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January 28, 2008

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PUBLIC SERVICE
COMMISSION

Mr. Michael F. Burford
Director of Filings Division
Public Service Commission
Post Office Box 615
Frankfort, KY 40602

Re: Case No. 2007-00411

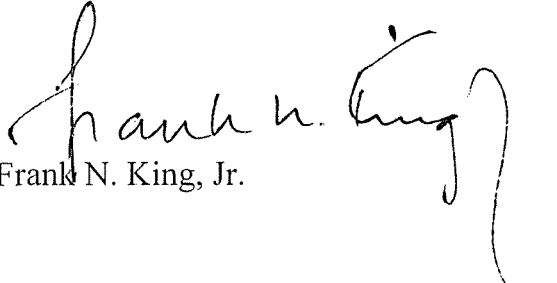
Dear Mr. Burford:

Your January 24 letter requesting receipt of the subject Franchise Agreement has been received. Enclosed herewith please find a copy of the Franchise Agreement between the City of Owensboro, Kentucky, and Kenergy Corp. dated December 4, 2007. I apologize for the delay in getting this to the Commission.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By


Frank N. King, Jr.

FNKJr/cds
Encls.

THIS FRANCHISE AGREEMENT made and entered into this 14th day of December, 2007, by and between the **CITY OF OWENSBORO, KENTUCKY** (sometimes referred to herein as the “City” and sometimes as “City of Owensboro”) and **KENERGY CORP.**, a Kentucky corporation (sometimes referred to herein as “Kenergy” and sometimes as “franchisee”);

WITNESSETH:

WHEREAS, federal law, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of electric power and energy, within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and furthermore, KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, electric utility services to industrial, commercial and residential customers within the City of Owensboro are currently provided by the Utility Commission for the City of Owensboro (Owensboro Municipal Utilities), a municipally owned and operated utility established under KRS 96.520, et seq., and Kenergy Corp., a member-owned electric cooperative, within their respective territories as agreed upon and certified by the Kentucky Public Service Commission; and

WHEREAS, the existing electric utility franchise between the City of Owensboro, Kentucky, and Kenergy Corp., expires December 19, 2007; and

WHEREAS, the Board of Commissioners of the City of Owensboro, Kentucky has found and determined that the construction, operation, maintenance and utilization of a franchise over, across and under public right-of-way in the City of Owensboro, is a valuable property right and benefits said utility to the extent it would be required to invest capital and incur right-of-way acquisition costs without the use thereof; and the Board has further found and determined that the construction, installation, operation, removal, maintenance and/or repair of utility owned facilities and other infrastructure necessarily and unavoidably results in the damage and degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the cost of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and

WHEREAS, in order to protect the health, safety and welfare of the citizens of Owensboro, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

Section 1. DEFINITIONS:

As used in this Agreement , the following words and phrases shall have the following meanings:

(A) “Electrical Distribution System” shall mean the system of poles, pipes, wires, conduits, facilities, fixtures, lines, machinery, equipment, appliances, structures, transformers, junction boxes, switch boxes, traffic signal controls, telecommunications facilities and related appurtenances and other infrastructure reasonably necessary for the distribution, storage and sale of electrical energy to industrial, commercial and residential customers and the public generally, located within public right-of-way within the corporate boundaries of Owensboro, Kentucky.

(B) “Force Majeure” shall mean any and all causes beyond the control and without the fault or negligence of franchisee. Such causes shall include but are not limited to, acts of God, acts of the public enemy, insurrections, riots, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment or facilities, interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable, which wholly or partly prevent franchisee from performing one or more of its obligations hereunder.

(C) “Franchise” shall mean the rights and privileges granted by the City of Owensboro to Kenergy Corp. under the terms and provisions of this Agreement.

(D) “Franchisee” shall mean Kenergy Corp., a Kentucky corporation.

(E) “Gross Revenues” shall mean all gross cash receipts from the sale of electrical energy for industrial, commercial or residential consumption (for light, heat, power and other purposes) within the corporate limits of the City of Owensboro, Kentucky.

(F) “New Construction” shall mean installation of poles, wires, conduits, lines, transformers, junction boxes, switch boxes, traffic signal controls, facilities or other equipment, apparatus or related infrastructure by franchisee in a new location as opposed to maintenance or repair or work on existing facilities and appurtenances.

