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RECEIVED
AUG 30 2016
PUBLIC SERVICE
COMMISSION

August 30, 2016

VIA HAND DELIVERY

Talina R. Mathews
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

**RE: Application of Louisville Gas and Electric Company for a Declaratory Order
Regarding the Proper Method of Municipal Franchise Fee Recovery
Case No. 2016-00317**

Dear Ms. Mathews:

Enclosed please find enclosed and accept for filing the original unbound and ten (10) additional copies of a *Verified Application for a Declaratory Order* filed on behalf of Louisville Gas and Electric Company. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our office courier.

Should you have any questions please contact me at your convenience.

Yours very truly,


Kendrick R. Riggs

KRR:ec

Enclosures as mentioned

cc: Allyson K. Sturgeon, Senior Corporate Attorney, LG&E and KU Energy LLC
Rebecca Goodman and Lawrence W. Cook, Office of the Kentucky Attorney General
Michael L. Kurtz, Boehm, Kurtz & Lowry
Mike O'Connell, Julie Hardesty, Jeff DeRouen, Sarah Martin and Matt Golden, Jefferson County Attorney's Office

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COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

AUG 30 2016

PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR A)
DECLARATORY ORDER REGARDING THE)
PROPER METHOD OF MUNICIPAL)
FRANCHISE FEE RECOVERY)

CASE NO. 2016-00317

VERIFIED APPLICATION

Pursuant to 807 KAR 5:001, Sections 14 and 19, Louisville Gas and Electric Company (“LG&E”) applies to the Kentucky Public Service Commission (“Commission”) for a declaratory order confirming that, absent a contrary order from the Commission, (1) LG&E must abide by its tariff and (2) pursuant to Commission policy, LG&E’s tariff requires recovery of municipal franchise fees as a line-item charge on the bills of the ratepayers residing within the jurisdiction imposing the franchise fee. On August 30, 2016, LG&E and Louisville Metro entered into a franchise agreement (“2016 Franchise”).¹ In contravention of LG&E’s tariff, Louisville Metro demands that LG&E not recover the 2016 Franchise fees as a line item on its bills to LG&E customers residing within Louisville Metro.² LG&E has filed this application to resolve and comply with the law and its tariff regarding the collection and recovery of the Louisville Metro franchise fees. Resolving the dispute is necessary to ensure that LG&E’s customers, both those within and outside the Louisville Metro, have a clear understanding of what charges they may be assessed.

LG&E’s Franchise Fee adjustment clause (“Franchise Rider”), filed with and approved by the Commission, provides that franchise fees imposed by a municipality must be recovered as

¹ See Exhibit 1.

² Louisville Metro’s basis for that position has shifted at times, and has included arguments that LG&E should treat the franchise fees as a regular operating expense and recover these costs from all LG&E customers or that LG&E should forego recovery of the fees altogether.

a separate line-item assessed only to the customers who reside in the municipality imposing the fee.³ Absent a contrary order from the Commission, LG&E must abide by its Commission-approved tariff.⁴ LG&E's Franchise Rider conforms to well-established Commission policy requiring that franchise fees imposed by a municipality be recovered as a separate line-item assessed only to the customers who reside in the municipality imposing the fee.⁵ Ultimately, Louisville Metro's disagreement with LG&E's position and the Commission's policy on the recovery of the franchise fee gives rise to this dispute and need for a declaratory order. Therefore, LG&E respectfully requests that the Commission issue an order declaring that: (1) LG&E must follow its Commission-approved Franchise Rider, and, in doing so, (2) LG&E must calculate and add a surcharge to the total bill for gas service for all customers located within the jurisdictional boundaries of Louisville Metro in order to recover the costs of any franchise fee. In support of this Application, LG&E respectfully states:

The Applicant

1. Applicant LG&E's full name and post office address is: Louisville Gas and Electric Company, 220 West Main Street, Post Office Box 32010, Louisville, Kentucky 40202.
2. LG&E may be reached by electronic mail at the electronic mail addresses of its counsel set forth below.
3. LG&E is incorporated in the Commonwealth of Kentucky and attests that it is in good corporate standing. LG&E was incorporated in Kentucky on July 2, 1913.

³ Exhibit 2, LG&E Rates, Terms and Conditions for Furnishing Natural Gas Service, P.S.C. Gas No. 10, Original Sheet No. 90.

⁴ KRS 278.160.

⁵ See, e.g., *In the Matter of: General Adjustment of Rates of Kentucky Utilities Company*, Case No. 7804, Order (Ky. PSC Oct. 1, 1980); *In the Matter of: The Local Taxes and/or Fees Tariff Filing of General Telephone Company of Kentucky*, Case No. 7843, Order (Ky. PSC Oct. 3, 1980); *In the Matter of: The Local Taxes and/or Fees Tariff Filing of Columbia Gas of Kentucky, Inc.*, Case No. 7906, Order (Ky. PSC Oct. 10, 1980); *In the Matter of: The Franchise Fee Tariff Filing of Continental Telephone Company of Kentucky*, Case No. 7891, Order (Ky. PSC Oct. 10, 1980); *In the Matter of: General Adjustment in Electric Rates of Kentucky Power Company*, Case No. 7900, Order (Ky. PSC Dec. 17, 1980).

4. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

Robert M. Conroy
Vice President, State Regulation and Rates
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
robert.conroy@lge-ku.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
allyson.sturgeon@lge-ku.com

Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
kendrick.riggs@skofirm.com

5. LG&E is a public utility, as defined in KRS 278.010(3)(a), engaged in the electric and gas business. LG&E generates and purchases electricity, and distributes and sells electricity at retail to 403,000 customers in Jefferson County and portions of Bullitt, Hardin, Henry, Meade, Oldham, Shelby, Spencer, and Trimble Counties. LG&E also purchases, stores and transports natural gas and distributes and sells natural gas at retail to 322,000 customers in Jefferson County and portions of Barren, Bullitt, Green, Hardin, Hart, Henry, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties.

Persons Who May Be Affected by the Application

6. Louisville-Jefferson County Metro Government (“Louisville Metro”), a consolidated local government formed pursuant to KRS 67C,⁶ is a person who may be affected

⁶ KRS 67C.101 *et seq.*

by this application. Louisville Metro is represented by the Jefferson County Attorney's Office. A copy of this application for declaratory order was served by electronic mail on Mike O'Connell, Jefferson County Attorney, at Mike.oconnell@louisvilleky.gov, Julie Hardesty, Assistant County Attorney, at Julie.hardesty@louisvilleky.gov, Jeff Derouen, Assistant County Attorney, at jeff.derouen@louisvilleky.gov, Sarah Martin, Assistant County Attorney, at Sarah.martin@louisvilleky.gov, and Matt Golden, Assistant County Attorney, at Matt.golden@louisvilleky.gov. The Jefferson County Attorney's Office is located at 600 West Jefferson Street, Louisville, Kentucky 40202.

7. The Attorney General of Kentucky ("AG") is responsible under KRS 367.150(8)(b) for representing the interests of consumers in matters before the Commission and is a person who may be affected by this application. The AG is represented by Rebecca Goodman, Director and Larry Cook, Assistant Attorney General, in the Office of Rate Intervention. A copy of this application for declaratory order was served by electronic mail on Rebecca Goodman at Rebecca.Goodman@ky.gov and Larry Cook at Larry.Cook@ky.gov. The office of the AG's Rate Intervention Division is located at 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

8. The Kentucky Industrial Utility Customers, Inc. ("KIUC") represents the utility interests of industrial customers served by LG&E and is a person who may be affected by this application. The KIUC is represented by Michael L. Kurtz and David F. Boehm. A copy of this application for declaratory order was served by electronic mail on Mike Kurtz at mkurtz@BKLLawfirm.com. The business address of the KIUC is 36 E. Seventh St., Suite 1510, Cincinnati, Ohio 45202.

Jurisdiction

9. The Commission has exclusive jurisdiction over the rates and services of Kentucky utilities pursuant to KRS 278.040.⁷

10. The method by which a utility recovers costs of providing utility service, including franchise fees and other local taxes and fees, is within the Commission's exclusive jurisdiction.⁸

11. LG&E has on file and approved by the Commission a Franchise Fee adjustment clause as part of its *Rates, Terms and Conditions for Furnishing Natural Gas Service* in the 17 counties including the Louisville, Kentucky metropolitan area.

