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RECEIVED

August 7, 2006

AUG 07 2006

**VIA HAND DELIVERY**

PUBLIC SERVICE  
COMMISSION

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

**Re: In the Matter of 271 West Main Street, LLC v. Kentucky Utilities Company**  
**Case No. 2005-00389**  
**Our File No.: 400001/124348**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Memorandum in Response to Commission's Order of July 21, 2006 in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the two additional copies provided and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,



J. Gregory Cornett

JGC/cja  
Enclosures  
cc: Parties of Record

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

AUG 07 2006

PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

271 WEST MAIN STREET, LLC	)	
	)	
COMPLAINANT	)	
v.	)	CASE NO. 2005-00389
	)	
KENTUCKY UTILITIES COMPANY	)	
	)	
DEFENDANT	)	

**KENTUCKY UTILITIES COMPANY’S MEMORANDUM  
IN RESPONSE TO COMMISSION’S ORDER OF JULY 21, 2006**

\*\* \*\* \*

**INTRODUCTION**

This is an action by Complainant 271 West Main Street, LLC (“West Main LLC”) challenging Kentucky Utilities Company (“KU”)’s application of its LP Electric Rate Schedule for Large Power Service (“LP Tariff”). On July 21, 2006, the Commission entered an order directing the parties to file written memoranda addressing the issues raised herein in order to provide the Commission with sufficient information to make a ruling on this matter. KU hereby submits its memoranda in compliance with the Commission’s directive. For all of the reasons set forth herein, West Main LLC’s Complaint fails to state a claim upon which relief can be granted and should be dismissed without further proceedings.

**FACTUAL BACKGROUND**

On June 30, 2004, the Commission entered its final order in KU’s last base rate proceeding, Case No. 2003-00434, approving changes to a number of KU’s rates effective July 1, 2004. As part of that proceeding and final order, KU’s current LP Tariff was approved and

placed into effect. Before the Commission's June 30, 2004 order, service under the LP Tariff was available to certain customers with average loads less than 200 KW. However, in Case No. 2003-00434, KU proposed, and the Commission approved, a setting of the minimum threshold at 200 KW for availability of service under the LP Tariff. In addition, the revised LP Tariff included language clarifying the continuing availability of that tariff to customers then taking service under the tariff. As revised effective July 1, 2004, the LP Tariff provides, in relevant part:

#### **AVAILABILITY OF SERVICE**

This rate schedule is available for secondary, primary or available transmission line service on an annual basis for lighting and/or heating and/or power....

Service under this schedule will be limited to minimum average secondary loads of 200 KW and maximum average loads not exceeding 5,000 KW.

Customers with average single phase loads less than 200 KW receiving service under this rate schedule as of July 1, 2004, will continue to be served under this rate schedule.<sup>1</sup>

(Emphasis added.)

West Main LLC purchased the Court Yard Square building at 269 West Main Street, Lexington, Kentucky (the "Court Yard Square building") on March 18, 2005.<sup>2</sup> On March 28, 2005, West Main LLC applied with KU for electric service for that building, and KU established a new account, under KU's GS Electric Rate Schedule ("GS Tariff"), in the name of West Main LLC.<sup>3</sup> Service to that address was connected on March 30, 2005. Prior to that time, service to

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<sup>1</sup> Copies of the pre-July 1, 2004 and existing LP Tariffs are attached as Exhibit 1 for the Commission's convenience.

<sup>2</sup> West Main LLC Complaint, p. 2. KU has no knowledge of the actual date of purchase, but for purposes of this motion, KU accepts the facts regarding said purchase as alleged by West Main LLC.

<sup>3</sup> KU's Terms and Conditions of service clearly require that "new occupants of [a] premises will be required to make application for service" and do not permit the transfer of an application for service. Kentucky Utilities Company, Terms and Conditions, Original Sheet No. 82, PSC No. 13, Issued July 20, 2004.

the Court Yard Square building was provided in the name of a different customer, under a different account number, pursuant to KU's LP Tariff.<sup>4</sup>

West Main LLC filed its Complaint with the Commission on September 21, 2005. In that Complaint, West Main LLC alleges that it should be permitted to take service under the LP Tariff based on the fact that the former owner of the Court Yard Square building was served under that tariff.

