Monticello, KY 42633  
Tel: (606) 348-3338  
Fax: (606) 348-8848

Dear Editor:

This letter to the editor is an effort to communicate with the good citizens of Monticello and to inform them of important facts regarding the sale of the Electric Plant Board of Monticello before they cast their vote on Election Day, November 6, 2007. Their citizen owned electric power system is a valuable community asset that promises to become even more valuable to the community over future generations as electric power prices continue to rise. For this reason, these newly exposed facts should be strongly considered by the people of Monticello.

For months the board members of the Monticello Electric Plant Board refused to voluntarily disclose those very crucial documents to the electric customers of the city of Monticello. They tried to prevent the Kentucky Municipal Utilities Association (KMUA) from reviewing the records. KMUA won a Declaratory Judgment Action in Wayne Circuit Court, on October 25, 2007, which required the Monticello Electric Plant Board to provide the documents related to the sale. Now the truth has come out. If the court had not intervened the voters would never have known all of the important facts concerning the sale.

**These are the facts:**

1) The superintendent and the board members of the Monticello Electric Plant Board that orchestrated the sale of one of the city's most valuable assets will "become members of the advisory board to the buyer, South Kentucky Rural Electric Co-Op Corporation when the sale is completed. It appears that as an inducement to the Board of Directors to approve the sale of Monticello's public asset, the superintendent and the board members would be put on the SKRECC's payroll for two years in an "advisory" capacity at the same pay level. (Page 8, Section 17. Purchase and Sales Agreement).

2) On September 9, 2005, the Monticello Electric Plant Board put out a request for proposal for wholesale electrical energy supply purchases as they had provided written notice to the Tennessee Valley Authority (TVA) to terminate their contract for electric power. Instead of responding to the proposal to provide electric power, on September 28, 2006, South Kentucky Rural Electric Coop proposed to purchase the Monticello Electric Plant Board for a bargain price of \$4,686,000. (Notarized letter from Allen Anderson, CEO of South Kentucky Rural Electric Cooperative Corporation, dated September 28, 2006.)

3) In November, 2006, Intertech & Associates, Inc. Consulting Engineers completed an "Engineer's Review of Retail Energy Rates for the Monticello Electric Plant Board." This report clearly states, on page 6, that in current rate comparisons the average residential consumer could expect their **average electric bill** of \$112.79 with the Monticello Electric Plant Board to **INCREASE** to \$129.16 per month if the plant board was sold to South Kentucky Rural Electric. That's an increase of almost \$200 per year per family! In short, the 3,000 plus retail customers of Monticello will pay approximately \$543,746 per year for their electricity over what they are currently paying, if voters approve the sale. Small commercial customers such as a bank or retail store could expect their bill of \$1,153.58 per month to increase to \$1,332.10 per month with South Kentucky Rural Electric Coop (page 7). The Engineer's Summary, on page 12, clearly states, "the cost of energy to each customer on the Monticello Electric Plant Board System using the present TVA retail rates is likely to be less than if the current rates utilized by South Kentucky Rural Cooperative were applied... It appears the consumers within the Monticello Electric Plant Board service areas presently benefit from lower energy expenses when compared to customers directly outside the Monticello Electric Plant Board Service area." This report provided to the board members, clearly states that the **electric bills of the citizens of Monticello will INCREASE** if the Monticello Plant Board is sold to South Kentucky Rural Electric Cooperative and **the board still voted to sell this valuable asset.**

4) On September 26, 2007, James H. Herrick, Assistant Attorney General, stated in a letter to the Kentucky Municipal Utilities Association "that public or electronic auction or sealed bids should be used and a referendum/election can be used AFTER either an auction or sealed-bid procedure has failed to affect the sale of the property."

There are no records to indicate that the Board of Directors for the Monticello Electric Plant Board ever held the required public auction or conducted a sealed bid, as required by Kentucky law, to ensure the best possible price for the citizens of Monticello before they agreed to sale the people's property to South Kentucky Rural Electric Cooperative. They received only one offer and they accepted a very low offer instead of accepting bids to get the best price for the city of Monticello. It appears that the Board members **bypassed Kentucky law** and they went directly to the voter referendum/election.

5) The Board Members have agreed to make the city pay a \$25.00 membership fee for each electrical customer in Monticello. In short, the city will pay South Kentucky RECC \$85,000 when they sell the Monticello Electric Plant Board. (Section2, Page 2.)

We know that electric power rates are rising around the country. Consistently the municipally owned utilities, like the Monticello Electric Plant Board, are the lowest cost providers in comparison to all other utilities. A municipally owned utility can control many of the costs embedded in the price of electricity better than other providers because of the efficiency of operation that comes with serving a concentrated population.

This is a monumental decision for the citizens of Monticello and they deserve to know the facts.

I strongly urge the hard working people of Monticello to **VOTE NO to higher electric bills. VOTE NO to the sale of the Monticello Electric Plant Board** to ensure that your children and grandchildren will not be deprived of an advantage enjoyed by twenty-nine of Kentucky's most progressive cities. We wish you the best in making this decision and thought that you should know all of the facts before you cast your vote.

Annette C. DuPont-Ewing  
Executive Director  
Kentucky Municipal Utilities Association  
502-223-2063

.....  
The newspaper refused to run this op/ed piece and is contacting a lawyer before they will run our one page ad.  
\*\*\*\*\*

**HERBERT, HERBERT & PACK**  
Attorneys at Law

**H. JEFFERSON HERBERT, JR.**  
**BETTY REECE HERBERT**  
**BRIAN K. PACK**

135 North Public Square  
P.O. Box 1000  
Glasgow, Kentucky 42142-1000  
Office: (270) 651-8000  
Fax: (270) 651-3317  
E-mail: h&h@glasgow-ky.com

October 25, 2007

Ms. Annette C. DuPont-Ewing  
Municipal Electric Power Association of Kentucky, Inc.  
110 A East Todd Street  
Frankfort, KY 40601

**Via Facsimile 502/875-9151**  
**No Hard Copy to Follow**

RE: City of Monticello Open Records Request

Dear Ms. DuPont-Ewing:

Attached is the Purchase and Sales Agreement which Mr. Herbert received today.

Sincerely yours,

HERBERT, HERBERT & PACK

Denise M. Taylor  
Paralegal

:dmt  
F:\LAW\MEPAK\dupont-ewing.wpd

PURCHASE AND SALES AGREEMENT

THIS PURCHASE AND SALES AGREEMENT, this day made and entered into by and between THE ELECTRIC PLANT OF THE CITY OF MONTICELLO, KENTUCKY, of P.O. Box 657, Monticello, Kentucky 42633, party of the first part, (hereinafter referred to as EPB); and SOUTH KENTUCKY RURAL ELECTRIC CO-OP CORPORATION of P.O. Box 910, Somerset, Kentucky 42502, or an affiliated company of SKRECC, at its option, party of the second part, (hereinafter referred to as RECC).

W I T N E S S E T H:

THAT WHEREAS EPB is desirous of selling all of its electric plant and assets located either within or outside the boundary of the municipality of Monticello, Kentucky, owned and operated by it and RECC is desirous of purchasing the electric plant facility and all assets thereof, and

THAT WHEREAS the parties hereto have had various discussions concerning this proposed purchase and sale and now desire to reduce these agreements to writing for the purpose of memorializing same, and

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements as hereinafter set forth, the same being a good and sufficient consideration, the parties do hereby agree as follows, to-wit:

- 1. ASSETS. That EPB agrees to sell and RECC agrees to purchase all of the real estate, personal property, utility poles, substations, revenue producing contract rights as set forth on

exhibit A attached hereto, as supplemented by EPB's financial records, and any and all other assets owned by EPB, whether set forth on exhibit A or not, including all assets acquired from the date hereof until closing, unless otherwise excluded herein, for the purpose of allowing RECC to be the complete and sole owner of all of the facilities and assets of EPB. Cash on hand and accounts receivable shall be addressed in #4 below.

2. CONSIDERATION. That for and in consideration of the transfer of said assets from EPB to RECC, EPB shall be paid the sum of FOUR MILLION SIX HUNDRED EIGHTY SIX THOUSAND DOLLARS (\$4,686,000.00), which represents all assets and facilities. However, subsequent to the sale, the City of Monticello, Kentucky shall pay to RECC the \$25.00 membership fee per number of customers served at date of sale.

3. TERMS OF PAYMENT. RECC agrees to pay said \$4,686,000.00 with a payment of \$286,000.00 to the City of Monticello upon approval by the voters, and the balance of said purchase price being \$4,400,000.00 due and payable to the City of Monticello on a thirty year amortized basis at the rate of 4.75% per annum with the first payment of \$146,666.67 plus accumulated interest on the unpaid principal to be due and owing on the \_\_\_ day of \_\_\_\_\_, 2008, and each consecutive and successive year thereafter on the \_\_\_\_\_, day of \_\_\_\_\_, for a total of thirty years, which note shall not be prepayable.