12. Municipalities like Louisville Metro have no jurisdiction over the rates or services of Kentucky utilities.⁹

The Franchise Agreement

13. In 2014, Louisville Metro awarded LG&E a franchise (the "2014 Franchise") which included a franchise fee of 2% of gross receipts from gas services provided by the utility within Louisville Metro, which generated approximately five million dollars (\$5,000,000) per year, but varied from month to month depending on customer consumption, as well as factors beyond LG&E's control, such as weather. Louisville Metro's 2014 switch from the flat franchise fee charged by the former City of Louisville to the use of a percentage of gross receipts represented a substantial change in the form and amount of the franchise fee to be paid by

⁷ *Ky. PSC v. Commonwealth ex. rel. Conway*, 324 S.W.3d 373 (Ky. 2010); *Southern Bell Tel. & Tel. Co. v. City of Louisville*, 96 S.W.2d 695 (Ky. 1936); *Smith v. Southern Bell Tel. & Tel. Co.*, 104 S.W.2d 961 (Ky. 1937); *Peoples Gas Co. of Kentucky*, 165 S.W.2d 567 (Ky. 1942); *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994); *City of Florence v. Owen Elec. Coop.*, 832 S.W.2d 876 (Ky. 1992).

⁸ *City of Florence*, 832 S.W.2d 876; *Peoples Gas Co. of Kentucky*, 165 S.W.2d 567; *Simpson County Water Dist.*, 872 S.W.2d 460. *See also*, Case No. 7804, Order; Case No. 7906, Order.

⁹ KRS 278.040(2); *Southern Bell Tel. & Tel. Co.*, 104 S.W.2d at 698.

LG&E. LG&E applied for and received a certificate of public convenience and necessity (“CPCN”) from this Commission to bid on the 2014 Franchise.¹⁰

14. Louisville Metro awarded LG&E the 2014 Franchise on October 1, 2014. The 2014 Franchise was for a term of sixteen months, beginning on December 1, 2014, and required LG&E to pay Louisville Metro a franchise fee of 2% of the gross receipts for gas service within Louisville Metro. Pursuant to its Franchise Rider, beginning December 1, 2014, LG&E collected the 2014 Franchise fees by calculating and adding a surcharge to the total bill for gas service for all customers located within the jurisdictional boundaries of Louisville Metro. LG&E collected the franchise fee under its Franchise Rider through March 31, 2016.

15. On June 24, 2015, LG&E, through a letter to the Jefferson County Attorney’s Office, requested Louisville Metro to provide for the sale of a new franchise prior to expiration of the 2014 Franchise.¹¹ Meetings between LG&E and representatives of Louisville Metro were held on July 21, September 20, and October 14, 2015 to discuss the renewal of the franchise. In November and December 2015, LG&E and representatives of Louisville Metro exchanged drafts of the franchise agreement.

16. After months of negotiations, on December 17, 2015, the Legislative Council of Louisville Metro (“Metro Council”) passed Ordinance No. 429, Series 2015, which directed Louisville Metro to advertise a gas franchise for bid.¹² LG&E applied for and received a CPCN

¹⁰ *In the Matter of: Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing LG&E to Bid on a Gas Franchise Established by the Legislative Council of Louisville/Jefferson County Metro Government*, Case No. 2014-00202, Order (Ky. PSC June 17, 2014).

¹¹ Louisville Metro has a statutory obligation under KRS 96.010 “at least 18 months before the expiration of any franchise ... [to] provide for the sale of a new franchise to the highest and best bidder on terms that are fair and reasonable to the city, to the purchaser of the franchise and to the patrons of the utility.”

¹² See Exhibit 3.

from this Commission to bid on the franchise.¹³ LG&E subsequently submitted its bid to Metro Council on January 15, 2016, using an agreement substantively similar to the 2014 Franchise. LG&E received a response from the Jefferson County Attorney's Office indicating that the bid was unacceptable and nonconforming. Louisville Metro sought to have LG&E recover the franchise fee only in base rates, but LG&E did not agree to those terms as the issue of rate recovery is squarely within the exclusive jurisdiction of the Commission. On March 24, 2016, Louisville Metro formally rejected LG&E's bid, primarily because of the dispute regarding how the fee should be recovered.

17. The 2014 Franchise expired by its own terms on March 31, 2016. LG&E then ceased collecting and remitting a franchise fee for bills issued on and after April 1, 2016.¹⁴ In the absence of a franchise, LG&E continued supplying gas service to all its customers within the boundaries of Louisville Metro pursuant to its Commission-approved gas tariff and occupying the rights-of-way of Louisville Metro as a licensee, by operation of law.¹⁵

18. After the expiration of the 2014 Franchise, LG&E and Metro Council once more resumed negotiations for a new franchise. Meetings between LG&E and representatives of Louisville Metro were held on April 13 and April 22, 2016 to discuss a new franchise. These negotiations once again resulted in a preliminary draft franchise agreement. But, once again, negotiations reached an impasse over rate recovery issues. On May 6, the Jefferson County Attorney's Office advised LG&E that Louisville Metro would enact an ordinance authorizing the Louisville Metro Mayor to advertise for bids for a new franchise. On May 16, 2016, LG&E and

¹³ *In the Matter of: Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing LG&E to Bid on a Gas Franchise Established by the Legislative Council of Louisville/Jefferson County Metro Government*, Case No. 2016-00038, Order (Ky. PSC Jan. 13, 2016).

¹⁴ LG&E advised Louisville Metro in meetings and confirmed by letter dated March 14, 2016 of its intent and obligation to cease collecting and remitting franchise fees upon expiration of the franchise. See Exhibit 4.

¹⁵ *Princeton v. Princeton Electric Light & Power Co.*, 179 S.W. 1074, 1079-1080 (Ky. 1915); *Ralston v. Middlesboro*, 251 S.W.2d 233, 234 (Ky. 1952); *Hardin County Kentucky Tel. Co. v. Elizabethtown*, 14 S.W.2d 162, 164 (Ky. 1929).

the Jefferson County Attorney's Office met and, after additional negotiations, reached an agreement in principle on the terms of the draft ordinance and franchise agreement. On May 19, 2016, the Metro Council Budget Committee reviewed the draft ordinance and franchise agreement. On May 26, 2016, Metro Council passed Ordinance No. 132, Series 2016, which directed Louisville Metro to advertise a gas franchise for bid.¹⁶ The ordinance and subsequent advertisement made no mention of a limitation on the collection of franchise fees from customers. LG&E applied for and received a CPCN from this Commission to bid on the franchise.¹⁷ On June 9, 2016, LG&E submitted its bid to Metro Council. On June 17, 2016, the Jefferson County Attorney's Office advised LG&E that Louisville Metro would consider the bid in the following month.

19. On July 28, 2016, Metro Council introduced Ordinance No. 214-16, authorizing Louisville Metro to accept LG&E's bid.¹⁸ On August 18, 2016, the Louisville Metro Council Budget Committee considered Ordinance No. 214-16, and, in doing so, amended the ordinance and franchise agreement to clarify that Louisville Metro made payment of the franchise fees contingent upon the adjudication of LG&E's method of recovering the fee. In addition, the Committee modified the ordinance and franchise agreement such that, if the adjudication concludes that the fee should be recovered as a line item only on the bills of customers in the franchise area, the franchise fee will revert to zero. On August 25, 2016, Metro Council passed Ordinance No. 214-16, as amended, authorizing Louisville Metro to accept LG&E's bid. On August 30, 2016, LG&E and Louisville Metro executed the 2016 Franchise.

¹⁶ See Exhibit 5.

¹⁷ *In the Matter of: Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity Authorizing LG&E to Bid on a Gas Franchise Established by the Legislative Council of Louisville/Jefferson County Metro Government*, Case No. 2016-00193, Order (Ky. PSC June 6, 2016).

¹⁸ See Exhibit 6 for the as amended Ordinance No. 214-16.

20. The 2016 Franchise is for a term of five years and includes a franchise fee based on four options or a combination of the options, each at the discretion of Metro Council throughout the term of the 2016 Franchise.¹⁹ Under Section 11, the total annual payment is not to exceed a total annual franchise fee of three percent (3%) of gross receipts within the Louisville Metro franchise area. Based on LG&E's historical gross receipts in the Louisville Metro franchise area, a 3% fee would result in annual franchise fees of nearly \$6.5 million.²⁰ For the present, Louisville Metro has selected the option from Section 11(a)(2) which uses the thousand cubic feet or "Mcf" measurement of gas, using LG&E's distribution system, whether for transmission or distribution within Louisville Metro's jurisdiction, to determine the monthly payment.²¹ Louisville Metro estimates this initial method will generate a franchise fee of approximately \$1 million each year.²² The terms of 2016 Franchise allow Louisville Metro to change the fee to any of the other options in the agreement at any time, including requiring the 3% fee that would likely result in franchise fees of nearly \$6.5 million, upon 60 days' notice to LG&E.²³ This would result in a \$5.5 million annual increase over the expected fees due under the Section 11(a)(2) option. The terms of the 2016 Franchise thus allow Louisville Metro, if it is successful in limiting LG&E's recovery of the estimated \$1 million franchise fee to only gas base rates, to increase the franchise fee between rate cases by \$5.5 million, causing LG&E's shareholders to absorb the increase until the gas base rates could be changed again.