### **ARGUMENT**

KU's LP Tariff is only available to customers in two instances: (1) when the customer's usage is a minimum of 200 KW but no more than a maximum of 5,000 KW average secondary load; or (2) when the customer has an average single phase load of less than 200 KW but was already receiving service under the LP Tariff as of July 1, 2004.<sup>5</sup> Here, West Main LLC does not contend that its average load meets the minimum threshold for service under KU's LP Tariff. The issue, then, is whether West Main LLC should nonetheless receive service under the LP Tariff based on the "grandfather clause" allowing customers already on the LP Tariff, but with loads less than 200 KW, to continue that service after the revised tariff went into effect.<sup>6</sup>

West Main LLC contends that the LP Tariff "grandfather clause" should allow for it to take service at the Court Yard Square building under the LP Tariff, despite a change in

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<sup>4</sup> See billing records attached as exhibits to the West Main LLC Complaint.

<sup>5</sup> Kentucky Utilities Company LP Electric Rate Schedule for Large Power Service, Original Sheet No. 20, PSC No. 13, Issued July 20, 2004.

<sup>6</sup> The term "grandfather clause" is generally defined as an "exception to a restriction that allows all those already doing something to continue doing it even if they would be stopped by the new restriction." Black's Law Dictionary (5<sup>th</sup> Ed. Abridged). The Kentucky Legislative Research Commission defines "grandfather clause" as an "exemption from regulation for certain persons having engaged in the regulated activity for a specified period of time prior to the effective date of the regulatory legislation." <http://lrc.ky.gov/legproc/glossary.html>. While the term "grandfather clause" is not specifically used in the LP Tariff or defined in Commission regulations, it is a term that is generally used in the utility context to refer to tariff changes which freeze the availability of a rate to existing customers or deliveries (such as specific types of lighting fixtures as was done in Kentucky Utilities Company ST LT Electric Rate Schedule for Street Lighting Service, Original Sheet No. 40, PSC No. 13, Issued July 20, 2004) and requiring new customers or deliveries under that tariff to take the same type of service under a different rate. The restriction to customer or delivery is specified by the tariff itself.

ownership of the building, because “most grandfathered conditions (such as zoning nonconforming issues) generally apply to the property and not to the ownership.”<sup>7</sup> That position, however, is contrary to the plain language of the tariff and to the general application of grandfathering provisions in the context of utility rates.

**I. The Tariff Provision at Issue is Clear and Unambiguous, and Must be Applied as Written.**

The LP Tariff “grandfather clause” at issue here provides as follows:

Customers with average single phase loads less than 200 KW receiving service under this rate schedule as of July 1, 2004, will continue to be served under this rate schedule.<sup>8</sup>

That provision clearly states that “customers” previously receiving service under the LP Tariff may continue taking service under that rate schedule, even though their average single phase load is less than 200 KW. That language must be interpreted based upon its plain meaning.<sup>9</sup> Although the term “customer” is not expressly defined in KU’s tariffs, it is defined several times in the Commission’s own regulations. In each such instance, the term “customer” is used to refer only to the person or entity applying for or receiving service from the utility, and does not include the physical property or location at which service is rendered.<sup>10</sup>

Had either KU or the Commission intended the “grandfather clause” in the LP Tariff to apply on a building- or premises-specific basis, rather than on a customer-specific basis, such language would have been inserted into the tariff, as could have easily been done. Indeed, such language is found in the Terms and Conditions of KU’s tariffs, in instances where the provision

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<sup>7</sup> West Main LLC Complaint, p. 2.

<sup>8</sup> Kentucky Utilities Company LP Electric Rate Schedule for Large Power Service, Original Sheet No. 20, PSC No. 13, Issued July 20, 2004.

<sup>9</sup> As with contract interpretation, it has been held that tariff provisions should be interpreted based upon the “ordinary meaning” of the language used therein. *Almond Tree Hulling Co. v. Pacific Gas and Electric Co.*, 2005 PUC Lexis 494 (Cal. PUC 2005).