4. ACCOUNTS RECEIVABLE, ACCOUNTS AND CASH ON HAND. Both parties understand and agree that upon approval by the voters of



this purchase and sales agreement, any and all sums of money in the existing bank account, checking or savings, accounts receivable and accounts of EPB shall be transferred to the City of Monticello, Kentucky as soon as possible after closing, however there shall also be an approximate debt of \$400,000.00 that is now due and owing by EPB or any other outstanding debts of EPB that shall also be assumed by the City of Monticello or paid by it from the above bank account funds, all in an effort to sell and transfer an unencumbered title of all assets of EPB to RECC in consideration of their agreement to pay said purchase price.

5. MORTGAGE AND SECURITY AGREEMENT. As a result of the thirty year financing of the payment as set forth above, RECC shall grant the City of Monticello a first mortgage lien on all real estate being purchased by RECC from EPB and also a first security agreement and financing statement for all personal property, fixtures, accounts receivable and contract rights being sold to RECC by EPB and that said documents shall be executed and delivered to EPB and/or City of Monticello at the closing of this transaction and duly lodged in the Wayne County Court Clerk's Office to perfect its first mortgage liens and security agreements against said assets.

6. REVENUE It is understood and agreed that EPB shall continue operating this facility and receive all revenues and be obligated to pay all debts pertaining to the operation of this electric system until this transaction is closed and both parties agree that there may need to be an adjustment on the last billing cycle for a

one month period due to the billing and revenue side being one month a part and the parties agree that an adjustment shall be made by either a payment to or from RECC or EPB/City of Monticello depending upon the receipts and revenues generated the month after the sale is consummated. Any payments made by EPB for electric prior to closing shall entitle EPB to receive the revenue generated therefrom.

7. HAYDEN INSURANCE POLICY. Both parties acknowledge the existence of an ongoing obligation by EPB to pay the previous Chairman and Board Member, Robert (Bob) Hayden pursuant to an insurance plan offered to the Board Members several years ago and with an existing insurance policy on the life of Bob Hayden that is now payable to EPB upon Mr. Hayden's death which in essence creates a "wash out" or break even transaction and that said obligation shall either be negotiated with Mr. Hayden by the City of Monticello or assumed by the City of Monticello as a part of this sales agreement.

8. REFERENDUM. Both parties understand and acknowledge that the purchase and sale of the above stated assets of EPB is subject to KRS 96.860 and any other applicable statutes and contract with TVA which in essence will require the Board of EPB to adopt a resolution approving the sale, describing the property to be sold, identifying the purchaser, stating the consideration for the purchase, and the terms and conditions of the sale and that this sale shall be subject to the voters qualified to vote in the regular November election to cast a majority of votes approving

this sale. The parties also understand upon the EPB adoption of a resolution containing the above information that said resolution shall be submitted to the governing body of the City of Monticello, and only after it is approved by the Council of the City of Monticello, shall the question of the sale of this facility be submitted to November vote of the qualified voters. In the event either the City Council of Monticello, Kentucky does not adopt and approve the resolution submitted to it by EPB or the qualified voters in the November general election reject the sale, then and in either of those events, this contract and all terms and conditions set forth herein shall, unless otherwise clarified and stated, be null and void and shall have no binding effect on either party.

9. PUBLIC SERVICE COMMISSION AND OTHER GOVERNMENTAL BODIES.

The parties further understand and agree that RECC will have to seek and obtain approval of the terms hereof from the Public Service Commission or any other governmental body of RECC which either regulates its business or provides its financing prior to this transaction being consummated and in the event the Public Service Commission or other governmental body of RECC does not approve RECC's request to purchase the facilities and assets of EPB pursuant to the terms hereof then and in that event this agreement shall be null and void and unenforceable.

10. TVA. The parties further understand and agree that there is an existing contract among EPB, City of Monticello and TVA pertaining to the ownership and operation of EPB and pursuant to

the Little TVA Act as set forth in the Kentucky Revised Statutes and that the parties must seek the approval of TVA to release EPB and RECC from any future obligations under the original contract among the parties since the contract does not expire until November, 2008 or RECC be obligated to honor TVA's contract until its completion date in 2008. Failure to obtain the consent of or fulfill the obligations to TVA may also nullify and void this agreement.

11. CLOSING. The closing shall occur within 30 days after certification of the vote at the November 2007 Election at which time EPB shall transfer and convey title to all assets to SKRECC with covenant of general warranty. All assets shall be delivered at closing in the same condition as they exist as of the date hereof, normal wear and tear excepted. At closing SKRECC shall execute a promissory note for the unpaid purchase price and the mortgage and security agreement set forth in numerical paragraph 5 above.

12. EMPLOYEES. It is the intention of RECC upon the consummation and purchase of all assets and facilities of EPB to offer all employees now employed by EPB a position at RECC with wages at or above the same wages and benefits for similar jobs, presently provided them and to further guarantee said employees the opportunity to work at RECC and RECC will make every good faith effort to retain said employees if job performance remains at an

acceptable level.

13. TRANSMISSION LINE. The parties further understand and agree that there is an approximate two mile stretch of transmission line that TVA continues to own that RECC will be attempting to negotiate the purchase of same and in the event RECC does purchase said transmission line from TVA but this agreement is not consummated for any of the above stated reasons, then and in that event RECC shall and does hereby grant EPB a six (6) month Option to Purchase said transmission line at the same price paid by RECC to purchase it from TVA plus interest at the rate of 4.75% per annum from the purchase date of RECC to the sales date to EPB and any other identifiable costs associated with the purchase.

14. RATE COMMITMENT. In the event this purchase and sale of EPB facilities and assets cannot be consummated and closed for any of the above stated reasons, and by reason of EPB having given a termination notice to TVA of future electric service, RECC does hereby agree and commit to provide continued wholesale electricity to EPB and its customer base for a period of no less than two years from November \_\_\_\_, 2008, the termination date of TVA contract, at a wholesale rate but in no event shall these wholesale electric rates be greater than the wholesale rate charged to RECC at such time as the sale is approved. The parties specifically agree that this part of the agreement shall survive and be binding upon the parties regardless of the fact of the balance of this agreement being cancelled in the event the sale of these facilities is not

consummated for any of the above stated reasons.

15. OPERATIONS. Both parties understand and agree that during the course of the proposed purchase and sale of the EPB assets to RECC that EPB shall continue operating its facilities in the same manner as it has in the past, including but not limited to, the continued maintenance of utility poles and lines and its basic facilities and managerial and accounting methods, all in an effort to maintain the facilities and its operation in its present state of condition until this transaction is closed.

16. NETPOWER, LLC. The parties further understand and acknowledge that EPB is a part owner of the business of NetPower, LLC that provides internet service to certain customers in Wayne County, Kentucky and that EPB would also be transferring all of its right, title and interest in and to NetPower, LLC to the City of Monticello as a result of this sale and the City of Monticello shall assume all liabilities and responsibilities concerning the operation of NetPower, LLC upon the consummation of this action.

17. ADVISORY BOARD AND SUPERINTENDENT. It is also agreed and understood between the parties that upon consummation of this sale, the current Board Members of EPB would become members of an advisory board to RECC relative to the newly acquired Monticello facility and the current Superintendent of EPB shall be retained by RECC also in an advisory capacity for a minimum period of two years with a compensation amount equal to their current levels.

18. DEPOSIT ACCOUNTS. The parties further understand and agree that all customer deposits now in the possession or control

of EPB would be transferred and assigned to RECC at or within ten (10) days of the closing of this transaction and that RECC shall become obligated and liable for the handling and disposition of said customer deposits consistent with the rules and regulations of RECC.

19. COMMUNITY INVOLVEMENT. That upon approval and consummation of this purchase and sales RECC agrees to continue with its community involvement in the Monticello/Wayne County, Kentucky area in an effort to provide good and dependable electric services at the most reasonable and cost efficient rates that it can provide to its customer base and to also display an interest in the Monticello, Wayne County, Kentucky area by investing either financially or otherwise in programs that may be available to its customers, the same as it has done with its other existing customers in Southern Kentucky.

That this constitutes the entire Purchase and Sales Agreement between these parties and shall be binding upon their heirs, successors and assigns and shall not be modified unless done so in writing.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names, on this 11<sup>th</sup> day January, 2007.

FIRST PARTY:

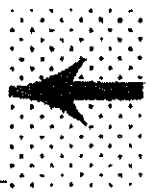
THE ELECTRIC PLANT BOARD OF THE CITY OF MONTICELLO, KY

BY: [Signature]  
MIKE ANDERSON, CHAIRMAN OF THE BOARD

SECOND PARTY:

SOUTH KENTUCKY RURAL ELECTRIC CO-OP CORPORATION

BY: [Signature]  
ALLEN ANDERSON, PRESIDENT & C.E.O.