(G) “Public Right-of-Way” shall mean the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, public utility easement or any other public ways owned, dedicated by plat, occupied or used by the public for vehicular or pedestrian transportation or access. Public right-of-way does not include dedicated (platted) utility or privately acquired easements located outside public right-of-way.

Section 2. CREATION OF FRANCHISE:

(A) There is hereby created, established and granted to Kenergy Corp. a non-exclusive franchise to enter upon, acquire, construct, install, operate, maintain, repair and

replace in the public right-of-way of the City of Owensboro, Kentucky, an electrical distribution system within the corporate boundaries of Owensboro, Kentucky, subject to the provisions of this ordinance. However, the franchise granted hereunder shall be limited to the boundaries of the franchisee's territorial service area as certified by the Public Service Commission under KRS 278.017 et seq., as presently certified and as it may be amended in the future, but within such boundaries, shall be extended to territories that are subsequently annexed within the City of Owensboro upon the same terms and conditions herein, subject to the approval of state regulatory authorities, if any such approval is required.

(B) The franchise granted herein by the City of Owensboro, Kentucky, shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time, as permitted by law. In the event the City of Owensboro shall grant to another person or entity during the term hereof, a franchise for an electrical distribution system within the corporate boundaries of Owensboro, similar to the one herein granted to franchisee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional franchisee than those terms contained in this ordinance. Additionally, it is agreed that any such new/additional franchisee shall have no right to use any portion of the electrical distribution system of this franchisee without this franchisee's written consent.

Section 3. TERM OF FRANCHISE:

The franchise created herein shall be for a term of five (5) years, which franchise shall commence on the date set forth in Section 14 of this Agreement.

Section 4. FRANCHISEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:

The franchisee shall have the right and privilege of constructing, installing, erecting, laying, operating, maintaining, replacing, removing and/or repairing its electrical distribution system above, through, along, across and under the public right-of-way within the corporate boundaries of the City of Owensboro as it now exists or may hereafter be extended, subject to the boundaries of the franchisee's territorial service area as certified by the Public Service Commission under KRS 278.017 et seq., the inherent police powers conferred upon or reserved unto the City of Owensboro and the provisions of this ordinance. The franchisee shall not construct, install, erect, lay, operate, maintain, remove, replace or repair any part or all of its electrical distribution system above or below ground level on any public right-of-way or other public property within the corporate boundaries of the City of Owensboro without the expressed authorization of the City Engineer as provided hereinbelow and any other authorization required under federal or state regulatory authority.

Section 5. USE AND EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The electrical distribution system shall be designed, installed, constructed and replaced in locations and at depths (if below ground) which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of electrical distribution systems.

The franchisee of the franchise created hereunder shall provide customer service in accordance with accepted standards in the industry and as authorized and directed by the Public Service Commission of the Commonwealth of Kentucky.

(B) The franchisee shall have the right to disturb, break and excavate in the public right-of-way of the City of Owensboro as may be reasonable and necessary to provide the service authorized by this franchise, provided, however, that no new construction within public right-of-way (including pavement, green space, sidewalks, curbs, gutters, drainage facilities or other street installations) shall be commenced and no excavation in any public right-of-way shall be made for such new construction, except with the prior approval of the City Engineer as defined under current City ordinances and regulations and procedures approved by the City and franchisee. All new construction within public right-of-way shall comply with the undergrounding requirements set forth in Ordinance 67-2000, as may be amended from time to time. Franchisee shall give the City Engineer prior notification on all other excavations in public right-of-way for maintenance and repair work on existing electrical distribution system facilities. Components of the electrical distribution system

shall be located in such portion of said public right-of-way as is specifically designated and approved in advance by the City Engineer.

(C) Franchisee shall submit plans for review by the City Engineer prior to the commencement of new construction, or the relocation of existing sections of the electrical distribution system located in public right-of-way. The City assumes no responsibility, liability or risk of loss associated with the electrical distribution system existing or hereafter placed by the franchisee in public right-of-way within the City of Owensboro.

(D) **Schedule of Installation/Repairs:** Franchisee shall schedule and coordinate construction, installation, maintenance, replacement or repairs of its electrical distribution system known to be necessary, and which involves the excavation or disturbance of streets, in advance, with proposed improvements to City public right-of-way that has been designated (and which franchisee has been advised of) for improvements, resurfacing or repairs prior to the commencement thereof. In the event franchisee has implemented, or in the future may implement a written program for the systematic replacement of its electrical distribution system, or any part thereof, located in the public right-of-way that have exhausted their useful life, franchisee shall make a copy of same available to the City Engineer for inspection and shall to the extent practical, follow same. Any replacement program shall, to the extent feasible, be scheduled to coincide with the City's annual right-of-way pavement program.