<sup>10</sup> 807 KAR 5:006, Section 1 (2); 807 KAR 5:041, Section 1 (3); 807 KAR 5:066, Section 1 (1); 807 KAR 5:071, Section 2 (3).

is meant to be property specific.<sup>11</sup> Specifically, the “Access to Premises and Equipment” and “Protection of Company’s Property” sections of the Terms and Conditions tariff sheet at times refer to the “customer,” but in other places refer to “customer’s premises” when denoting the actual property at which service is rendered.<sup>12</sup> Terms such as property, building and premises are not included in the “grandfather clause” because the clause is meant solely to be customer-specific.

The interpretation of the LP Tariff offered by West Main LLC is not only contrary to the clear language used in the LP Tariff, but it would also have the effect of creating a rate class with rights in perpetuity, to the detriment of other customers.<sup>13</sup> Using the interpretation urged by West Main LLC, any property served under the LP Tariff as of July 1, 2004 would be entitled to service under that tariff indefinitely, regardless of the number of times it changed ownership. As a result, a customer who elected to construct a new building, rather than to purchase an existing one, would be unfairly disadvantaged. That is the very situation meant to be avoided by the use of “customer” as opposed to “premises” or “property” in the LP Tariff’s “grandfather clause.”

The language used in the LP Tariff is clear and unambiguous. A customer whose average load is less than 200 KW is not entitled to service under the LP Tariff unless that customer was receiving service under the tariff as of July 1, 2004. The term “customer” can only reasonably be defined to cover the person or entity that applies for and receives service, and not to include the physical property being served. KU has enforced the tariff as written, and as approved by

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<sup>11</sup> Kentucky Utilities Company, Terms and Conditions, Original Sheet No. 82 and 82.1, PSC No. 13, Issued July 20, 2004. It is also worth noting that in the same section of KU’s tariffs, the term “customer” is modified with a personal pronoun such as “he” or “his,” further evidencing the intent that the term cover only the person or entity taking service.

<sup>12</sup> *Id.*

<sup>13</sup> The Court of Appeals has declared the “law and public policy of this state” to preclude “construing rights or agreements in perpetuity.” *Electric and Water Plant Board of the City of Frankfort v. South Central Bell Tel. Co.*, 805 S.W.2d 141, 143 (Ky.App. 1990).

this Commission, and there is no basis for requiring any different application now.<sup>14</sup> Accordingly, West Main LLC has failed to state a claim upon which relief can be granted, and its Complaint must be dismissed.

## **II. “Grandfather Clauses” in the Utility Rate Context are Generally Applied Only to the Customer and not the Location of Service.**

Although it is KU’s position that this matter is and must be disposed of based on the language of the LP Tariff itself, it is nonetheless necessary to examine the application of “grandfather clauses” given West Main LLC’s assertion that “most grandfathered conditions (such as zoning nonconforming issues) generally apply to the property and not to the ownership.”<sup>15</sup> Of course, in so doing it is important to consider the application of such clauses in the present context of utility rate matters, because this is not a zoning proceeding.

KU is unaware of any instance in which this Commission has interpreted the proper application of a “grandfather clause” in a tariff. However, the Commission has rejected a claim seeking to “grandfather” an old tariff where the new tariff did not provide for any grandfathering. In that case, the customer argued that a previous tariff should apply to the gas pipelines on his property, but the Commission rejected the argument, finding that “no such [grandfathering] clause exists in the tariff and, regardless of what any earlier tariff provided, the applicable tariff is the current one.”<sup>16</sup> There are, though, at least three instances in which “grandfather” clauses have been addressed by Commissions in other states. In each of those three cases, the clause was applied in a customer-specific, rather than property-specific, manner.

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<sup>14</sup> A utility must charge its filed rates to all of its customers. KRS 278.160; *In the Matter of: Shawn and Katherine Gillen v. Kentucky Utilities Co.*, Case No. 2005-00062 (PSC Order of April 12, 2006). Indeed, even in cases of negligence or fraud by the utility, the Commission must enforce a utility’s tariffs. *Id.*; *Boone Co. Sand and Gravel v. Owen Co. RECC*; 779 S.W.2d 224 (Ky. App. 1989).

<sup>15</sup> West Main LLC Complaint, p. 2.

<sup>16</sup> *In the Matter of: Donald D. Weber v. The Union Light, Heat and Power Co.*, Case No. 2000-0066 (PSC Order of August 4, 2000). That holding also supports KU’s position that it is the tariff itself, as expressed in clear language, which must control.