BY: Gary E. Dishman  
GARY DISHMAN, SUPERINTENDENT

BY: Richard Stephens  
RICHARD STEPHENS, CHAIRMAN OF  
THE BOARD

STATE OF KENTUCKY  
COUNTY OF WAYNE

The foregoing Purchase and Sale Agreement was signed and acknowledged before me by First Party, THE ELECTRIC PLANT BOARD OF THE CITY OF MONTICELLO, KY, acting by and through Mike Anderson, Chairman of the Board, and Gary Dishman, Superintendent. on this 1<sup>st</sup> day of July, 2007.

Madeline Keeton  
NOTARY PUBLIC

My Comm. Expires: 9/16/2007

STATE OF KENTUCKY  
COUNTY OF Pulaski

The foregoing Purchase and Sale Agreement was signed and acknowledged before me by Second Party, SOUTH KENTUCKY RURAL ELECTRIC CO-OP CORPORATION, acting by and through, Allen Anderson, President & C.E.O. and Richard Stephens, Chairman of the Board on this 11<sup>th</sup> day of January, 2007.

Anna Carter  
NOTARY PUBLIC

My Comm. Expires: June 23, 2010

THIS INSTRUMENT PREPARED BY:  
PHILLIPS & PHILLIPS  
ATTORNEYS AT LAW  
P.O. BOX 391  
MONTICELLO, KENTUCKY  
(606) 348-5591

BY: [Signature]  
ATTORNEY



=== COVER PAGE ===

TO: \_\_\_\_\_

FROM: HERBERTHERBERTPACK

FAX: 2706513317

TEL: 2706519000

COMMENT:

**HERBERT, HERBERT & PACK**  
Attorneys at Law

**H. JEFFERSON HERBERT, JR.**  
**BETTY REECE HERBERT**  
**BRIAN K. PACK**

135 North Public Square  
P.O. Box 1000  
Glasgow, Kentucky 42142-1000  
Office: (270) 651-9000  
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E-mail: h&hlaw@glasgow-ky.com

October 25, 2007

Ms. Annette C. DuPont-Ewing  
Municipal Electric Power Association of Kentucky, Inc.  
110 A East Todd Street  
Frankfort, KY 40601

Page 1 of 28  
Via Facsimile 502/875-9151  
No Hard Copy to Follow

RE: City of Monticello Open Records Request

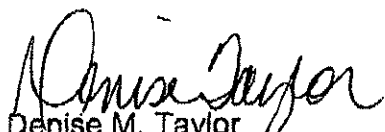
Dear Ms. DuPont-Ewing:

Attached are the following:

1. Transmittal letter of South Kentucky of its proposal to the Monticello EPB;
2. Engineer's Review of Retail Energy Rates for the Monticello EPB; and
3. Solicitation for Letter of Interest.

Sincerely yours,

HERBERT, HERBERT & PACK

  
Denise M. Taylor  
Paralegal



925929 North Main Street  
Post Office Box 910  
Somerset, KY 42502-0910  
Telephone 606-678-4121  
Toll Free 800-264-5112  
Fax 606-679-8279  
[www.skrecc.com](http://www.skrecc.com)

September 28, 2006

Monticello Electric Plant Board  
Gary Dishman, Superintendent  
905 N. Main Street  
Monticello, KY 42633

RE: Monticello Electric Plant Board's Request for Proposals – Wholesale Energy  
Providers dated August 2006

Dear Mr. Dishman:

South Kentucky RECC ("SKRECC") has prepared its proposal in a manner that is somewhat different than the norm. SKRECC's proposal contains two parts. The first part or Part A is a listing of SKRECC's response to the information and/or data specifically requested in the Monticello Electric Plant Board's (MEPB) Request for Proposals ("RFP"). Much of the original request is not applicable to SKRECC or relevant to SKRECC's proposition. The second part or Part B of SKRECC's proposal contains SKRECC's actual proposition for the MEPB.

SKRECC is proposing an alternative arrangement in the attached response to your request for proposals. SKRECC is proposing to purchase the fixed assets of the Monticello Electric Plant Board ("MEPB") at the price listed in our proposal. All other assets, liabilities and equities listed on the balance sheet of the MEPB would remain with MEPB to dispose of as it sees fit.

SKRECC is also willing to provide the following possibilities or opportunities for the MEPB:

- Employment opportunities with SKRECC for the current employees of the MEPB,
- Advisory opportunities with SKRECC for the current board members of the MEPB,
- Potential advisory/consulting opportunities for those who have provided such services to the MEPB in the past, and
- A continual or ongoing stream of income to the city and/or MEPB through a partial financing of SKRECC's purchase from the city of Monticello and/or the MEPB.

SKRECC has in place a current line of credit that provides SKRECC the ability to pay cash for the MEPB if this is the preferred way. SKRECC is willing to consider other types of financial arrangement that may be financially beneficial or advantageous to SKRECC and the MEPB.

Many advantages would accrue to your current ratepayers, the citizens of Monticello, if SKRECC is successful in consummating this proposition. They would become a member of an electric cooperative with the following opportunities:

Albany 606-387-6476 Monticello 606-348-6771 Russell Springs 270-866-3439 Whitley City 606-376-5997

- Membership in the cooperative movement through an organization that solicits participation by its members if desired by the member,
- Right to vote in cooperative elections,
- Equity participation through the accumulation of capital credit and/or payments made by SKRECC on a periodic basis,
- Access to a multitude of member services through SKRECC,
- Become a part of SKRECC's commitment to the community, and
- An avenue of redress on a complaint through the Kentucky Public Service Commission.

SKRECC has provided above a summary of what it is proposing, the opportunities it can provide to the MEPB, and some of the advantages it could provide to your ratepayers. If you have any questions or need additional information, please contact me at your convenience. All items contained in our proposal are open to discussion and further development. SKRECC's Board of Directors and its management sincerely wish to make this proposition occur.

It is with great anticipation that we submit our proposal. SKRECC would sincerely appreciate some type of decision by the end of the year as SKRECC has some human resource decisions and capital expenditure decisions to be made in the near future.

Sincerely,



Allen Anderson  
President and CEO

I, Allen Anderson, CEO of South Kentucky Rural Electric Cooperative Corporation, declare that the statements contained in foregoing Proposal are true to the best of my information and belief.



Allen Anderson, CEO  
South Kentucky Rural Electric Cooperative Corporation

Subscribed and sworn to me by Allen Anderson, this 28<sup>th</sup> day of September 2006.



Notary Public, State at Large

My Commission Expires: 12/2/2007



**MONTICELLO ELECTRIC PI**  
*A Public Power Utility - Estat*

*I mailed*

**SOLICITATION FOR LETTERS**

*9-9-05*

**I. INTRODUCTION**

The Monticello Electric Plant Board is seeking let wholesale electrical energy ("Suppliers") for the total electrical energy requirements of the Monticello Electric Plant Board distribution system. In planning for future wholesale electrical energy supply arrangements, the Monticello Electric Plant Board desires to obtain letters of interest from potential Suppliers and establish a basis for future discussions. As the planning process for wholesale electrical energy proceeds, the Monticello Electric Plant Board anticipates an electrical energy Request For Proposal (RFP) will be developed from respondents to this solicitation.

As part of a comprehensive review of wholesale electrical energy supply, the Monticello Electric Plant Board is reviewing available supply options. The goal of this solicitation is to provide the Monticello Electric Plant Board management with information which will form the basis for electrical energy power supply decisions and future supplier negotiations.

**II. OUTLINE REQUIREMENTS**

The Monticello Electric Plant Board is a municipal utility system that owns and operates an electrical distribution system supplying retail electric service to approximately 3400 customers within its service area. At present, the Monticello Electric Plant Board purchases wholesale electric energy from the Tennessee Valley Authority ("TVA") under a power supply contract which contains a 5 year cancellation provision (the Power Contract). Written notice of the Monticello Electric Plant Board's intent to cancel their current agreement was provided to TVA on November 20, 2003.

For the 12 months ending June 2005, the Monticello Electric Plant Board annual purchased electrical energy requirements were approximately 101,856 megawatts hour ("MWh") and a peak demand of approximately 25.5 megawatts ("MW"). A summary of historical monthly peak demand and energy purchases is available upon request.



**MONTICELLO ELECTRIC PLANT BOARD**  
*A Public Power Utility – Established 1954*

**SOLICITATION FOR LETTERS OF INTEREST**

**I. INTRODUCTION**

The Monticello Electric Plant Board is seeking letters of interest from suppliers of wholesale electrical energy ("Suppliers") for the total electrical energy requirements of the Monticello Electric Plant Board distribution system. In planning for future wholesale electrical energy supply arrangements, the Monticello Electric Plant Board desires to obtain letters of interest from potential Suppliers and establish a basis for future discussions. As the planning process for wholesale electrical energy proceeds, the Monticello Electric Plant Board anticipates an electrical energy Request For Proposal (RFP) will be developed from respondents to this solicitation.

As part of a comprehensive review of wholesale electrical energy supply, the Monticello Electric Plant Board is reviewing available supply options. The goal of this solicitation is to provide the Monticello Electric Plant Board management with information which will form the basis for electrical energy power supply decisions and future supplier negotiations.