¹⁹ 2016 Franchise Agreement, Sections 9 and 11(a), pp. 6, 7-8

²⁰ In 2015, LG&E's gross receipts in the franchise area were \$216,298,687. Based on these receipts, if the franchise fee is 3.0%, the annual fees would be \$6,488,960.61. This amount could increase due to demand, growth, and weather.

²¹ 2016 Franchise, Section 11(b). The 2016 Franchise expressly recognizes that LG&E's acceptance of the franchise should not be construed to mean that LG&E approves or agrees that customer usage outside the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. 2016 Franchise, Section 11(a).

²² Parker, Marilyn. Statement at Metro Council Meeting (Aug. 25, 2016). Available at http://louisville.granicus.com/ViewPublisher.php?view_id=2; Accessed Aug. 26, 2016. Councilmember Parker's statement begins at approximately 01:47:40.

²³ 2016 Franchise, Section 11(a).

21. The 2016 Franchise does not restrict LG&E in any way from recovering the cost from its customers. In addition, the 2016 Franchise in no way restricts LG&E from filing this application and requesting a declaratory order. The 2016 Franchise does contain a reservation of the right by Louisville Metro to challenge LG&E's method of recovery at the Commission or any court of competent jurisdiction.²⁴

22. Under the terms of the 2016 Franchise, Louisville Metro has made the franchise fee payment contingent upon the adjudication of the recovery issue by an order of the Commission or any court of competent jurisdiction clarifying the proper method of recovery of the cost of the franchise fee by LG&E.²⁵

23. To resolve whether, and if so, how LG&E should recover the cost incurred from the payment of the 2016 Franchise fee from its customers, LG&E is filing this application for a declaratory order.

LG&E's Tariff and KRS Chapter 278 Require LG&E to Pass Franchise Fees Through to Ratepayers Residing in the Franchise Area

24. LG&E's Franchise Rider states in part:

A surcharge shall be calculated and added to the total bill for gas service for all customers located within local governmental jurisdictions which currently or in the future impose municipal franchise fees or other local taxes on the Company by ordinance, franchise, or otherwise. Such fees or taxes shall be net of any corresponding fees or taxes which are currently included in the base charges of each rate schedule.

The amount calculated shall be applied exclusively to the bills of customers receiving service within the territorial limits of the authority imposing the fee or tax. The fee or tax shall be added to the customer's bill as a separate item. Where more than one such fee or tax is imposed, each of the fees or taxes applicable to each customer shall be added to the bills as separately identified items.²⁶

²⁴ *Id.* at Section 12.

²⁵ *Id.* at Section 11s (a) and (b); Ordinance No. 214-16.

²⁶ Exhibit 2, LG&E Rates, Terms and Conditions for Furnishing Natural Gas Service, P.S.C. Gas No. 10, Original Sheet No. 90.

The express language of Franchise Rider provides that franchise fees imposed by a municipality “shall” be recovered as a separate line-item assessed only to the customers who reside in the municipality imposing the fee.

25. The Franchise Rider is a filed rate under KRS 278.160.²⁷ Pursuant to the filed-rate doctrine, embodied in KRS 278.160, a utility may not “charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed [by the Commission] in its filed schedules....”²⁸ The filed-rate doctrine “demands that a utility strictly adhere to its published rate schedules and not, either by agreement or conduct, depart from them.”²⁹ Therefore, any deviation from LG&E’s tariff filed without Commission approval would violate the filed-rate doctrine,³⁰ which the Commission has called the “bedrock of utility regulation.”³¹

26. KRS 278.170 prohibits LG&E from giving any unreasonable preference or advantage to any person or establishing or maintaining any unreasonable difference between localities. KRS 278.170 prevents LG&E from yielding to Louisville Metro’s demands that its residents receive special treatment by requiring LG&E’s customers residing within the political boundaries of other municipalities to pay the franchise fee imposed by Louisville Metro.

27. The Commission’s policy,³² with limited exceptions,³³ is that franchise fees imposed by a municipality are to be recovered as a separate line-item assessed only to the

²⁷ Case No. 7804, Order at 11-12. *See also*, KRS 278.010(12) (“Rate” means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, *and any schedule or tariff or part of a schedule or tariff thereof.*) (Emphasis added); KRS 278.010(13) (“Service” includes any practice or requirement in any way relating to the service of any utility.)

²⁸ KRS 278.160(2).

²⁹ *In the Matter of: North Marshall Water District Alleged Violations of KRS 278.160*, Case No. 95-107, Order at 2 (Ky. PSC Oct. 13, 1995).

³⁰ *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922); *See also* Case No. 95-107, Order at 3.

³¹ Case No. 95-107, Order at 2.

³² *See, e.g.*, Case No. 7804, Order; Case No. 7843, Order; Case No. 7906, Order; Case No. 7891, Order; Case No. 7900, Order; *An Adjustment by the Union Light, Heat and Power Company to Include in Its Gas and Electric*

customers who reside in the municipality imposing the fee. To do otherwise and recover franchise fees from all customers through general rates would unreasonably prejudice or disadvantage customers outside the fee-imposing municipality who typically receive no benefit from the fee.³⁴

28. As the Commission has stated:

[S]ince the fees go to the municipalities in question there is no justification to assess residents outside of the political boundaries of the franchise area. Such a policy is tantamount to taxation without representation and therefore not in the best interest of the consumer. Increased consumption of electricity within a franchise area will increase the payment due the municipality. Energy consumption outside the franchise area does not change the amount of the franchise fee. Conservation by customers outside the franchise area would not lessen this expense... KRS 96.010 provides that the franchise agreement be fair and reasonable to the City, to the purchasers of the franchise, and to the patrons of the utility. Since the franchise fee becomes an identifiable part of the cost of providing service within the city or municipality, that fee should be recovered by those receiving service within the city... Such itemization is further justified by the fact that this charge is not regarded by the Commission as an ordinary expense of the utility. Consumers have a right to know the amount of such charges collected from them for government operating expenses. The matter of the amount of such franchises is basically between the citizens within the franchise area and their local government, but its inclusion in a utility bill and the treatment of the charge for rate making purposes is a Commission matter. Franchise fees have become contagious as cities have looked for new ways to raise

Tariffs, E.R.C. KY. No. 2 and E.R.C. KY. No. 3, Respectively, a Local Franchise Fee Applicable to All Schedules, Case No. 8154, Order (Ky. PSC June 24, 1981); Case No. 89-054, Order; Tariff of Kentucky Utilities Company to Implement a Franchise Fee Rider, Case No. 2003-00265, Order (Ky. PSC Oct. 16, 2003); Tariff of Louisville Gas and Electric Company to Implement a Franchise Fee Rider, Case No. 2003-00267, Order (Ky. PSC Oct. 16, 2003).

³³ See, e.g., Case No. 2002-00402, *In the Matter of: The Filing by Kenergy Corp. for Approval of a Franchise Billing Plan and for Permission to Deviate from the Public Notice Requirements of 807 KAR 5:011* (Ky. PSC June 13, 2003).

³⁴ Case No. 7843, Order (“[I]t is unfair to customers not residing within a municipality to be forced to pay part of the costs of a utility’s franchise agreement with that municipality. Accordingly, tariff provisions which perpetuate such an arrangement are unfair and unreasonable. The fairest and best way to accomplish this is to recover franchise fees as a separate item on the bills of customers receiving service within a municipality requiring such a fee.”); Case No. 89-054, Order. (“Franchise fees are a clearly identifiable cost of doing business only in the community which imposes it. Imposing this cost on utility customers who are located outside the community and who receive no benefit from the community services supported by such fees is discriminatory... Customer bills should separately state the amount which is attributable to franchise fees...” (Emphasis in original).

needed revenues. Basic fairness dictates that these revenues be raised in the area in which they are spent, and that customers are aware of this in the same manner as the school tax and the fuel adjustment charges or credits are presented on the customer bill... The Commission finds no justification in hiding this charge from the consumer or treating these franchises as ordinary utility expenses.³⁵

29. The Commission therefore recognizes that franchise fees are not an ordinary utility expense, such as rental payments to lease property. Kentucky's courts have further held that the right of a utility to occupy public rights of way or lands in a municipality is a right a municipality can grant only through a franchise issued according to the terms of Section 164 of the Kentucky Constitution, further distinguishing it from the rent or lease of property.³⁶ The forty-three cents (\$0.43) per thousand cubic feet (Mcf) of gas referenced in the 2016 Franchise is apparently taken from LG&E's Rate Schedule FT for gas transportation service where it represents the distribution charge for firm transportation service of customer-owned gas and not the rental of its gas distribution system.³⁷ LG&E's tariff makes clear the \$0.43 charge is for transportation service only, which is expressly defined as LG&E's "sole obligation" under the rate schedule.³⁸ Customers have no property right in LG&E's distribution system by virtue of receiving transportation service. In fact, even the transportation service is contingent on the availability of adequate capacity on LG&E's system to perform such service without detriment to its other customers.