In the first case, the California Public Utilities Commission considered a proposed settlement of a utility's application to provide certain telecommunications service. The Commission ultimately approved that settlement agreement, which included a limitation on "grandfather clauses" that precluded extension to "service additions or to new applicants."<sup>17</sup>

In the second case, the Colorado Public Utilities Commission considered motions for rehearing and reconsideration of a ruling on a utility's application for certain tariff changes. One of the issues before the Commission was the proper application of a "grandfather clause," with concerns raised about potential inequities that might result from application of the clause. The Commission resolved the issue by clarifying that the clause was to be applied only on a "customer and location specific" basis.<sup>18</sup>

In the third case, the Georgia Public Utilities Commission considered a utility's application for approval of interruptible service ("IS") tariffs. In approving a Joint Stipulation to resolve the matter, the Commission clarified the interpretation of a "grandfather clause." The Commission noted that the clause would cover expansions of service by an existing IS tariff customer only so long as that expansion was "under the same meter and under the same contract or account."<sup>19</sup>

Regardless of how "grandfather clauses" have been applied in other contexts, three other state commissions have applied those clauses in utility tariffs in such a way as to preclude their application where a new customer applied for service, as was done by West Main LLC. That is exactly the manner in which KU has applied the LP Tariff here. For that additional reason, West

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<sup>17</sup> *In the Matter of the Application of AT&T Communications of California, Inc.*, 1990 Cal. PUC Lexis (Cal. PUC 1990).

<sup>18</sup> *Investigation of Proposed Changes to Electric and Steam Rates, Public Service Company of Colorado*, 1996 Colo. PUC Lexis 348 (Colo. PUC 1996).

<sup>19</sup> *In re: Georgia Power Company's Application for Interruptible Service Options*, 2001 Ga. PUC Lexis 61 (Ga. PUC 2001).

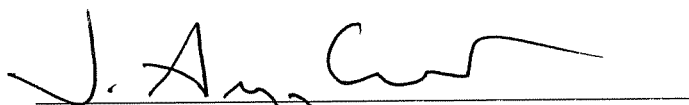


Main LLC has failed to set forth a claim upon which relief can be granted, and its Complaint must be dismissed.

**CONCLUSION**

For all of the reasons set forth above, KU's LP tariff has been appropriately interpreted and applied as it relates to West Main LLC, and the Complaint herein should be dismissed.

Respectfully submitted,



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Counsel for Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

It is certified that a true and correct copy of the foregoing was served via U. S. Mail, postage prepaid, this 7th day of August, 2006 upon:

Andre F. Regard  
269 W. Main St., Suite 600  
Lexington, KY 40507

  
\_\_\_\_\_  
Counsel for Kentucky Utilities Company



**ELECTRIC RATE SCHEDULE**

**LP**

**Combined Lighting and Power Service**

**APPLICABLE**

In all territory served by the Company.

**AVAILABILITY OF SERVICE**

This rate schedule is available for secondary, primary or available transmission line service on an annual basis for lighting and/or heating and/or power where no class rate is available.

It is optional with the customer whether service will be billed under this schedule for the entire requirements, or under various other schedules applicable to the various services. The customer having selected this schedule will continue to be billed under it for not less than 12 consecutive months, unless there should be a material and permanent change in the customer's service.

Service under this schedule will be limited to maximum loads not exceeding 5,000 KW. Existing customers who demonstrate an average demand of 5,000 KW or greater over a 12-month period, or new customers, upon demonstrating an average demand of 5,000 KW or greater, will be served under Rate Schedule LCI-TOD.

**CHARACTER OF SERVICE**

See Character of Electric Service (Sheet No. 2)

**RATE**

Maximum Load Charge:

Secondary Service at nominal voltages of 120, 240, 480 or 208Y as available.

\$4.11 per kilowatt of the maximum load in the month, but not less than \$493.20 per year.

Primary Service at nominal voltages of 2400, 4160Y, 7200, 8320Y and 12,470Y as available.

\$3.13 per kilowatt of the maximum load in the month, but not less than \$939.00 per year.

Transmission Line Service at voltages of 34,500 or 69,000 as available.