(E) **Emergency Exception:** When an emergency arises which requires immediate attention, franchisee is authorized to disturb, break or excavate public right-of-way without first obtaining written permission from the City Engineer, provided the City Engineer is notified of the work performed by the end of the next regularly scheduled work day. This notification shall include, but is not limited to, the date, location, time and description of the excavation or any other significant information which describes the remedial work performed by franchisee. Any restoration of disturbed or excavated public right-of-way shall be completed in accordance with Section 6 below.

Section 6. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

(A) When the franchisee shall enter upon any public right-of-way for the purpose of constructing, installing, erecting, operating, maintaining, repairing and/or removing any part of its electrical distribution system, it shall promptly and diligently prosecute the work to completion at no cost to the City and shall repave, cover and restore all trenches and exposed areas as quickly as circumstances permit; and shall leave all public right-of-way in as good a condition as existed when franchisee entered upon same for the purpose of commencing the work. All restoration or repairs of public right-of-way shall be maintained by the franchisee for a minimum period of one year, in as good a condition as exists with regard to the remainder of the affected public right-of-way. However, notwithstanding the foregoing

restoration requirements, franchisee shall upon request by the City Engineer and at its sole expense, repave all street pavement located within an entire street-block if franchisee, its employees, contractors or agents, have undertaken an authorized excavation of street right-of-way that has been repaved within six (6) months of the excavation. Provided, however, the provisions of the foregoing sentence shall not apply to the extent the excavation was necessitated by an act of the City or a third party with whom franchisee is not in privity of contract or over whom franchisee has no control. In the event franchisee is required to repave an entire street-block of pavement right-of-way, the City shall, once the City Engineer has inspected and approved the completed project, assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of public right-of-way shall be performed in accordance with the City's Public Improvement Specifications and approved by the City Engineer. All restoration or repairs performed by the franchisee may be subject to inspection at any time by the City Engineer or his designee. In the event franchisee fails, refuses or neglects to comply with this provision, the City shall have the right, after franchisee is first given notice and an opportunity to comply with the foregoing provisions, to repair or restore the affected public right-of-way, and the costs and expenses incurred by the City as a result thereof, shall be paid to the City by franchisee within ten (10) days from the date on which an itemized bill is submitted to the franchisee.

(B) **Due Regard for Public Safety:** In the construction, installation, maintenance, repair or removal of any of its electrical distribution system, or any part thereof, franchisee

shall exercise due regard for the rights of the City of Owensboro, pedestrians and motorists, and shall not interfere with, or in any way injure, City property, or the private property of others, below, on, above, or across the ground. Franchisee shall comply with all laws of the Commonwealth of Kentucky and ordinances of the City of Owensboro with respect to signalization, placement of lights, danger signals or warning signs. All work performed by franchisee hereunder shall be done in a workmanlike manner and shall not unnecessarily interfere with public use of the City's right-of-way or property.

(C) **Public Improvement Projects:** Franchisee shall, upon request by the City, remove, move, modify, relocate, reconstruct, improve or adjust any of its electrical distribution system located within public right-of-way, at its own expense, if the City of Owensboro, in its sole discretion, constructs, reconstructs, widens, alters, excavates, paves, repaves, repairs, changes or improves any public right-of-way as part of any public improvement project, and such work requested by the City shall be accomplished by franchisee within thirty (30) days after notice thereof by the City; provided, however, that the City Engineer is authorized to extend the thirty (30) day completion deadline if the work requested of franchisee cannot reasonably be completed within the prescribed time period due to exigent circumstances or an emergency for which franchisee is not responsible and over which it had no control. In this event, franchisee shall complete its work within the time frame and in the manner mutually agreed upon between franchisee and the City Engineer, in writing.

(D) If the City requires the franchisee to adapt or conform its electrical distribution system, or to in any way construct, reconstruct, remove, alter, relocate, adjust or change its system to enable any other person, firm, corporation or entity, whether public or private, other than the City, to utilize public right-of-way, franchisee shall be reimbursed for all costs incurred by the person, firm, franchisee, corporation or entity requesting or required by the City to perform such change, construction, removal, repair, maintenance, alteration or relocation.