³⁵ Case No. 7804, Order at 10-12.

³⁶ *Inland Waterways Co. v. City of Louisville et al.*, 13 S.W.2d 283 (Ky. 1929). *Cumberland Tel. & Tel. Co. v. Calhoun*, 151 S.W. 659, (Ky. 1912); *Rural Home Tel. Co. v. Ky. & Ind. Tel. Co.*, 107 S.W. 787, 790 (Ky. 1908).

³⁷ Exhibit 7, LG&E Rates, Terms and Conditions for Furnishing Natural Gas Service, P.S.C. Gas No. 10, Sheet Nos. 30 to 30.10.

³⁸ *Id.* at 30.1

30. The Commission’s rulings on this issue are in accord with the majority of other states.³⁹

31. Louisville Metro has no legal authority to encroach upon or otherwise pre-empt the exclusive jurisdiction of this Commission regarding how LG&E recovers or passes through its costs of providing utility service to customers, including franchise fees.⁴⁰ Moreover, Kentucky’s General Assembly has repeatedly declined to enact legislation that would amend KRS 96.010 to grant cities the right to prohibit utilities from recovering franchise fees from residents of the cities by adding a fee or surcharge to the bill;⁴¹ a right that cities do not currently possess.⁴² Thus, LG&E and Louisville Metro may agree to a franchise fee, but the method of recovering the fee is solely within the exclusive jurisdiction of the Commission.

Basic Rate-Making Principles Dictate that Franchise Fees Continue to be Recovered from Customers Residing within the Municipality Imposing the Fee

32. KRS 278.030 grants Kentucky utilities the right to “demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.”

³⁹ Franchise fees are assessed only against the customers residing in the jurisdiction imposing the fee in a majority of states. *See, e.g., Norfolk v. Chesapeake & Potomac Tel. Co.*, 218 S.E.2d 531 (Va. 1975); *Ogden City v. Public Serv. Comm’n*, 260 P.2d 751 (Utah 1953); *State ex rel. West Plains v. Public Serv. Comm’n*, 310 S.W.2d 925 (Mo. 1958); *Elmhurst v. Western United Gas & Electric Co.*, 1 N.E.2d 489 (Ill. 1936). In addition to these appellate decisions, state commission decisions and statutes are overwhelmingly in accord. *See, e.g.,* Tenn. Code Ann. § 65-4-105; NM Stat. 62-6-4.5; Equitable Gas Company, LLC; Rule 42T tariff filing to increase rates and charges, 2010 W.Va PUC LEXIS 2107 (W.Va PSC August 24, 2010); Re Iowa Power and Light Company; Intervenors: City of Des Moines, League of Iowa Municipalities et al., 20 P.U.R.4th 397, Docket No. U-526 (Iowa St. Commerce Comm'n June 1, 1977).

⁴⁰ KRS 278.040(2); *Southern Bell Tel. & Tel. Co.*, 104 S.W.2d at 698.

⁴¹ *See, e.g.,* HB 456 (Ky. 2011), available at <http://www.lrc.ky.gov/record/11rs/hb456.htm>; HB 41 (Ky. 2012), available at <http://www.lrc.ky.gov/record/12rs/hb41.htm>; HB 40 (Ky. 2013), available at <http://www.lrc.ky.gov/record/13rs/hb40.htm>; HB 443 (Ky. 2014), available at <http://www.lrc.ky.gov/record/14rs/hb443.htm>; HB 325 (Ky. 2015), available at <http://www.lrc.ky.gov/record/15RS/HB325.htm>; HB 446 (Ky. 2016), available at <http://www.lrc.ky.gov/record/16RS/HB446.htm>.

⁴² *Jefferson Co. Bd. of Educ. v. Fell et al.*, 391 S.W.3d 713, at 723-725 (Ky. 2012) (The Court found the fact that legislation did not pass indicates that the legislation “would bring about a change in the meaning of [the statute], a meaning that is not currently there.”).

33. Louisville Metro has asserted that LG&E should not recover the franchise fee as a line item on its bills to LG&E customers residing within Louisville Metro. Regardless of whether that position is based on an argument that LG&E should treat the 2016 Franchise fees as a regular operating expense to be recovered from all LG&E customers, or an argument that LG&E should forego recovery of the 2016 Franchise fees altogether, Louisville Metro has no legal authority to encroach upon the exclusive jurisdiction of this Commission over LG&E's rates and services. Therefore, Louisville Metro has no legal authority to prohibit LG&E from recovering its costs of providing service from its customers, dictate how LG&E recovers its costs, or otherwise impinge on LG&E's right under KRS 278.030 to demand, collect, and receive fair, just and reasonable rates. Such action conflicts with the Commission's jurisdiction and Kentucky's regulatory scheme embodied in KRS Chapter 278.

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WHEREFORE, Louisville Gas and Electric Company respectfully requests the Commission issue a declaratory order confirming that LG&E must calculate and add to the total bill for gas service for all customers located within Louisville Metro's jurisdiction a surcharge to collect any fees for the 2016 Franchise.

Dated: August 30, 2016

Respectfully submitted,



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Counsel for Louisville Gas and Electric Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct electronic copy of the foregoing Verified Application for Declaratory Order was served on the following persons by electronic mail using the electronic mail addresses shown below and a true and correct copy in paper medium of the same was served by placing the same in the U.S. Mail, postage prepaid for delivery to the addresses shown below all on the 30th day of August 2016:

Rebecca Goodman
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Office of the Kentucky Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
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Jefferson County Attorney
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Louisville, KY 40202


Counsel for Louisville Gas and Electric Company

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company"):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance 214 Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*Party*" or "*Person*" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended; subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of

Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws

and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to change its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is vacated or when the Right of Way is altered for the convenience of abutting property owners or for

private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro that the Company's use of the Right of Way or the presence or operation of the Company's equipment on or along said Right of Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other

reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this

Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the Company, Louisville Metro shall receive payment as determined by the Metro Council, at its

discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the

Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise upon passage, the Franchise Fee shall be a combination of: (1) zero per linear foot as described in Section 11(a) above; (2) six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) zero % of Gross Receipts; and (4) no fee is to be collected beginning with bills rendered for the October 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities, within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received

within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the

accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s)

impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

(k) As further consideration for the granting of this Franchise, the Company agrees to pay all publication costs Louisville Metro incurs in the granting of this Franchise. The above- mentioned costs shall be invoiced by Louisville Metro to the Company and the Company shall pay said costs within thirty (30) days of receipt of said invoice.

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, reserves the right to terminate and cancel this Franchise and all rights and privileges of the Company hereunder in the event that the Company:

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

(2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon Louisville Metro;

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

(4) Is no longer able to provide regular and customary uninterrupted service to its customers in Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 13(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

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

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

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

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

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and an opportunity to cure, such violations, failure or default continue as set forth in Section 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his/her election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all

defaults thereunder; and,

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

Section 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes,

regulations, and orders.

Section 17. This Franchise shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Franchise shall be in a court of competent jurisdiction in Kentucky.

Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

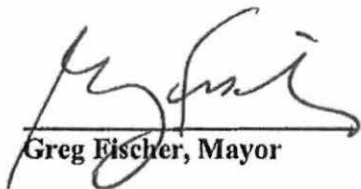
Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this 30th of

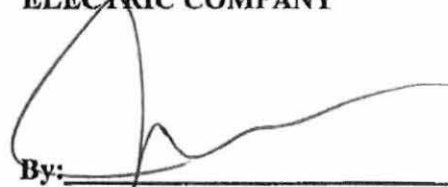
August, 2016.

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



Greg Fischer, Mayor

LOUISVILLE GAS AND
ELECTRIC COMPANY



By: _____

Title: VP Customer Services

Adjustment Clause

Franchise Fee

APPLICABILITY

All gas rate schedules.

MONTHLY CHARGE

A surcharge shall be calculated and added to the total bill for gas service for all customers located within local governmental jurisdictions which currently or in the future impose municipal franchise fees or other local taxes on the Company by ordinance, franchise, or otherwise. Such fees or taxes shall be net of any corresponding fees or taxes which are currently included in the base charges of each rate schedule.

The amount calculated shall be applied exclusively to the bills of customers receiving service within the territorial limits of the authority imposing the fee or tax. The fee or tax shall be added to the customer's bill as a separate item. Where more than one such fee or tax is imposed, each of the fees or taxes applicable to each customer shall be added to the bills as separately identified items.