\$2.97 per kilowatt of the maximum load in the month with minimum depending upon the facilities necessary to serve, but not less than \$1,782.00 per year.

Plus an Energy Charge of:

2.872 cents per KWH for the first 500,000 KWH used per month.

2.633 cents per KWH for the next 1,500,000 KWH used per month.

2.504 cents per KWH for all in excess of 2,000,000 KWH used per month.

**DETERMINATION OF MAXIMUM LOAD**

The load will be measured and will be the average KW demand delivered to the customer during the 15-minute period of maximum use during the month.

The Company reserves the right to place a KVA meter and base the billing demand on the measured KVA. The charge will be computed based on the measured KVA times 90 percent of the applicable KW charge.

In lieu of placing a KVA meter, the Company may adjust the measured maximum load for billing purposes when power factor is less than 90 percent in accordance with the following formula: (BASED ON POWER FACTOR MEASURED AT TIME OF MAXIMUM LOAD).

$$\text{Adjusted Maximum KW Load for Billing Purposes} = \frac{\text{Maximum Load Measured} \times 90\%}{\text{Power Factor (in percent)}}$$

Date of Issue: November 6, 2003  
Canceling Second Revision of  
Original Sheet No. 13  
Issued May 13, 2003

Issued By

Michael S. Beer, Vice President  
Lexington, Kentucky

Date Effective: With Service Rendered  
On and After  
October 31, 2003

Issued Pursuant to K.P.S.C. Order of 10/17/03 in Case No. 2003-00068

**ELECTRIC RATE SCHEDULE**

**LP**

**Combined Lighting and Power Service**

**MINIMUM ANNUAL CHARGE**

Service under this schedule is subject to an annual minimum of \$49.32 kilowatt for secondary delivery, \$37.56 per kilowatt for primary delivery and \$35.64 per kilowatt for transmission delivery for each yearly period based on the greater of (a), (b), (c), (d), or (e) as follows:

- (a) The highest monthly maximum load during such yearly period.
- (b) The contract capacity, based on the expected maximum KW demand upon the system.
- (c) 60 percent of the KW capacity of facilities specified by the customer.
- (d) Secondary delivery, \$493.20 per year; Primary delivery, \$939.00 per year; Transmission delivery, \$1,782.00 per year.
- (e) Minimum may be adjusted where customer's service requires an abnormal investment in special facilities.

Payments to be made monthly of not less than 1/12 of the Annual Minimum until the aggregate payments during the contract year equal the Annual Minimum. However, payments made in excess of the amount based on above rate schedule will be applied as a credit on billings for energy used during contract year. A new customer or an existing customer having made a permanent change in the operation of electrical equipment that materially affects the use in kilowatt-hours and/or use in kilowatts of maximum load will be given an opportunity to determine new service requirements in order to select the most favorable contract year period and rate applicable.

**DUE DATE OF BILL**

Customer's payment will be due within 10 days from date of bill.

**FUEL CLAUSE**

An additional charge or credit will be made on the kilowatt-hours purchased by the customer in accordance with the fuel clause set forth on Sheet No. 24 of this Tariff.

**FRANCHISE CHARGE**

The rate herein provided shall include, where applicable, an additional charge for local government franchise payment determined in accordance with the Franchise Billing Plan as set forth in the Rules and Regulations of this Tariff.

**TERM OF CONTRACT**

For a fixed term of not less than one year and for such time thereafter until terminated by either party giving 30 days written notice to the other of the desire to terminate.

**RULES AND REGULATIONS**

The customer, in order to earn the Primary or Transmission Service Rate must own and maintain or lease all transformers and other facilities necessary to take service at the Primary or Transmission voltage delivered.

Service will be furnished under Company's general Rules and Regulations or Terms and Conditions.

**ELECTRIC RATE SCHEDULE LP**  
**Large Power Service**

**APPLICABLE**

In all territory served.

**AVAILABILITY OF SERVICE**

This rate schedule is available for secondary, primary or available transmission line service on an annual basis for lighting and/or heating and/or power.

It is optional with the customer whether service will be billed under this schedule for the entire requirements, or under various other schedules applicable to the various services. The customer having selected this schedule will continue to be billed under it for not less than 12 consecutive months, unless there should be a material and permanent change in the customer's service.