Section 7. COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND CONSIDERATION FOR FRANCHISE:

In consideration for the granting and exercise of the rights and privileges created under this franchise, and in further consideration of the grant to the franchisee of the right to make use of public right-of-way within the City, since such right-of-way is valuable property acquired and maintained at great expense to the taxpayers of the City of Owensboro and the grant to franchisee of the right to use same is a valuable property right without which franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, the franchisee shall pay to the City, during the term of the franchise, a sum equal to a minimum of two percent (2%) of its gross revenues as defined in Section 1(E), derived from the sale of its electrical energy through its electrical distribution system above, on, below and across public right-of-way within the corporate limits of the City of

Owensboro. The franchisee fee prescribed herein shall be paid to the City quarterly, on or before the 15th day after the end of each quarter, and the franchisee shall furnish to the City quarterly, a certified copy of franchisee's gross revenues received. Franchisee may account for, and reflect the franchise fee on the customer's bill in the manner authorized by franchisee's tariffs on file with the Kentucky Public Service Commission. Any franchise payments to the City by the franchisee shall not be in lieu of any occupational, income, license or property tax, or similar levy, assessment, fee, or charge which would otherwise apply to and be payable by, franchisee.

Section 8. INSURANCE AND INDEMNIFICATION REQUIREMENTS:

(A) **Insurance:** The franchisee shall file with the City of Owensboro, Kentucky, and shall thereafter during the entire term of this franchise, maintain in full force and effect a single-limit, comprehensive liability policy of insurance with limits of not less than \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate and an excess liability policy with a limit of not less than \$5,000,000.00; both of which shall insure franchisee, name the City as an additional insured and provide primary coverage for the City, its officials, officers, employees and agents against liability for loss or damage for personal injury, death, or property damage occasioned by any activity or operation of franchisee under such franchise.

(B) **Indemnification:** Franchisee shall indemnify and hold harmless the City of Owensboro, Kentucky, its officials, officers, employees, contractors, and agents from and against any and all claims, demands, causes of action, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees) of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, regardless of the merit of same, against all liability to others and against any loss, costs and expenses resulting or arising out of same, including attorney fees, accountant fees, expert witness or consultant fees, court costs, expenses or other costs which the City, its officials, officers, employees, contractors or other costs which the City, its officials, officers, employees, contractors or agents may suffer or incur or which may be legally obtained against the City, for or by reason of the negligent use, excavation,

degradation, alteration, repair, or occupation of any public right-of-way within the corporate limits of the City of Owensboro by the franchisee pursuant to and under the terms of this ordinance or resulting from negligent acts or omissions of the franchisee in the exercise of any of the rights and privileges granted by this franchise or by reason of franchisee's business within the City. Franchisee shall, at its sole risk and expense, upon demand of the City of Owensboro, by and through its City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or initiated by third persons or duly-constituted authorities against or affecting the City, its officials, officers, employees, contractors or agents, and arising out of or pertaining to the negligent acts or omissions of franchisee in the exercise of the enjoyment of the franchise created and granted by the City under this ordinance. Franchisee shall be liable for and shall pay or satisfy, or shall cause to be paid or satisfied, any judgment, decree, order, directive or demand rendered, made or issued against franchisee, the City, its officials, officers, employees, contractors or agents in any of these premises and such indemnity shall exist and continue without reference to or limitation by, the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder or otherwise; provided, however, that neither franchisee or the City shall make or enter into any compromise settlement of any claim, demand, cause of action, action, suit or other proceeding without first obtaining the written consent of the other. Provided further, none of the provisions of this Section 8 shall be applicable to the extent the acts of omissions

of the City, its officials, officers, employees, contractors, or agents, were the sole or contributing factor in bringing about the damages sued upon. Accordingly, any judgment and all of the costs of defense, including attorney fees, provided for above shall be apportioned between the City and the franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction. Franchisee shall abide by all provisions of this franchise and shall further agree that it will not at any future time set up as against the City, the claim that the provisions of this franchise are unconstitutional, unlawful, unreasonable, arbitrary or void.

Section 9. TRANSFER OR ASSIGNMENT OF FRANCHISE:

Franchisee may transfer or assign the franchise created by this ordinance to any parent or subsidiary entity, or any other person, proprietorship, partnership, firm or corporation with the organization, assets, knowledge and experience to carry out and comply with the terms of this franchise, without the consent of the City, upon approval of the Kentucky Public Service Commission. However, the terms and conditions set forth in this franchise shall be binding and enforceable against franchisee, its successors and assigns.