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: February 6, 2009

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

ORDINANCE NO. 205, SERIES 2015

AN ORDINANCE AUTHORIZING THE MAYOR TO BID A GAS FRANCHISE AGREEMENT AND DECLARING THE ENACTMENT OF THIS ORDINANCE AN EMERGENCY.

SPONSORED BY: PRESIDENT DAVID TANDY AND COUNCILMEMBERS KELLY DOWNARD AND CHERI BRYANT HAMILTON

WHEREAS, Louisville Metro Government's gas franchise agreement with LG&E expires on March 31, 2016;

WHEREAS, Kentucky state law requires Louisville Metro Government to publically advertise for a new gas franchise agreement; and

WHEREAS, given the pending expiration date of the current gas franchise agreement, Louisville Metro Council invokes the emergency clause, Council Rule 7.12, to allow members to vote on the ordinance without a second reading of the ordinance.

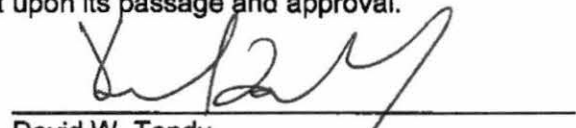
BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

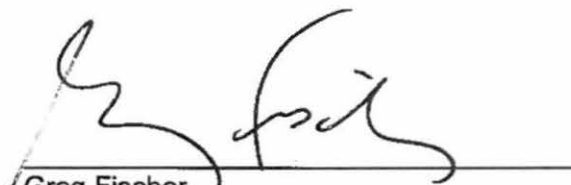
Section I. Louisville Metro Council authorizes Louisville Metro Government to advertise a gas franchise for bid as required by the Kentucky Constitution, Section 164.

Section II. Louisville Metro Council authorizes the Mayor to bid a gas franchise agreement for up to five (5) years with a franchise fee of 2.0% of gross receipts, as defined by the gas franchise bid.

Section III. This ordinance shall take effect upon its passage and approval.


H. Stephen Ott
Metro Council Clerk


David W. Tandy
President of the Council


Greg Fischer
Mayor

Date Approved: 12/29/15

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: *Paul Mathey*

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
December 17, 2015

LGE Franchise Agt Ordinance ROCsjm 12-17-15 Draft 2



PPL companies

March 14, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Julie Hardesty
Assistant County Attorney
Ms. Sarah Martin
Assistant County Attorney
Mr. Jeff Derouen
Assistant County Attorney
Jefferson County Attorney's Office
Jefferson Hall of Justice
600 West Jefferson Street
Louisville, KY 40202

Re: Louisville-Jefferson County Metro Government Gas Services Franchise

Dear Julie, Sarah, and Jeff:

On January 15, 2016, Louisville Gas and Electric Company ("LG&E") submitted its bid for renewal of its gas Franchise with Louisville-Jefferson County Metro Government ("Louisville Metro"). We believe the bid conformed with the relevant Louisville Metro ordinance and corresponding public request for bids, however, on March 10, 2016, Metro Council had the first reading of an ordinance to reject LG&E's bid and may vote on that ordinance on March 24, 2016.

As you know, the March 31st expiration of the current Franchise Agreement is rapidly approaching. It is our view that Louisville Metro has the exclusive authority to grant a Franchise

¹ Section 9 of the current Franchise Agreement states that "[t]he franchise hereby created is not exclusive and shall be of a term of sixteen months, effective sixty (60) days after: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement." On June 5, 2014, Metro authorized the bidding of the franchise. On June 17, 2014, the Kentucky Public Service Commission issued an order authorizing LG&E to bid on the franchise. On August 14, 2014, Metro Council approved entering into the Franchise Agreement, and on October 1, 2014, the Mayor awarded the Franchise Agreement to LG&E by executing the agreement. Finally, consistent with Ordering Paragraph No. 3 of the Commission's Order of June 17, 2014, LG&E filed a copy of the executed agreement electronically with the Commission's tariff branch. As the Commission noted in its Order of June 17th, the Commission's authority in such matters is limited by statute to finding only whether there is a need and demand for the service sought to be rendered. *See* KRS 278.020(4). The June 17, 2014 Order required that if LG&E was the successful bidder, within ten days of the award of the franchise, it must file with the Commission a copy of the executed franchise agreement and a statement disclosing the amount of the initial franchise fee. The Commission gave all the approval and the CPCN it was authorized by law to grant on June 17, 2014. The award of the franchise occurred on October 1, 2014 when it was executed. The October 6, 2014 filing of the Franchise Agreement was a compliance filing under the terms of the June 17, 2014 order, but the filing was not required for the franchise to

Ms. Julie Hardesty
Mr. Jeff Derouen
March 14, 2016
Page 2

under the requirements of the Kentucky Constitution and KRS 96.010, and as such, LG&E does not have the authority to impose or collect a Franchise Fee ("Fee") or obligation to make a Fee payment to Louisville Metro in the absence of such a Franchise Agreement. Thus, upon expiration of the current Agreement on March 31, 2016, and payment of any Fees due and owing at that time, LG&E will not remit any additional Franchise Fee payments to Louisville Metro. LG&E will, of course, continue to provide natural gas service to its customers who are Louisville Metro's constituents despite the expiration of the Franchise Agreement.

We believe that our January 15, 2016, bid to renew the existing gas Franchise was fair and reasonable to both parties and we invite you to reconsider rejecting it especially given that the proposed Franchise Agreement is nearly identical to the current Franchise Agreement. It is our hope that the proposed Franchise Agreement will be executed so we can continue our relationship pursuant to the tried-and-true terms that have governed our long-standing relationship with respect to the gas Franchise.

If Metro Council rejects the bid, LG&E will participate in any new process for requesting bids. Given the timeframe, however, we reiterate that if Louisville Metro chooses to reject LG&E's bid and tendered Franchise Agreement, LG&E will no longer collect a Franchise Fee from its customers after March 31, 2016, and, following payment of amounts then due, Louisville Metro will no longer receive any Franchise Fee payments from LG&E.

Should you wish to schedule a meeting between our two clients for further discussions, please contact me at your first convenience.

Very truly yours,



Hon. Allyson K. Sturgeon
Senior Corporate Attorney,
LG&E and KU Energy LLC

cc: Metro Council President David Yates (email only)
Mayor Greg Fischer (email only)
Metro Council Members (email only)

become legally effective, nor did the Commission have the authority to make the franchise legally effective upon filing with the Commission. The agreement is stamped as "Tariff Branch RECEIVED 10/6/2014" and not stamped "effective 10/06/2014." As a result, the franchise was effective 60 days after October 1, 2014 which was December 1, 2014. Because the franchise was effective December 1, 2014 and had a term of 16 months, the Franchise Agreement expires March 31, 2016.

ORDINANCE NO. 074 , SERIES 2016

AN ORDINANCE AUTHORIZING THE MAYOR TO BID A GAS FRANCHISE AGREEMENT. (Amended by Substitution)

SPONSORED BY: COUNCILMEMBERS HOLLANDER, KRAMER

WHEREAS, Louisville Metro Government seeks to enter into a new gas franchise agreement because its agreement with LG&E expired in April 2016;

WHEREAS, the Kentucky Constitution, Section 164, requires Louisville Metro Government to publically advertise the gas franchise;

WHEREAS, Section 163 of the Kentucky Constitution also requires Louisville Metro Council, as the legislative body of Louisville Metro Government, to give consent before a Louisville Metro Government may enter into a gas franchise agreement;

WHEREAS, Louisville Metro Council has reviewed and agrees to the terms contained in the attached proposed gas franchise agreement.

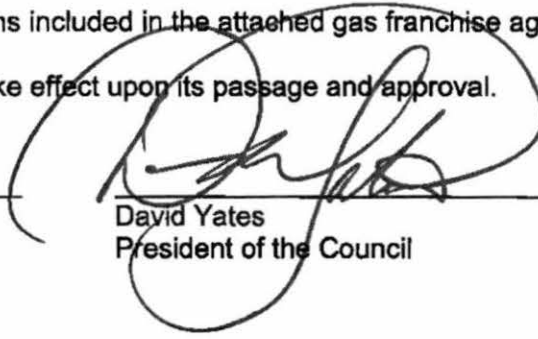
BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section I. Louisville Metro Council authorizes Louisville Metro Government to advertise a gas franchise for bid pursuant to the terms included in the attached gas franchise agreement.