Service under this schedule will be limited to minimum average secondary loads of 200 KW and maximum average loads not exceeding 5,000 KW.

Customers with average single phase loads less than 200KW receiving service under this rate schedule as of July 1, 2004, will continue to be served under this rate schedule.

**RATE**

Customer Charge: \$75.00 per month

Maximum Load Charge:

Secondary Service

\$6.65 per kilowatt of the maximum load in the month.

Primary Service

\$6.26 per kilowatt of the maximum load in the month

Transmission Service

\$5.92 per kilowatt of the maximum load in the month

Plus an Energy Charge of:

2.200 cents per KWH

**ADJUSTMENT CLAUSES**

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

Fuel Adjustment Clause	Sheet No. 70
Demand-Side Management Surcharge	Sheet No. 71
Environmental Cost Recovery Surcharge	Sheet No. 72
Merger Surcredit Rider	Sheet No. 73
Earnings Sharing Mechanism	Sheet No. 74
Value Delivery Surcredit Rider	Sheet No. 75
Franchise Fee Rider	Sheet No. 76
School Tax	Sheet No. 77
Program Cost Recovery Mechanism	Sheet No. 62

Date of Issue: July 20, 2004

Issued By

Date Effective: With Service Rendered  
On and After  
July 1, 2004

Michael S. Beer, Vice President  
Lexington, Kentucky

Issued By Authority of an Order of the KPSC in Case No. 2003-00434 dated June 30, 2004

**ELECTRIC RATE SCHEDULE LP  
Large Power Service**

**DETERMINATION OF MAXIMUM LOAD**

The load will be measured and will be the average KW demand delivered to the customer during the 15-minute period of maximum use during the month.

The Company reserves the right to place a KVA meter and base the billing demand on the measured KVA. The charge will be computed based on the measured KVA times 90 percent of the applicable KW charge.

In lieu of placing a KVA meter, the Company may adjust the measured maximum load for billing purposes when power factor is less than 90 percent in accordance with the following formula: (BASED ON POWER FACTOR MEASURED AT TIME OF MAXIMUM LOAD).

$$\text{Adjusted Maximum KW Load for Billing Purposes} = \frac{\text{Maximum Load Measured} \times 90\%}{\text{Power Factor (in percent)}}$$

**MINIMUM ANNUAL CHARGE**

Service under this schedule is subject to an annual minimum of \$79.80 per kilowatt for secondary delivery, \$75.12 per kilowatt for primary delivery and \$71.04 per kilowatt for transmission delivery for each yearly period based on the greater of (a), (b), (c), (d), or (e) as follows:

- (a) The highest monthly maximum load during such yearly period.
- (b) The contract capacity, based on the expected maximum KW demand upon the system.
- (c) 60 percent of the KW capacity of facilities specified by the customer.
- (d) Secondary delivery, \$798.00 per year; Primary delivery, \$1,878.00 per year; Transmission delivery, \$3,552.00 per year.
- (e) Minimum may be adjusted where customer's service requires an abnormal investment in special facilities.

Payments to be made monthly of not less than 1/12 of the Annual Minimum until the aggregate payments during the contract year equal the Annual Minimum. However, payments made in excess of the amount based on above rate schedule will be applied as a credit on billings for energy used during contract year. A new customer or an existing customer having made a permanent change in the operation of electrical equipment that materially affects the use in kilowatt-hours and/or use in kilowatts of maximum load will be given an opportunity to determine new service requirements in order to select the most favorable contract year period and rate applicable.

**DUE DATE OF BILL**

Customer's payment will be due within 10 days from date of bill.

**TERM OF CONTRACT**

For a fixed term of not less than one year and for such time thereafter until terminated by either party giving 30 days written notice to the other of the desire to terminate.

**TERMS AND CONDITIONS**

Service will be furnished under Company's Terms and Conditions applicable hereto.

Date of Issue: July 20, 2004

Issued By

Date Effective: With Service Rendered  
On and After  
July 1, 2004

Michael S. Beer, Vice President  
Lexington, Kentucky

Issued By Authority of an Order of the KPSC in Case No. 2003-00434 dated June 30, 2004