Section 10. CITY'S RIGHT OF INSPECTION AND ACCESS TO ELECTRICAL DISTRIBUTION SYSTEM OF FRANCHISEE:

The City, through its City Manager, City Engineer, City Attorney, or such other assistants as it may employ or designate, at all times reasonable, shall have access to, and the right to inspect, the electrical distribution system permitted within public right-of-way under this franchise and may inspect, examine or verify all or any of franchisee's non-confidential (as determined from time to time by the Kentucky Public Service Commission) books, records, contracts, documents or papers that are necessary to confirm the accuracy of the amount of franchise fees being paid by franchisee to the City. Prior to inspection of the electrical distribution system, the franchisee shall be notified, and franchisee shall be allowed to have a representative present during inspection.

Section 11. DISPUTE RESOLUTION; BREACH OF FRANCHISE;

REMEDIES:

(A) Should any dispute arise between the City and the franchisee concerning the terms or conditions of this ordinance, the duties or obligations of the City or franchisee thereunder, or the implementation or breach of this ordinance, either party may request in writing a meeting between an authorized representative of each of the parties to discuss and attempt to reach a resolution of the dispute. Such meeting shall take place within ten (10) days (or such shorter or longer time as agreed upon by the parties) of the request. Any resolution mutually agreed upon by the parties shall be reduced to written form and signed by each party, and thereafter shall be binding. Absent such resolution, the City and franchisee

shall be entitled to pursue all rights and remedies that they may have at law, in equity or pursuant to this ordinance, and the City may serve written notice as provided under the immediately following section 11(B).

(B) The terms and conditions of this Agreement, and each of them, are hereby deemed to be substantial and material. If the franchisee breaches any of the terms or conditions of this franchise and fails to cure same within a reasonable time (not less than 30 days) after written notice from the City describing the default and the actions that must be taken by the franchisee to correct same, the City shall have the right to terminate the franchise on the basis of non-performance by the franchisee, at which time the franchisee shall forfeit all rights, titles, interest and privileges it was otherwise entitled to under this ordinance, and franchisee shall proceed without unreasonable delay, to promptly remove its electrical distribution system from the public right-of-way over or in which it is located; provided (i) if the default cannot reasonably be cured within the time specified in the notice, the franchisee will not be deemed to be in default if the franchisee commences curing such default within said time and thereafter diligently pursues such cure to completion, and (ii) if the franchisee is regulated by the Kentucky Public Service Commission removal of the electric distribution system will be with the approval and consent of said Commission. Following a default which is not cured as aforesaid, the City may pursue any and all legal and/or equitable remedies reasonable and necessary to protect and prevent the unauthorized use of the City's public right-of-way and the health, safety and welfare of the citizens of

Owensboro, including claims for special and compensatory damages, specific performance, mandatory injunctive relief or any other remedy to which the City may be entitled. The provisions of this Section shall not impair or abrogate any statutory or common law rights franchisee has as to its electrical distribution system.

Section 12. FORCE MAJEURE:

(A) An obligation to perform hereunder by franchisee shall be suspended during a period of force majeure.

(B) If, because of a condition of force majeure, franchisee is unable to carry out any of its obligations under this Agreement, franchisee shall promptly give the City written notice. The obligation of giving notice shall be suspended to the extent made necessary by said force majeure during its continuance. However, franchisee shall use commercially reasonable efforts to eliminate the force majeure with a minimum of delay.

Section 13. SEVERABILITY:

If any section, subsection or provision of this ordinance or any part thereof is for any reason found unconstitutional or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this ordinance, which shall remain in full force and effect.

Section 14. EFFECTIVE DATE OF FRANCHISE:

The franchise created by this Agreement shall become effective on December 20, 2007, immediately upon the expiration of the existing electric utility franchise between the parties hereto.

IN TESTIMONY WHEREOF, witness the hands of the parties hereto by and between their duly authorized representatives this day and date first above written.

CITY OF OWENSBORO, KENTUCKY

By Thomas H. Watson
Thomas H. Watson, Mayor

ATTEST:

Beverly Lovan
Beverly Lovan, City Clerk

KENERGY CORP.

By *Sanford Novick*
Sanford Novick, President and CEO