**II. OUTLINE REQUIREMENTS**

The Monticello Electric Plant Board is a municipal utility system that owns and operates an electrical distribution system supplying retail electric service to approximately 3400 customers within its service area. At present, the Monticello Electric Plant Board purchases wholesale electric energy from the Tennessee Valley Authority ("TVA") under a power supply contract which contains a 5 year cancellation provision (the Power Contract). Written notice of the Monticello Electric Plant Board's intent to cancel their current agreement was provided to TVA on November 20, 2003.

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### III. POINT OF DELIVERY

The Monticello Electric Plant Board takes delivery from TVA at a single 69 kV Primary Substation and the Monticello Electric Plant Board Substation is connected to East Kentucky Power's substation by a TVA owned and operated transmission line 1.96 miles in length.

The Monticello Electric Plant Board substation facilities at 69 kV include power transformers and associated switching & protectives. The Monticello Electric Plant Board owns the 69 kV substation facilities which serve their distribution needs.

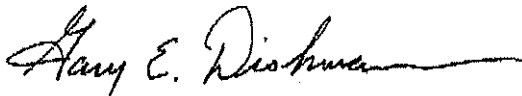
Transmission connection facilities owned, operated and maintained by TVA may not necessarily be depended upon for any other wholesale energy supplier.

A map showing the TVA/Monticello Electric Plant Board delivery point location is available upon request.

### IV. TIMELINE

Letters of interest are requested to be sent to Gary Dishman, Superintendent – Monticello Electric Plant Board by October 11, 2005.

Submitted By:



Gary Dishman, Superintendent  
MONTICELLO ELECTRIC PLANT BOARD  
904 N. Main Street  
Monticello, KY 42633  
606-348-8102

Document Prepared By:  
Barry W. Cooper, P.E.  
INTERTECH & ASSOCIATES, INC.  
Consulting Engineers



**POWER INVOICE**

MONTICELLO  
Customer No. 0143

July 2005

Invoice No. B05-07-052

Period	kWh Preceding 12 Months		Schedule 2a
	Wholesale	End Use	
JUL-04	8,034,780	7,632,339	4.526%
AUG-04	8,339,829	8,005,682	3.638%
SEP-04	8,418,019	7,987,867	4.497%
OCT-04	7,052,411	6,707,747	4.319%
NOV-04	7,630,292	7,546,767	3.412%
DEC-04	8,965,836	7,743,286	4.962%
JAN-05	9,937,157	9,578,428	3.970%
FEB-05	10,877,567	10,411,591	4.156%
MAR-05	9,287,781	9,515,557	4.105%
APR-05	7,844,121	7,689,028	4.317%
MAY-05	7,558,949	7,184,625	4.083%
JUN-05	7,909,107	7,192,865	4.795%
	101,855,849	97,195,782	
Loss Factor	101,855,849	- 1 =	
	97,195,782		4.795%
Fixed Loss Factor			4.300%



Power Provider "Letter of Interest" Mailing List

✓  
 Ms. Renee Marko  
 Director of Power Organization  
 Cinergy Services  
 139 East Fourth Street, EA600  
 P.O. Box 960  
 Cincinnati, Ohio 45201-0960

✓  
 Mr. Charles A. Freibert, Jr.  
 Director Energy Marketing  
 Louisville Gas & Electric Company  
 220 West Main Street  
 Louisville, Kentucky 40202

✓  
 Mr. Ted P. Tudor  
 Manager Wholesale Power  
 Louisville Gas & Electric Com.  
 One Quality Street  
 Lexington, Kentucky 40507-1.

✓ Mailed  
 on 9-9-05

✓  
 Mr. Chuck Hanna  
 Director, Marketing & Business Deve  
 Exelon Power Team  
 300 Exelon Way  
 Kennett Square, PA 19348

✓  
 Mr. Luther Lu  
 Marketing & Business Development  
 Exelon Power Team  
 300 Exelon Way  
 Kennett Square, PA 19348

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Louisville Gas & Electric Company  
220 West Main Street  
Louisville, Kentucky 40202

✓  
Mr. Ted P. Tudor  
Manager Wholesale Power  
Louisville Gas & Electric Company  
One Quality Street  
Lexington, Kentucky 40507-1462

✓  
Mr. Chuck Hanna  
Director, Marketing & Business Development  
Exelon Power Team  
300 Exelon Way  
Kennett Square, PA 19348

✓  
Mr. Luther Lu  
Marketing & Business Development  
Exelon Power Team  
300 Exelon Way  
Kennett Square, PA 19348

✓  
Mr. Norrie McKenzie  
Business Development Vice President  
Southern Company  
270 Peachtree Street  
Atlanta, Georgia 30303  
Bin #935 11<sup>th</sup> Floor

✓  
Mr. Greg Hall  
V.P. Energy Marketing  
American Electric Power  
155 W. Nationwide Blvd.  
Columbus, Ohio 43215

✓  
ATTN: Mr. Roy Palk  
President & CEO  
East Kentucky Power  
P.O. Box 707  
Winchester, Kentucky 40392



**MONTICELLO ELECTRIC PLANT BOARD**  
*A Public Power Utility – Established 1954*

**ENGINEER'S REVIEW  
OF  
RETAIL ENERGY RATES**

**FOR**

**The Monticello Electric Plant Board**

Prepared By:



**INTERTECH & ASSOCIATES, INC.**  
**Consulting Engineers**

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160 CREEKVIEW DRIVE – P.O. BOX 195 – MONTICELLO, KY 42833  
TELEPHONE: 606-348-8874      FAX: 606-348-8887      E-Mail: [bcooper@net-power.net](mailto:bcooper@net-power.net)

November 2006

**INDEX**  
**ENGINEER'S REVIEW OF RETAIL ENERGY RATES**

1.	Confidentiality	Page 1 of 12
2.	Executive Summary	Page 2 of 12
3.	MEPB Demographics	Page 3 of 12
4.	SKRECC Rate Summary	Page 4 of 12
5.	Comparison Methodology	Page 5 of 12
6.	Current Rate Comparison Examples	
	Example 1 – Residential Customer	Page 6 of 12.
	Example 2 – Small Commercial	Page 7 of 12
	Example 3 – Large Commercial	Page 8 & 9 of 12
	Example 4 – Large Industrial	Page 10 & 11 of 12
7.	Engineer's Summary	Page 12 of 12

**Appendix**

- **MEPB Customer #019-3665 Engineering Demand Information**
- **MEBP Customer #019-3666 Engineering Demand Information**
- **SKRECC Meter #104927 Residential Power Invoice**
- **SKRECC Meter #77101 Commercial Power Invoice**

**DOCUMENTS ON FILE AT MEPB TO SUPPORT THIS REPORT**

- **MEPB Retail Rate Summary**
- **SKRECC Rate Schedule Sept. 2006**
- **Oct. 2006 MEPB Wholesale Power Invoice From TVA**
- **Oct. 2006 Large Consumer Report For The MEPB**

**CONFIDENTIALITY**

Retail Rate comparisons contained herein are based upon current rate structures promulgated by TVA, the MEPB and the South Kentucky RECC.

This report is not believed to contain sensitive competitive information or information of a confidential nature.

This report was prepared for the use and benefit of the Board of Directors of the Electric Plant Board of the City of Monticello. The South Kentucky RECC will be invited by Superintendent Dishman to review the report and offer comments as deemed appropriate.

**EXECUTIVE SUMMARY**

The retail customers of the Monticello Electric Plant Board presently purchase energy under the current TVA retail rate structure.

In the interest of the maintaining the lowest possible costs for electrical energy for the citizens and industries within the MEPB service area, the MEPB desires a rate comparison with utilities such as the South Kentucky Rural Electric Cooperative Company whose service area surrounds the MEPB customer base.

This report provides a direct comparison between the current rates imposed by South Kentucky RECC (hereinafter SKRECC) and the present retail MEPB electrical energy rates set by TVA.

At the request and direction of the Board of Directors, this study is limited to an objective rate analysis only. No review of subjective issues such as reliability or indirect effect on the community as a whole were to be examined.

Rather than detail the subtle differences between the rate structures, four example customers were compared for each major rate structure.

Copies of each applicable rate structure are on file in Superintendent Dishman's office for further review if necessary.

**MEPB DEMOGRAPHICS**

There are presently 2860 metered customers who obtain electrical energy from the MEPB under the current TVA retail rate structure.

The existing MEPB customer mix is represented by the table below.

Approximate Number Of Customers	Class Description	MEPB Retail Customer Designation	Energy Charges Only	Energy + Demand	Reactive Metering Charges Apply
2,768	c22 - Residential Service	Residential	Yes	---	No
44	c40 - Commercial	Commercial & Large Power Part 1	---	Varies	Varies
40	c50 - Commercial/Industrial	Commercial & Large Power Part 2	---	Yes	Yes
613	c77 Outdoor Lighting Ser.	Schedule LS	Yes	--	No
1	c77 Municipal Street Light	Schedule LS	Yes	No	No
2	c50 Large Industrial	Commercial & Large Power Part 3	---	Yes	Yes

Time of Day Service (off peak metering) is indicated in the TVA rate structure but no MEPB customers presently are assigned any of the time of day rate structures.