Section II. This ordinance shall take effect upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

Date Approved: 5/27/16

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By *Sarah J. Martin*

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
May 26, 2016

LGE Franchise Agt Ordinance ROCsjm Revised 5-25-16

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company"):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance _____, Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*Party*" or "*Person*" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended;

subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company

agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to changes its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is

vacated or when the Right of Way is altered for the convenience of abutting property owners or for private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro that the Company's use of the Right of Way or the presence or operation of the Company's equipment on or along said Right of Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and

records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise

Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the

Company, Louisville Metro shall receive payment as determined by the Metro Council, at its discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order

resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise on _____, 2016, the Franchise Fee shall be a combination of: (1) \$ ____ per linear foot as described in Section 11(a) above; (2) \$ ____ per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) __% of Gross Receipts; and (4) \$ ____ fee to be collected beginning with bills rendered for the _____ 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities,

within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient

information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro shall be construed as an

accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s) impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid

pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

(k) As further consideration for the granting of this Franchise, the Company agrees to pay all publication costs Louisville Metro incurs in the granting of this Franchise. The above-mentioned costs shall be invoiced by Louisville Metro to the Company and the Company shall pay said costs within thirty (30) days of receipt of said invoice.

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, reserves the

right to terminate and cancel this Franchise and all rights and privileges of the Company hereunder in the event that the Company:

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

(2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon Louisville Metro;

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

(4) Is no longer able to provide regular and customary uninterrupted service to its customers in Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 13(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

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

on the issue in dispute.

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

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

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

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and an opportunity to cure, such violations, failure or default continue as set forth in Section 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his/her election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement,

duly approve by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

Section 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes, regulations, and orders.

Section 17. This Franchise shall be governed by the laws of the Commonwealth of

Kentucky, both as to interpretation and performance. The venue for any litigation related to this Franchise shall be in a court of competent jurisdiction in Kentucky.

Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this ____ of _____, 2016.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

**LOUISVILLE GAS AND
ELECTRIC COMPANY**

Greg Fischer, Mayor

By: _____

Title: _____

Ordinance No. 154, Series 2016

AN ORDINANCE AUTHORIZING LOUISVILLE METRO GOVERNMENT TO ACCEPT THE BID SUBMITTED BY LOUISVILLE GAS & ELECTRIC AND SIGN A GAS FRANCHISE AGREEMENT AS SUBMITTED. (AS AMENDED)

SPONSORED BY: COUNCIL MEMBERS KRAMER, BLACKWELL, WOOLRIDGE, DOWNARD, WELCH, STUCKEL, YATES, BENSON, JAMES AND PARKER

WHEREAS, on May 26, 2016, Metro Council authorized Louisville Metro Government to advertise a gas franchise bid;

WHEREAS, Metro Council set the terms and conditions of the franchise bid as a 5 year renewable agreement, totally not more than 20 years, and with a franchise fee of no greater than 2 3.0% of gross receipts within the franchise area;

WHEREAS, Louisville Gas & Electric submitted a bid responsive to such terms and conditions; and

WHEREAS, the attached gas franchise agreement contains the gas franchise fee in effect at the time of the agreement that may be modified throughout the term of the agreement.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ("METRO COUNCIL") AS FOLLOWS:

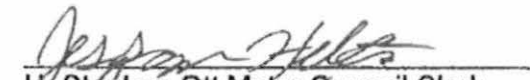
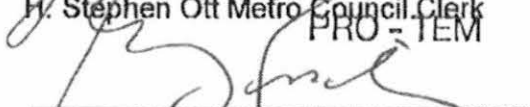
SECTION I: Louisville Metro Government advertised and received a bid from Louisville Gas & Electric Company for a gas franchise agreement.

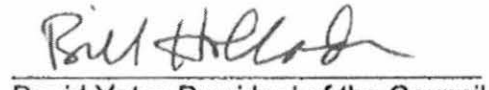
SECTION II: Louisville Metro Council hereby makes payment of the gas franchise fee contingent upon the final order, including any appeals therefrom, in an adjudication of the Company's method of recovery of the franchise fee. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be

recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

SECTION III: Louisville Metro Council authorizes Louisville Metro Government to enter into the attached gas franchise agreement with Louisville Gas & Electric Company.

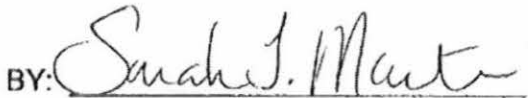
SECTION IV: This Ordinance shall take effect upon its passage and approval.


H. Stephen Ott Metro Council Clerk
PRO-TEM

Greg Fischer Mayor


David Yates President of the Council
Pro Tem
8/30/16
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: 

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
August 25, 2016

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30

Standard Rate

FT

Firm Transportation Service (Transportation Only)

APPLICABLE

In all territory served.

AVAILABILITY OF SERVICE

Available to existing commercial and industrial customers who consume at least 50 Mcf each day at each individual Delivery Point during each month of the twenty-four (24) months prior to the March 31 service request date, have purchased natural gas elsewhere, obtained all requisite authority to transport such gas to Company's system through the system of Company's Pipeline Transporter, and have requested Company to utilize its system to transport, by displacement, such customer-owned gas to Customer's place of utilization. Customers electing to transfer from another service shall notify Company on or before March 31 and execute a contract by April 30 in order to receive service hereunder beginning November 1 of that same year. The Contract Year shall include the twelve monthly billing periods from November 1 through October 31, of the following calendar year. Service under this rate schedule shall be for a term of one (1) year and year to year thereafter. Unless otherwise permitted herein, Customer or Company may terminate service hereunder effective November 1 by giving written notice to the other by the preceding April 30.

For new customers whose historical gas consumption is not available, Company will determine Customer's eligibility for service hereunder based upon data provided by Customer and such other information as may be available to Company. Company may allow such new customers to begin service hereunder prior to the November 1 date specified above for existing customers.

Customers using natural gas for vehicular fueling of internal combustion engines must also elect service under Rider NGV.

Any such transportation service hereunder shall be conditioned on Company being granted a reduction in billing demands by its Pipeline Transporter corresponding to the Customer's applicable transportation quantities.

Transportation service hereunder will be subject to the terms and conditions herein set forth and to the availability of adequate capacity on Company's system to perform such service without detriment to its other customers.

Service under this rate schedule shall not be available to customers with a Maximum Daily Quantity ("MDQ") in excess of 20,000 Mcf/day. In the event that Customer's MDQ exceeds 20,000 Mcf/day, Company may terminate service under this rate schedule upon thirty (30) days prior written notice. Additionally, customers using gas to generate electricity for use other than as standby electric service, irrespective of the size of the Customer's MDQ, are not eligible for service under this rate schedule.

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: July 1, 2015

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

**Issued by Authority of an Order of the
Public Service Commission in Case No.
2014-00372 dated June 30, 2015**

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30.1

Standard Rate

FT

Firm Transportation Service (Transportation Only)

CHARACTER OF SERVICE

Transportation service under this rate schedule shall be considered firm from the Receipt Point at Company's interconnection with its Pipeline Transporter ("Receipt Point") to the Delivery Point at the Customer's place of utilization ("Delivery Point"), subject to paragraph 6 of the Special Terms and Conditions.

Due to the physical configuration of Company's system, and in order to maintain system integrity and reliability, unless otherwise permitted or directed by Company in its sole discretion, the Pipeline Transporter shall be Texas Gas Transmission, LLC.

Company's sole obligation hereunder is to redeliver Customer's gas from the Receipt Point to the Delivery Point. Accordingly, Company has no obligation to deliver to the Customer a volume of gas, either daily or monthly, which differs from the volume delivered to Company at the Receipt Point.

Company will provide service to meet imbalances only on an as-available basis. For purposes used herein, "Imbalances" are defined as the difference between the volume of gas delivered by the Customer to the Receipt Point and the volume of gas taken by Customer at the Delivery Point. When Company can provide such service, the Utilization Charge for Daily Imbalances shall apply to daily imbalances in excess of $\pm 5\%$ of the delivered volume of gas as set forth herein. Company shall issue an Operational Flow Order as set forth herein during periods when service cannot be provided to meet daily imbalances.

Customers served under this rate may elect to become a member of an FT Pool pursuant to Rider PS-FT.

RATE

In addition to any and all charges billed directly to Company by other parties related to the transportation of customer-owned gas, and any other charges set forth herein, the following charges shall apply.

Administrative Charge: \$550.00 per Delivery Point per month

Distribution Charge Per Mcf: \$0.4302

Gas Cost True-Up Charge: The Gas Cost True-Up Charge is applicable only to a former sales Customer that has elected transportation service hereunder. Such Customer shall pay this charge for the first eighteen billing periods that Customer is served under Rate FT. The charge (or credit) per Mcf shall be applied to all volumes delivered by Company pursuant to Rate FT in order to recover from (or refund to) transferring sales customers any under- or over-

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: July 1, 2015

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

Issued by Authority of an Order of the
Public Service Commission in Case No.
2014-00372 dated June 30, 2015

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Fifth Revision of Original Sheet No. 30.2
Canceling P.S.C. Gas No. 10, Fourth Revision of Sheet No. 30.2

Standard Rate FT
Firm Transportation Service (Transportation Only)

RATE (continued)

collected gas costs as reflected in the GCAA, GCBA, and PBRRC components of the Gas Supply Clause ("GSC") applicable to gas sold during those periods when the transferring customer was a sales customer. The Gas Cost True-Up Charge amount shall be revised with each of Company's quarterly Gas Supply Clause filings.