Since the minimum bill customers represent a very small portion of the MEPB revenue stream no comparative analysis for minimum bill customers have been attempted.

Reactive demand charges imposed by TVA occur only when customer's kVA meter reading times .85 exceeds the kW meter reading.



**COMPETITIVE RATE SUMMARY <sup>(1) (2)</sup>**

SOUTH KENTUCKY RECC Rate Summary as of September 1, 2006 for a typical October 2006 energy invoice.

Minimum Bill – No Usage - \$8.00/month

**Schedule "A"** 6.445 cents/kWh+ environmental surcharge of 9.53%  
Residential Single Phase Service + fuel adjustment of .534 cents per kWh

**Schedule "B"** less than 50 KVA transformation bank  
Small Commercial Minimum bill \$15.00/month (meter fee)  
Or 3 phase .90 per KVA of transformation size  
7.474 cents/kWh + environmental charge of 9.53%  
+ fuel adjustment of .534 cents/kWh

**Schedule "LP"**, typically greater than 50 kW demand but less than 300 KVA demand.

Minimum Bill \$30.00/month or \$.80/KVA  
Minimum P.F. W/O Penalty .90  
Energy Charge 4.156 cents/kWh + environmental charge of 9.53% &  
\*Demand Charge \$6.00/kW fuel adjustment of .534 cents/kWh

**Schedule "LP-1"**, typically greater than 500 kW demand.

Metering Charge \$125.00/month  
Substation Charge \$315.00 \$944.00 \$2,373.00  
Demand 5.39 cents per kW 999 kW 2999 kW 7500 kW  
Energy 3.713 cents per kWh + environmental charge of 9.53%  
+ fuel adjustment of .534 cents/kWh

\*15 minute peak interval measurement, ratcheting demand. Measured at peak and applied to preceding 11 month period.

**Schedule AES (All Electric School)** 5.646 cents/kWh  
School cannot use other primary fuels for heating, cooking or water heating.

**Schedule STL (Street Lighting Service)** \$6.30/month/fixture  
Lamp replacement billed to customer

SKRECC begins to impose a penalty when the power factor drops below .90. Few customers would be affected by the difference in power factor calculations.

(1) Complete South KY RECC rate schedule dated September 2006 is on file in Superintendent Dishman's office.

(2) Fuel adjustment and Environmental surcharge is shown for October 2006 and will vary month to month.

## COMPARISON METHODOLOGY

The TVA issued October 2006 Large Consumer Report for the MEPB as well as the October 2006 Wholesale Power Invoice from TVA were utilized as a baseline for comparison energy consumption calculations. Copies of each document are on file in Superintendent Dishman's office.

To obtain a single month snapshot for the residential energy purchased in October, the Large Consumer Report kWh figures were subtracted from the October Wholesale Power invoice for total energy (kWh) consumed.

The total metered energy sold by the MEPB in October not including losses was 8,109,354 kWh.

For the 90 metered commercial, industrial and lighting accounts summarized within the Large Consumer Report the total energy billed for October 2006 was 3,752,620 kWh.

The residential use was thus calculated to be total energy billed less large consumer and lighting meter readings (8,109,354 - 3,752,620) = 4,356,734 kWh or an average of 1573 kWh per residential customer.

For the 2,768 residential customers, the average residential energy invoice was nearly \$112.00 for the month of October.

Retail rates for both TVA & South KY RECC include many customer classifications that would not presently apply to the customer base of the MEPB.

As an example, both the TVA & South KY RECC include a tariff structure where a customer may elect to utilize metered equipment at off peak times and benefit from lower rates. Since the MEPB does not have a single customer participating in such a program, no effort has been made to compare rates for which there are no customers.

In another example, the LP-2 rate adopted by South KY RECC for customers having over 5 mW demand was not compared with TVA's similar tariff as the MEPB does not have a metered customer exceeding 5 mW.

The following example customers form the basis of the rate comparisons. In each case for the snapshot month of October, a fuel adjustment clause applies for SKRECC customers. In January 2007, the MEPB customers on TVA rates will begin to experience a fuel adjustment clause in their power invoices. The school tax on county wide customers is not added to the retail comparison nor is the \$4.00 per month City Fee reconciled for the customers of the MEPB.

Regardless of the rate structure utilized, the City Fee & School Tax will continue to be imposed.

**CURRENT RATE COMPARSION EXAMPLES**

**Example 1** – Average residential customer with a \$112.79 per month invoice using approximately 1575 kWh of electrical energy.

Average Residential Consumption	Oct. 2006 MEPB Rate Under Schedule "Residential"	Oct. 2006 South KY RECC Rate Schedule "A"	MEPB Average Current Residential Bill	Projected South KY RECC Residential Average Customer Bill
1575 kWh	6.84 cents/kWh +			
	\$5.20 Meter Fee		\$112.79/month	\$129.16/month
	7.16 cents/kWh effective rate	8.2 cents/kWh (see calculation)		

Using the October 2006 SKRECC rates the projected cost for the average MEPB residential customer would increase nearly 15% per month when compared to current TVA retail rates.

The 2,768 existing customers would thus pay a total of \$45,312.00 more for the example month if placed on the present South KY RECC rate structure. In extremely cold or hot weather, the monthly cost increase would be more significant.

**SKRECC Residential Rate Calculation**

Monthly Meter Fee	=	\$ 8.00
Energy 6.445 cents per kWh @ 1575 kWh	=	\$101.51
Fuel Adjustment .534 cents per kWh @ 1575 kWh	=	\$ 8.41
<b>Subtotal</b>		<b><u>\$117.92</u></b>
Environmental charge for 1575 kWh @ 9.53% of subtotal		\$ 11.24
Total for Residential Customer for Month of October		\$129.16
<b>Effective cost for 1575 kWh</b>	<b>=</b>	<b>8.2 cents/kWh</b>

**CURRENT RATE COMPARISON EXAMPLES**

**Example 2** – Small commercial customer such as a bank or retail store with Demand less than 50 kVA and monthly use of 15,000 kWh.

Commercial Consumption	Oct. 2006 MEPB Rate Under Schedule Commercial & Large Power Part 1	Oct. 2006 South KY RECC Schedule "B" Cost/kWh	MEPB Bill For This Example Customer At Current Rates	Projected South KY RECC Bill For This Example Customer
15,000 kWh	7.635 cents/kWh	8.88 cents/kWh	\$1,153.58	\$1,332.10
	+ \$8.33 meter fee			
		(See Calculation Below)		

When SKRECC rates were compared for this example, the small commercial customer would typically pay 15% less for the month of October 2006 for the electrical energy when the TVA rates were applied.

**SKRECC Small Commercial Calculation**

Monthly Meter Fee	=	\$ 15.00
Energy 7.474 cents per kWh @ 15,000 kWh	=	\$1,121.10
Fuel Adjustment .534 cents per kWh @ 15,000 kWh	=	\$ 80.10
<b>Subtotal</b>		<b><u>\$1,216.20</u></b>
Environmental charge for 15,000 kWh @ 9.53% of subtotal	=	\$ 115.90
Total for Small Commercial Customer for Month of October	=	\$ 129.16
<b>Effective cost for 15,000 kWh</b>	=	<b>8.88 cents/kWh</b>

**CUSTOMER RATE COMPARISON EXAMPLES**

**Example 3 – Larger commercial customer with 75 KVA demand and 32,000 kWh consumption but less than 300 kVA contract demand.**

Commercial Consumption	Oct. 2006 MEPB Rate Under Schedule Part 2*, Commercial & Large Power	Oct. 2006 South KY RECC Schedule "LP" Cost/kWh	MEPB Bill For This Example Customer At Current TVA Rates	Projected South KY RECC Bill For This Example Customer
32,000 kWh	First 15,000 @ 7.706 cents/kWh next 17,000 @ 4.043 cents/kWh + \$8.33 meter charge	32,000 kWh @ 5.234 cents/kWh  (See Calculation)	\$1,851.33 energy <u>\$ 268.25 Demand</u> \$2,119.58 total monthly invoice	\$1,675 Energy <u>\$ 450 Demand</u> \$2,125 monthly invoice
75 kW Demand (Assumed 75 kW Flat All Year & Power Factor Greater Than .90.)	First 50 kW Demand No Charge Next 25 kW Demand \$10.73 per kW Demand  \$268.25 Demand Charge Component	75 kW Demand 6.00 per kW  \$450.00 Demand Charge Component		

\*For this example customer, if demand is reduced in the off peak season, the TVA retail rates will be further lowered for a net monthly decrease in demand charges.

South KY RECC demand charges will remain the same each month and be based on the highest of the 12 month period.

Given the assumptions of a flat 75 kW Demand each month and a power factor greater than .90, the customer would have experienced very little difference in costs, utilizing the October 2006 SKRECC rate schedule.

In practice, most MEPB Large Commercial customers would likely always benefit from TVA rates when compared to the SKRECC rate structure for the following reasons:

- a. October is typically a low use to moderate weather. As usage increases, the MEPB energy rate becomes further competitive.
- b. Few MEPB customers have a flat monthly demand. As demand decreases the MEPB rates allow for cost reduction for lower metered demand while SKRECC rates lock the customer in to a typically higher demand figure.


**SKRECC Calculated Energy Costs, Schedule "LP" Example**

Monthly Meter Fee	=	\$ 30.00
Energy 4.156 cents per kWh @ 32,000 kWh	=	\$1,330.00
Fuel Adjustment .534 cents per kWh @ 32,000 kWh	=	<u>\$ 170.00</u>
<b>Subtotal</b>		<b><u>\$1,530.00</u></b>
Environmental charge for 32,000 kWh @ 9.53% of subtotal	=	\$ 145.00
Total for Example Large Commercial Customer for Month of October 2006	=	\$1,675.00
<b>Effective cost for 32,000 kWh</b>	=	<b>5.234 cents/kWh</b>

**CUSTOMER RATE COMPARSION EXAMPLES**

**Example 4 – Large Industrial Customer, 1300 kW demand in spring & fall, peak demand in summer at 1800 kW demand utilizing 950,000 kWh electrical energy per month.**

**Spring Calculation**

Energy & Demand	MEPB Schedule Part 3	SKRECC Schedule LP-1	MEPB	SKRECC
950,000 kWh 1300 kW Demand	4.115 cents/kWh + \$8.33 meter fee  1,000 kW Demand @ \$10.33/kW + 300 kW @ \$12.09	4.666 cents/kWh  NOTE:  1,800 kW Demand @ \$5.39 = \$9702.00 Demand Charge Component	\$39,100 Energy + <u>\$13,957 Demand</u> \$53,057 Total Monthly Invoice Spring & Fall	\$44,328 Energy + <u>\$ 9,702 Demand</u> \$54,030 Total Monthly Invoice

**Summer Calculation**

Energy & Demand	MEPB Schedule Part 3	SKRECC Schedule LP-1	MEPB	SKRECC
950,000 kWh 1800 kW Demand	4.115 cents/kWh + \$8.33 meter fee  1000 kW @ 10.33 cents 800 kW @ 12.09 cents = \$20,002 Demand	4.666 cents/kWh  1,800 kW Demand @ 5.39 = \$9702.00 Demand Charge Component	\$39,100 Energy + <u>\$20,002 Demand</u> \$59,102 Total Monthly Invoice Summer Month	\$44,328 Energy + <u>\$ 9,702 Demand</u> \$54,030 Total Monthly Invoice -

For this example customer, it is assumed the power factor is maintained greater than .90 to avoid SKRECC penalties.

Cost differences under SKRECC rates would vary between \$1,000.00 per month increase for the spring or fall monthly calculation or perhaps a savings of \$5,000.00 for the peak summer month when compared to present MEPB rates.

This example may be scrutinized further as it represents an actual customer of the MEPB who is presently receiving a growth credit of \$8,000.00 per month from TVA.

**SKRECC Calculated Energy Costs, Schedule "LP-1" example**

Monthly Meter Fee	=	\$ 125.00
Energy @ 3.713 cents per kWh @ 950,000 kWh	=	\$35,273.00
Fuel Adjustment .534 cents per kWh @ 950,000 kWh	=	\$ 5,073.00
<b>Subtotal</b>		<b><u>\$40,471.00</u></b>
Environmental charge for 950,000 kWh @ 9.53% of subtotal	=	\$ 3,857.00
Total for Large Commercial Customer for Month of October 2006	=	\$44,328.00
<b>Effective cost per kWh under LP-1 rates for October 2006 example customer</b>	=	<b>4.666 cents per /kWh</b>



**ENGINEER'S SUMMARY**

In general, the cost of energy to each customer on the MEPB system using the present TVA retail rates is likely to be less than if the current rates utilized by SKRECC were applied.

During any given 12 month interval a large industrial or commercial customer having both the demand and energy charge components on their invoice would appear to be nearly equal to SKRECC rates when compared to TVA rates.

For those small commercial customers with a demand more than 50 kW the TVA rate structure the MEPB utilizes will likely be more competitive than SKRECC due to differences in how the demand charges are measured and how the charges are calculated.

No forward looking analysis was provided. Only the information contained in current month of utilization and the presently applied rate structures were analyzed.

When fuel adjustments begin to appear on TVA based energy invoices in 2007 the difference between TVA distributor retail rates and SKRECC rates may be diminished.

Similarly, this report looks at only one month's comparison. There may be individual customers whose use patterns may actually benefit from the rate structure currently employed by SKRECC while other customers with a specific use pattern will benefit from the current TVA retail rate structure.

In summary, it appears the consumers within the MEPB service area presently benefit from lower energy expenses when compared to the customers directly outside the MEPB service area.

The small quantity (less than 100) large commercial and industrial of the MEPB will always be more difficult to analyze than a residential customer. On a forward going basis it may be prudent for the staff of the MEPB to simply look at a comparative analysis for residential rates on a monthly basis. The comparison would only take a few minutes to accomplish and serve as a useful guide for rate reviews by the Board in the future.

ACCT NUMBER- 143 01 019 3665 1  
 NAME ----- BELDEN ELECTRONICS DIV  
 STREET ----- 1211 W COLUMBIA AVE  
 CITY/STATE -- MONTICELLO KY 42633

ACCT STATUS --- ACTIVE  
 CUSTOMER DATE - UNKNOWN  
 TYPE SERVICE -- INDUSTRIAL >2500KW  
 CIS ACTIVITY -- NONE

\*\*\*\*\*  
 CLASS - 55 METER - ENGINEERING DEMAND INFORMATION \*\*\*\*\*

MO	KWH	KVAR	KVA	% KVA	KW	BL DMD	DIFF	PF	LF
OCT05	962400	435.7	1608.0	1366.8	1548.00	1548.00	.00	.963	.82
SEP06	1134000	1072.3	2088.0	1774.8	1791.60	1791.60	.00	.858	.82
AUG06	1233600	1118.1	2196.0	1866.6	1890.00	1890.00	.00	.861	.90
JUL06	1146000	1021.4	2083.2	1770.7	1815.60	1815.60	.00	.872	.82
JUN06	1044000	479.6	1716.0	1438.6	1647.60	1647.60	.00	.960	.82
MAY06	1011600	481.4	1620.0	1377.0	1546.80	1546.80	.00	.955	.90
APR06	939600	685.5	1704.0	1448.4	1560.00	1560.00	.00	.915	.80
MAR06	739200	479.4	1632.0	1397.2	1560.00	1560.00	.00	.915	.80
FEB06	818400	232.2	1332.0	1132.2	1311.60	1311.60	.00	.985	.70
JAN06	817200	306.2	1464.0	1244.4	1431.60	1431.60	.00	.978	.70
DEC05	810000	242.5	1452.0	1234.2	1431.60	1431.60	.00	.986	.70
NOV05	915600	435.1	1608.0	1366.8	1548.00	1548.00	.00	.963	.70
AVG	964300	582.4	1708.6	1452.3	1590.20	1590.20	.00	.938	.82

ENTER TRANSACTION CODE - \_\_\_\_\_  
 CAPACITORS TO CORRECT TO 90% POWER FACTOR 204.63 KVAR (WORST CASE)

PEAK MONTH AUG @ 1890  
 LOW MONTH FEB @ 1311  
 Difference = 579 KW

These 3 months,  
 Belden Billing Demand  
 under SKRECC would have  
 been as follows:

Sept ⇒ 1.049 X 1791 = 1879 or 88 kW X 6<sup>00</sup> = \$528 penalty  
 AUG ⇒ 1.045 X 1890 = 1975 or 85 kW X 6<sup>00</sup> = \$510 penalty  
 JULY ⇒ 1.032 X 1815 = 1873 or 58 kW X 6<sup>00</sup> = 348<sup>00</sup> penalty

\$1,386  
 power factor  
 penalties  
 under SKRECC

ACCT NUMBER- 143 01 013 3000 1  
 NAME ----- BELDEN ELECTRONICS DIV CUSTOMER DATE - 03/13/88  
 STREET ----- 1211 W COLUMBIA AVE TYPE SERVICE -- INDUSTRIAL >1000KW  
 CITY/STATE -- MONTICELLO KY 42633 CTS ACTIVITY -- NONE