For customers electing service under Rate FT effective November 1, 2014,
the Gas Cost True-Up Charge shall be:

\$0.0000 per Mcf for Bills Rendered On and After August 1, 2016

For customers electing service under Rate FT effective November 1, 2015,
the Gas Cost True-Up Charge shall be:

\$(0.1148) per Mcf for Bills Rendered On and After August 1, 2016

Minimum Daily Threshold Requirement and Charge: When Customer's daily usage falls below the Minimum Daily Threshold Requirement, Customer will be charged a Minimum Daily Threshold Charge equal to the difference between the Minimum Daily Threshold Requirement and the Customer's actual consumption in Mcf for that day multiplied by the Distribution Charge hereunder. The Minimum Daily Threshold Requirement is equal to the minimum daily volume of 50 Mcf. Such Minimum Daily Threshold Charge shall be accumulated for each day of the applicable month and billed during that month in accordance with the following formula:

Minimum Daily Threshold Charge =

(Minimum Daily Threshold minus Customer Usage on Given Day) times the Distribution Charge

Such daily amount shall be accumulated for each day of the month and the total will be applied to Customer's bill.

Payment of the Minimum Daily Threshold Charge is not a remedy for Customer's failure to meet the Minimum Daily Threshold Requirement for service under Rate FT. In the event that Customer does not meet the Minimum Daily Threshold Requirement for one-hundred twenty (120) days during a given Contract Year, service to Customer under Rate FT may be discontinued by Company. Customer will receive thirty (30) days prior written notice that Customer will be removed from Rate FT and returned to firm sales service under either Rate CGS or IGS as applicable.

DATE OF ISSUE: August 1, 2016

DATE EFFECTIVE: August 1, 2016

ISSUED BY: /s/ Robert M. Conroy, Vice President
State Regulation and Rates
Louisville, Kentucky

**Issued by Authority of an Order of the
Public Service Commission in Case No.
2016-00225 dated July 21, 2016**

Louisville Gas and Electric Company

P.S.C. Gas No. 10, First Revision to Original Sheet No. 30.3
Canceling P.S.C. Gas No. 10, Original Sheet No. 30.3

Standard Rate

FT

Firm Transportation Service (Transportation Only)

RATE (continued)

Other: In the event that Customer is determined to be the cause of any billing disadvantages or other penalties imposed on Company by Pipeline Transporter, then Customer shall pay such penalties, fees, or charges as determined by Company and in accordance with the payment provisions of this rate schedule in addition to any and all other charges due hereunder.

ADJUSTMENT CLAUSES

The bill amount computed at the charges specified above shall be increased or decreased in accordance with the following:

Demand Side Management Cost Recovery Mechanism	Sheet No. 86
Franchise Fee and Local Tax	Sheet No. 90
School Tax	Sheet No. 91

DUE DATE OF BILL

Customer's payment will be due within sixteen (16) business days (no less than twenty-two (22) calendar days) from the date of the bill.

LATE PAYMENT CHARGE

If full payment is not received by the due date of the bill, a 1% late payment charge will be assessed on the current month's charges.

IMBALANCES

Company will calculate on a daily and monthly basis the Customer's imbalance resulting from the difference between the metered usage of the Customer and the volumes that the Customer has delivered into Company's system. This will be calculated as follows:

$$\text{Imbalance} = \text{Metered Usage} - \text{Delivered Volume}$$

Company will also determine the imbalance percentage. This percentage will be calculated as follows:

$$\text{Imbalance \%} = \frac{(\text{Metered Usage} - \text{Delivered Volumes})}{\text{Delivered Volume}}$$

The term "day" or "daily" shall mean the period of time corresponding to the gas day as observed by the Pipeline Transporter as adjusted for local time.

DATE OF ISSUE: August 17, 2015

DATE EFFECTIVE: July 1, 2015

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30.4

Standard Rate

FT

Firm Transportation Service (Transportation Only)

CASH-OUT PROVISION FOR MONTHLY IMBALANCES

If the monthly imbalance is negative (an over-delivery into Company's system), Company shall purchase the monthly imbalance from Customer at a price per Mcf which is determined by multiplying the appropriate percentage specified below times the lower of the following: either (a) the lowest daily mid-point price posted in "Platts Gas Daily" for Texas Gas Zone 1 adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS during the month in which the imbalance occurred, or (b) the lowest daily mid-point price posted in "Platts Gas Daily" for Lebanon-Hub adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS during the month in which the imbalance occurred.

The appropriate percentage shall be dependent on the Customer's monthly imbalance percentage to be applied as follows:

When Total Net Negative Imbalance Percentage is:	The following percentage shall be multiplied by the above-determined amount:
0% to ≤5%	100%
>5% to ≤10%	90%
>10% to ≤15%	80%
>15% to ≤20%	70%
>20%	60%

If the monthly imbalance is positive (an under-delivery into Company's system), Customer shall purchase the monthly imbalance from Company at a price per Mcf which is determined by multiplying the appropriate percentage specified below times the higher of the following: either (a) the highest daily mid-point price posted in "Platts Gas Daily" for Texas Gas Zone 1 adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS during the month in which the imbalance occurred, or (b) the highest daily mid-point price posted in "Platts Gas Daily" for Lebanon-Hub adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS during the month in which the imbalance occurred.

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: July 1, 2015

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

Issued by Authority of an Order of the
Public Service Commission in Case No.
2014-00372 dated June 30, 2015

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30.5

Standard Rate

FT

Firm Transportation Service (Transportation Only)

The appropriate percentage shall be dependent on the Customer's monthly imbalance percentage to be applied as follows:

When Total Net Positive Imbalance Percentage is:	The following percentage shall be multiplied by the above-determined amount:
0% to ≤5%	100%
>5% to ≤10%	110%
>10% to ≤15%	120%
>15% to ≤20%	130%
>20%	140%

The monthly imbalance percentages stated above will be used to calculate the cash-out price for imbalances that fall within each category. For example, a Customer with a monthly imbalance percentage of 9% will cash-out at the 0% to 5% price for 5% of the imbalance and at the 5% to 10% price for 4% of the imbalance.

All such adjustments shall be shown and included on the Customer's monthly bill. The billing of these charges shall not be construed as a waiver by Company of any other rights or remedies it has under law, the regulations of the PSC of Kentucky, or this rate schedule, nor shall it be construed as an exclusive remedy for failure to comply with the provisions of this rate schedule.

VARIATIONS IN MMBTU CONTENT

All gas delivered by Company will be measured and billed on an Mcf basis. Pipeline Transporter delivers to and bills Company on an MMBtu basis. The reconciliation of the actual deliveries by Pipeline Transporter and the Customer's estimated deliveries by Pipeline Transporter occurs through the operation of the cash-out provision. Changes in billings of the cash-out provision caused by variations in the MMBtu content of the gas shall be corrected on the following bill.

UTILIZATION CHARGE FOR DAILY IMBALANCES

Should an imbalance exceed ±5% of the delivered volume of gas on any day when an Operational Flow Order (as described below) has not been issued, then Company shall charge the Utilization Charge for Daily Imbalances times the recorded imbalance greater than ±5% of the delivered volume of gas for each daily occurrence. The Utilization Charge for Daily Imbalances is the sum of the following:

DATE OF ISSUE: July 10, 2015

DATE EFFECTIVE: July 1, 2015

ISSUED BY: /s/ Edwin R. Staton, Vice President
State Regulation and Rates
Louisville, Kentucky

**Issued by Authority of an Order of the
Public Service Commission in Case No.
2014-00372 dated June 30, 2015**

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Third Revision of Original Sheet No. 30.6
Canceling P.S.C. Gas No. 10, Second Revision of Original Sheet No. 30.6

Standard Rate

FT

Firm Transportation Service (Transportation Only)

UTILIZATION CHARGE FOR DAILY IMBALANCES (continued)

Daily Demand Charge:	\$0.1673 per Mcf
Daily Storage Charge:	<u>\$0.1833</u>
Utilization Charge for Daily Imbalances:	\$0.3506 per Mcf

Note: The Daily Demand Charge may change with each filing of the GSCC.