ENGINEERING DEMAND INFORMATION

CLASS -	54 METER -	4627							
MO.	KWH	KVAR	KVA	% KVA	KW	BL DMD	DIFT	FF	LE
OCT06	610200	215.3	960.0	816.0	936.00	936.00	.00	.975	.8
SEP06	639600	221.9	990.0	841.5	964.80	964.80	.00	.975	.8
AUG06	654600	243.1	1020.0	867.0	990.60	990.60	.00	.971	.8
JUL06	664200	243.1	1020.0	867.0	990.60	990.60	.00	.971	.8
JUN06	630000	312.5	1080.0	918.0	1033.80	1033.80	.00	.957	.8
MAY06	679800	234.5	1104.0	938.4	1078.80	1078.80	.00	.977	.8
APR06	683400	193.5	1050.0	892.5	1032.00	1032.00	.00	.983	.8
MAR06	612600	235.1	1170.0	994.5	1193.40	1193.40	.00	1.020	.8
FEB06	673200	302.4	1110.0	943.5	1068.00	1068.00	.00	.962	.8
JAN06	705600	132.9	1224.0	1040.4	1231.20	1231.20	.00	1.006	.8
DEC05	689400	285.6	1170.0	994.5	1134.60	1134.60	.00	.970	.8
NOV05	713400	232.6	1140.0	969.0	1116.00	1116.00	.00	.979	.8
AVG	663000	237.5	1086.5	923.5	1064.15	1064.15	.00	.979	.8

ENTER TRANSACTION CODE - \_\_\_\_\_

PEAK MONTH JAN. @ 1231  
 LOW MONTH OCT @ 936  
 Difference = 295 KW



1197  
1425

(800) 264-5112

Albany (806) 387-8476 7:30 A.M. - 5:00 P.M.  
 Monticello (806) 348-8771 7:30 A.M. - 5:00 P.M.  
 Russell Springs (270) 888-3439 7:30 A.M. - 5:00 P.M.  
 Somerset (806) 678-4121 7:30 A.M. - 5:00 P.M.  
 Whitley City (606) 376-5997 7:30 A.M. - 5:00 P.M.

ACCOUNT NUMBER	ACCOUNT NAME	METER NUMBER
0228201	COOPER BARRY W	104927
LOCATION	CYCLE NUMBER	RATE BC TELEPHONE
200746051	313	1 0 (000) 000-0000
SERVICE ADDRESS		

PREVIOUS	READING	PRESENT	READ CODE	FROM	TO	MULTIPLIER	KWH	\$ AMOUNT
88325		89353	2	09/19/06	10/16/06	1	1028	74.25
	0.005340	FUEL ADJUSTMENT					1028	5.49
		ENVIRONMENTAL SURCHARGE						7.60
		SCHOOL TAX						2.62
		TOTAL CURRENT BILL DUE		11/04/06				89.96
		PREVIOUS AMOUNT DUE						125.52
		THANK YOU FOR YOUR PAYMENT		10/11/06				-132.47
		PREVIOUS CREDIT BALANCE						-6.95
		TOTAL AMOUNT DUE						83.01

**RESIDENTIAL**

COMPARISONS	DAYS SERVICE	TOTAL KWH	AVG. KWH/DAY	AVG. TEMP/DAY	TOTAL DUE	\$ 83.01
CURRENT BILLING PERIOD	27	1028	38	60.0	DUE DATE 11/04/06	BILL IS DELINQUENT AFTER DUE DATE
US BILLING PERIOD	35	1531	43		AFTER DUE DATE PAY \$ 87.02	
PERIOD LAST YEAR	32	1417	44			



Due Date is for current months bill only and does not apply to previous amounts  
 Conveniently pay your bill online at [www.skrecc.com](http://www.skrecc.com)

**ENVIRONMENTAL SURCHARGE 9.53%.** For a clean, comfortable, safe, and affordable way to heat your home - contact your local COOP Office for more info on ETS heaters.

Ask Us About These Services			Rate Codes			Meter Reading Codes		
24 Hour Dispatching	Outdoor Lighting		1-Residential	5-Optional Power	9-Large Power 1	0-Estimated Reading		
Ky Living Magazines	Elect. Code/Design Consultation		2-Small Comm.	6-Res. Mktg.	10-Large Power 2	1-Consumer Reading		
Energy Audits	Long Distance Phone Service		3-Public Building	7-Small Comm. Mktg.	13-Contract Loan	2-Normal Reading		
			4-Large Power	8-Street Lighting	11, 12, 14-19-Special Contract LP	3-Manual Estimated		

power is off, first check to see that all fuses and breakers are working properly. If this does not correct the problem, call your local Cooperative office at the number listed above. provide your Account Number, Name, and Address as it appears on your statement. Phone dispatch is available 24 hours a day, 7 days a week. Please call our office with any problem you may have. If your local office is a toll call then call our toll free number listed above.



1200  
1425

(800) 264-5112

Albany (606) 387-6476 7:30 A.M. - 5:00 P.M.  
 Monticello (606) 348-6771 7:30 A.M. - 5:00 P.M.  
 Russell Springs (270) 866-3439 7:30 A.M. - 5:00 P.M.  
 Somerset (606) 678-4121 7:30 A.M. - 5:00 P.M.  
 Whitley City (606) 376-8987 7:30 A.M. - 5:00 P.M.

ACCOUNT NUMBER	ACCOUNT NAME		METER NUMBER				
0228205	COOPER BARRY W		77101				
LOCATION	CYCLE NUMBER	RATE	BC	TELEPHONE	SERVICE ADDRESS		
200292043	313	2	0	(606) 348-4775	HWY 90		
PREVIOUS READING	PRESENT	READ CODE	SERVICE FROM	TO	MULTIPLIER	KWH	\$ AMOUNT
2812	2819	2	09/07/06	10/04/06	10	70	20.23
0.005340 FUEL ADJUSTMENT							0.37
ENVIRONMENTAL SURCHARGE							1.96
SCHOOL TAX							0.68
SALES TAX							1.39
TOTAL CURRENT BILL DUE 11/04/06							24.63
PREVIOUS AMOUNT DUE							15.55
THANK YOU FOR YOUR PAYMENT 10/11/06							-15.55
TOTAL AMOUNT DUE							24.63

**EXAMPLE**  
Small Commercial

COMPARISONS	DAYS SERVICE	TOTAL KWH	AVG. KWH/DAY	AVG. TEMP/DAY	TOTAL DUE	\$ 24.63
THIS BILLING PERIOD	27	70	2	60.0	DUE DATE 11/04/06	BILL IS DELINQUENT AFTER DUE DATE
THIS BILLING PERIOD	34	90	2		AFTER DUE DATE PAY \$ 25.75	
PERIOD LAST YEAR	30	180	6			

Your Electricity Use Over The Last 13 Months



Due Date is for current months bill only and does not apply to previous amounts  
 Conveniently pay your bill online at [www.skreco.com](http://www.skreco.com)

**ENVIRONMENTAL SURCHARGE 9.53%. For a clean, comfortable, safe, and affordable way to heat your home - contact your local COOP Office for more info on ETS heaters.**

Ask Us About These Services			Rate Codes			Meter Reading Codes		
24 Hour Dispatching	Outdoor Lighting	1=Residential	5=Optional Power	9=Large Power 1	0=Estimated Reading			
Ky Living Magazine	Elect. Code/Design Consultation	2=Small Comm.	6=Res. Mktg.	10=Large Power 2	1=Consumer Reading			
Energy Additions	Long Distance Phone Service	3=Public Building	7=Small Comm. Mktg.	13=Contracts Loan	2=Normal Reading			
		4=Large Power	8=Street Lighting	11, 12, 14-18=Special Contract LP	3=Manual Estimated			

When in off, first check to see that all fuses and breakers are working properly. If this does not correct the problem, call your local Cooperative office at the number listed above, provide your Account Number, Name, and Address as it appears on your statement. Phone dispatch is available 24 hours a day, 7 days a week. Please call our office with any other problem you may have. If your local office is a toll call then call our toll free number listed above.



**SUMMARY OF EVENTS ASSOCIATED WITH THE SALE OF MONTICELLO MUNICIPAL PLANT BOARD TO SOUTH KENTUCKY RECC PURSUANT TO AN ELECTION OF VOTERS IN THE CITY OF MONTICELLO ON NOVEMBER 6, 2007.**

**1. Request an AG Opinion as to whether a Competitive Bid Process Should have been Utilized in the Sale:**

August 20, 2007

- KMUA wrote a letter requesting a formal written opinion from the Attorney General of the Commonwealth of Kentucky on the question of whether sealed bids are required when a municipal electric power system is sold by public auction or electronic auction and whether competitive bidding is required before property can be disposed of by alternative means.

September 26, 2007

- James H. Herrick, Assistant Attorney General, responded in a letter, which is not a formal opinion, stated that KRS 96.860 requires an election prior to the sale of a municipal utility and that the sale can be conditional upon the outcome of the election. KRS 82.083(3) lists three options that apply to the sale of this property: (a) sale at public auction; (b) sale by electronic bid and (c) sale by sealed bid. He also states that if a city receives no bids for the property, either at public or electronic auction or by sealed bid, the property may be disposed of consistent with the public interest in any manner deemed appropriate by the city. The AG's office does not believe that sealed bids must be used at an auction. The AG's office states that public or electronic auction or sealed bids should be used and an referendum/election can be used AFTER either an auction or sealed-bid procedure has failed to effect the sale of the property.