These charges are in addition to any other charges set forth herein. The Utilization Charge for Daily Imbalances will not be applied to daily imbalances which do not exceed $\pm 5\%$ of the delivered volume unless an OFO has been issued. If an OFO has been issued, the Utilization Charge for Daily Imbalances shall apply to daily imbalances which exceed 0% for customers in violation of the OFO directive, either "condition (a)" or "condition (b)" as applicable and further described below under "Operational Flow Orders." Customers not in violation of the OFO directive, either "condition (a)" or "condition (b)" as applicable, will continue to be assessed the Utilization Charge for Daily Imbalances on volumes which exceed the 5% daily tolerance. Company shall not have an obligation to provide balancing service for any volumes of gas hereunder.

OPERATIONAL FLOW ORDERS

Company shall have the right to issue an Operational Flow Order ("OFO") which will require actions by Customer to alleviate conditions that, in the sole judgment of Company, jeopardize the operational integrity of Company's system. Customer shall be responsible for complying with the directives contained in the OFO.

Notice of an OFO shall be provided to Customer at least twenty-four (24) hours prior to the beginning of the gas day for which the OFO is in effect and shall include information related to the OFO. Customer shall respond to an OFO by adjusting its deliveries to Company's system as directed in the OFO within the specified timeframe. If Customer is a member of an FT Pool, it is the responsibility of the FT Pool Manager, not Company, to convey OFOs to Customers in its FT Pool.

Upon issuance of an OFO, Company will direct Customer to comply with one of the following conditions: (a) Customer must take delivery of an amount of natural gas from Company that is no more than the daily amount being delivered by the Pipeline Transporter to Company for Customer; or (b) Customer must take delivery of an amount of natural gas from Company that

DATE OF ISSUE: April 15, 2016

DATE EFFECTIVE: May 1, 2016

ISSUED BY: /s/ Robert M. Conroy, Vice President
State Regulation and Rates
Louisville, Kentucky

**Issued by Authority of an Order of the
Public Service Commission in Case No.
2016-00137 dated April 8, 2016**

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30.7

Standard Rate

FT

Firm Transportation Service (Transportation Only)

OPERATIONAL FLOW ORDERS (continued)

is no less than the daily amount being delivered by the Pipeline Transporter to Company for Customer. Customer shall respond to an OFO by either adjusting its deliveries to Company's system or its consumption at its facility. All volumes taken by Customer in excess of volumes delivered by Pipeline Transporter to Company for Customer in violation of the above "condition (a)" OFO shall constitute an unauthorized receipt by Customer from Company. All volumes taken by Customer less than volumes delivered by Pipeline Transporter to Company for Customer in violation of the above "condition (b)" OFO shall constitute an unauthorized delivery by Customer to Company. Unauthorized receipts or deliveries during the effectiveness of an OFO shall be subject to an OFO Charge per Mcf for each Mcf of unauthorized receipts or deliveries, as applicable. Customer shall be subject to the OFO Charge on the day for which the OFO was violated, plus the applicable UCDI charges and any other charges under this rate schedule for such unauthorized receipts or deliveries that occur.

Company may, in its sole discretion, issue an OFO to an individual Customer or an individual Pool Manager taking service under Rider PS-FT without issuing an OFO to all Customers taking service under Rate FT or without issuing an OFO to all Pool Managers taking service under Rider PS-FT.

The OFO Charge per Mcf shall be equal to \$15.00 plus the higher of the following: either (a) the daily mid-point price posted in "Platts Gas Daily" for Texas Gas Zone 1 adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS for the day on which the OFO was violated, or (b) the daily mid-point price posted in "Platts Gas Daily" for Lebanon-Hub adjusted for Fuel Retention applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS plus the Commodity Charge and any surcharges applicable to deliveries to Zone 4 under Texas Gas Transmission, LLC's Rate NNS for the day on which the OFO was violated. Such OFO Charge shall be in addition to any other charges under this rate schedule.

Company will not be required to provide service under this rate schedule for any Customer that does not comply with the terms or conditions of an OFO. Payment of OFO Charges hereunder shall not be considered an exclusive remedy for failure to comply with the OFO, nor shall the payment of such charges be considered a substitute for any other remedy available to Company.

OPTIONAL SALES AND PURCHASE TRANSACTION

Customer may agree to sell its natural gas supplies to Company, and Company may agree to purchase natural gas supplies from Customer pursuant to Company's Curtailment Rules. If Company purchases natural gas from Customer, such gas will not be redelivered to Customer, and Customer shall discontinue or otherwise interrupt the usage of such natural gas.

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State Regulation and Rates
Louisville, Kentucky

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Public Service Commission in Case No.
2014-00372 dated June 30, 2015**

Louisville Gas and Electric Company

P.S.C. Gas No. 10, Original Sheet No. 30.8

Standard Rate

FT

Firm Transportation Service (Transportation Only)

RETURN TO FIRM SALES SERVICE

Return to firm sales service is contingent upon the ability of Company to secure the appropriate quantities of gas supply and transportation capacity with Company's Pipeline Transporter, as determined solely by Company.

REMOTE METERING

Remote metering service shall be required as a prerequisite to the Customer obtaining service under this rate schedule. The remote metering devices will allow Company and Customer to monitor the Customer's usage on a daily basis and allow Company to bill the Customer.

The Customer shall reimburse Company for the cost of this remote metering equipment and the cost of its installation, including any modifications to Company facilities and the replacement of any existing meters required in order to facilitate the functioning of the remote metering.

The Customer shall be responsible for making any necessary modifications to its facilities, including, but not limited to, any modifications of Customer's piping, in order to facilitate the installation and operation of such remote metering.

The Customer shall be responsible for providing the necessary and adequate electric and telephone service to provide remote metering by October 1 of the year that the Customer's Rate FT service becomes effective. Electric and telephone services installed for this equipment shall conform to Company's specifications. The Customer shall be responsible for maintaining the necessary and adequate electric and telephone service to provide remote metering.

SPECIAL TERMS AND CONDITIONS

1. Service under this rate schedule shall be performed under a written contract between Customer and Company setting forth specific arrangements as to the volumes to be transported by Company for Customer, Delivery Points, timing of receipts and deliveries of gas by Company, and any other matters relating to individual Customer circumstances.
2. As further described below, Customer shall specify to Company the daily volume of gas required by Customer. Such volume shall be stated in Mcf/day and converted to MMBtu/day using a standard conversion factor as may be specified by Company from time to time. At least ten (10) days prior to the beginning of each month, Customer shall provide Company with a schedule setting forth daily volumes of gas to be delivered into Company's

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Standard Rate

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Firm Transportation Service (Transportation Only)

SPECIAL TERMS AND CONDITIONS (continued)

system for Customer's account. Any changes in nominated volumes, as well as any other information required to effectuate the delivery of such gas to Company by the Pipeline Transporter, shall be provided by Customer to Company no later than 10:00 a.m. Eastern Clock Time on the day prior to the day(s) for which volumes are scheduled to flow. Only those volumes actually confirmed by Company and scheduled on the Pipeline Transporter are considered nominated volumes. Company shall not be obligated to accept from Customer daily nominations, or changes thereto, that are made after the daily deadline for such nominations as set forth above or that are made on weekend days or holidays as such are observed by Company. Company will not be obligated to utilize its underground storage capacity for purposes of this service.

3. In no case will Company be obligated to deliver gas, including both gas transported and gas sold, to Customer in greater volumes or at greater rates of flow than those specified in the written contract between Customer and Company. The maximum daily volume that Company shall be obligated to deliver shall be referred to as the Maximum Daily Quantity ("MDQ"). The MDQ is the maximum daily volume of gas, as determined by Company, based on Customer's historical daily metered volumes. In the event that historical daily metered volumes are not available, Company will determine the MDQ based upon data provided by Customer and/or monthly metered data. Once historical daily metered data becomes available, the MDQ will be subject to revision by Company on an annual basis.
4. Volumes of gas transported hereunder will be determined in accordance with Company's measurement base as set forth in the Terms and Conditions of this Tariff.
5. All volumes of natural gas received by Company for Customer shall meet the specifications established by Pipeline Transporter.
6. Company will have the right to curtail or interrupt the transportation or delivery of gas to any Customer hereunder when, in Company's judgment, such curtailment is necessary to enable Company to respond to an emergency or force majeure condition.
7. Should Customer be unable to deliver sufficient volumes of transportation gas to Company's system, Company will not be obligated hereunder to provide standby quantities for purposes of supplying such Customer requirements.

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Standard Rate

FT

Firm Transportation Service (Transportation Only)

SPECIAL TERMS AND CONDITIONS (continued)

8. Company shall not be required to render service under this rate schedule to any Customer that fails to comply with any and all of the terms and conditions of this rate schedule.

TERMS AND CONDITIONS

Service under this rate is subject to Company's Terms and Conditions governing the supply of gas service as incorporated in this Tariff, to the extent that such Terms and Conditions are not in conflict with nor inconsistent with the specific provisions hereof.

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