**2. Open Records Request to Find Out if a Competitive Bid was Utilized:**

August 7, 2007

- Jeff Herbert wrote to Gary Dishman of the Monticello Electric Plant Board to request the records pertaining to the sale.

August 24, 2007:

- Van Phillips, attorney for Monticello, sent a letter to Jeff Herbert saying he would instruct Gary Dishman to commence making copies of the information requested.

August 31, 2007

- Van Phelps sent a letter informing Jeff Herbert that a special board meeting would be called to consider the request.

September 11, 2007

- Van Phelps informs Jeff Herbert that he has filed for a Declaratory Judgment Action in Wayne Circuit Court seeking guidance as to what documents if any the law requires them to provide to KMUA. The referendum statement will read on the ballot as follows, "Are you in favor of the sale or disposition of the Electric Plant Board, for the consideration of Four Million Six Hundred Eighty-Six Thousand Dollars (\$4, 686,000.00) to South Kentucky RECC? The results of the suite will be a "binding declaration of rights" as to what documents and information should be provided to KMUA and what documents shall be retained under the Open Records Act of KRS 61.878.

October 8, 2007

- Jeff Herbert files a response and counterclaim to the court defending KMUA's right to see the records and requests an *expedited hearing*.

October 23, 2007

- Hearing scheduled and was cancelled by Van Phelps due to scheduling conflict.

October 25, 2007

- Hearing will take place during our board meeting and Jeff Herbert will call KMUA to let us know the ruling of the Circuit Court. On the request for Open Records.



**3. REQUEST AN OPINION FROM THE ATTORNEY GENERAL'S OFFICE ON  
KMUA'S REQUEST FOR RECORDS AND THE REFUSAL RECEIVED FROM  
MONTICELLO TO PROVIDE THEM**

October 17, 2007

- Jeff Herbert asks the AG's office to provide an *expedited* opinion on whether Monticello had to provide the records under the Open Records Act via a request for Review of Denial by Electric Plant Board of the City of Monticello KY of Request for Inspection of Public Records.

October 26, 2007:

- *Response Pending*





COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITOL AVENUE  
FRANKFORT, KY 40601-3449  
(502) 696-5300  
FAX: (502) 564-2894

September 26, 2007

Ms. Annette DuPont-Ewing  
Executive Director  
Municipal Electric Power Assn. of Ky.  
110A East Todd Street  
Frankfort, KY 40601

Re: Sale of municipal property

Dear Ms. DuPont-Ewing:

Although this letter is not a formal opinion of this office, we hope the views expressed will be of some assistance. You have asked about the application of KRS 82.083 to a sale of municipal property, specifically a municipal electric power system. Your questions include whether sealed bids are required when municipal property is sold by public auction or electronic auction, and whether competitive bidding is required by KRS 82.083(3) before property can be disposed of by alternative means under subsection (4).

As a preliminary matter, we note that KRS 82.083 would apply to the sale of any real or personal property constituting the electric power system. While KRS 96.860 requires an election prior to the sale of "an electric plant located within the boundary of the municipality," this statute can be reconciled with the provisions of KRS 82.083(3) by making the sale conditional upon the outcome of such election.

KRS 82.083(3) lists five options for the sale or other disposition of city property: (a) transfer to another governmental agency; (b) transfer for economic development purposes; (c) sale at public auction under KRS 424.130(1)(b); (d) sale by electronic auction under KRS 424.130(1)(b); and (e) sale by sealed bids under KRS 45A.365. You have indicated that (a) and (b) do not apply.



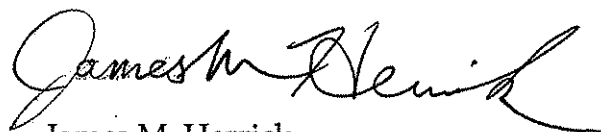
Subsection (4) of KRS 82.083 then states, in part: "If a city receives no bids for the real or personal property, **either** at public or electronic auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the city." (Emphasis added.) The first question is whether, under subsection (4), sealed bids must be used in an auction authorized by subsection (3)(c) or (3)(d). We believe they need not. The use of the sealed-bid procedure under (3)(e) is given as an alternative, not as a condition, to the use of an auction under (3)(c) or (3)(d).

A related issue is whether subsection (4) means that a city must try every possible means of selling its property under subsections (3)(c) to (3)(e) before resorting to the use of other means of disposition under subsection (4). This question arises from the use of the word "either" in subsection (4), which might be construed as requiring the municipality to attempt a sale through public auction, electronic auction, **and** sealed bids. In our view, however, this would not be necessary. "Either," as used in statutes, is a disjunctive between two items, and "means 'one of two' and not 'any.'" *Branch v. Branch*, 149 A.2d 573, 575 (Pa. Super. 1959). The structure of the sentence in KRS 82.083(4) indicates that "public or electronic auction" and "sealed bid" are treated in parallel, so that the statute is not requiring the use of all three options, but only stating that subsection (4) can be used after either an auction or a sealed-bid procedure has failed to effect the sale of the property.

In short, therefore, we believe that KRS 82.083 requires an opportunity for competitive bidding before municipal property is disposed of under subsection (4), but the three options presented in subsections (3)(c) through (3)(e) are separate and distinct. If you have any questions, you may call this office at (502) 696-5622.

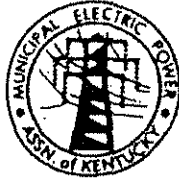
Yours very truly,

GREGORY D. STUMBO  
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "James M. Herrick".

James M. Herrick  
Assistant Attorney General

# Municipal Electric Power



# Association of Kentucky

*Serving those who power Kentucky cities*

Ron Herd, President  
Corbin City Utilities Commission

Doug Beckham, Vice President  
Williamstown Utility Company

John Humphries, Secretary  
Princeton Electric Plant Board

Jim Asbury, Executive Committee  
Madisonville Municipal Utilities

Bob Hunzinger, Executive Committee  
Owensboro Municipal Utilities

Larry Wilcutt, Executive Committee  
Russellville Electric Plant Board

August 20, 2007

The Honorable Greg Stumbo, Attorney General  
Commonwealth of Kentucky  
State Capitol Building  
Capital Avenue  
Frankfort, Kentucky 40601

Dear General Stumbo:

This is a request for a formal, written opinion from your office on the question of whether competitive bids are required for the sale of an electric power system owned and operated by a municipality.

Municipally owned and operated electric power systems are primarily organized under various statutes found in KRS Chapter 96. At least two municipal electric power systems are organized under KRS Chapter 58.180.

KRS 96.183, 96.540, and 96.860 address the sale of a municipal electric power system as to the power and authority of the governing body to sell the plant and the requirement for an election in which the voters approve or reject the sale. KRS 96.5405 also addresses the sale of a system in cities of the sixth class under emergency circumstances, in which case the governing body of the system is to petition the customers for their approval rather than hold an election for this purpose. The referenced statutes do not answer the question of whether or not competitive bids are required as part of the process of selling a municipally owned and operated electric power system.

KRS 82.083 specifically addresses the sale of real and personal property owned by a city. After making a written determination fully describing the property, its intended use at the time of acquisition, the reasons why it is in the public interest to dispose of the property

110 A East Todd Street  
Frankfort, Kentucky 40601  
Phone (502) 223-2063 Fax (502) 875-9151

and the method of disposition to be used, the city may go forth and dispose of the property in four ways:

*82.083 Sale or other disposition of city property.*

*(3) Real or personal property may be:*

*(a) Transferred, with or without compensation, to another governmental agency;*

*(b) Transferred, with or without compensation, for economic development purposes;*

*(c) Sold at public auction following publication of the auction in accordance with KRS 424.130(1)(b);*

*(d) Sold by electronic auction following publication of the auction, including the uniform resource link (URL) for the site of the electronic auction, in accordance with KRS 424.130(1)(b); or*

*(e) Sold by sealed bids in accordance with the procedure for sealed bids under KRS 45A.365(3) and (4).*

KRS 82.083(3)(a) and (b) dealing with transfers to another governmental agency or for economic development purposes do not appear to be applicable to the circumstances under which a municipal electric power system would be sold. KRS 82.083(3)(c) and (d) dealing with public or electronic auctions do not specifically require sealed bids for either procedure until we read the following subsection, subsection (4), indicating that sealed bids are required for both procedures. Subsection (4) states as follows:

*(4) If a city receives no bids for the real or personal property, either at public or electronic auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the city. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made.*

The city may dispose of real or personal property consistent with the public interest in any manner deemed appropriate, but only after no bids have been received. It would appear then that the sale of municipally owned electric power system would require an opportunity for competitive bidding by potential purchasers prior to disposal by the city through an alternative procedure.

We would appreciate an inquiry and opinion from your office on this question. Thank you.

Sincerely,



Annette DuPont-Ewing  
Executive Director