



Ms. Stephanie L. Stumbo  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

RECEIVED  
SEP 30 2008  
PUBLIC SERVICE  
COMMISSION

**Kentucky Utilities Company**  
Legal Department  
220. W. Main Street  
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September 29, 2008

**RE: Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Bid on a Franchise Established by the Lexington-Fayette Urban County Government, Case No. 2008-00278**

Dear Ms. O'Donnell:

Pursuant to the Commission's July 24, 2008 Order in the above-referenced proceeding, enclosed please find two copies of the executed franchise agreement with the Lexington-Fayette Urban County Government.

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

Very truly yours,

Allyson K. Sturgeon  
Senior Corporate Attorney

Enclosures

**FRANCHISE AGREEMENT**

**THIS AGREEMENT** made and entered into this 21<sup>st</sup> day of August, 2008, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes (hereinafter the "Government"), and **KENTUCKY UTILITIES COMPANY, INC.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at One Quality Street, Lexington, Kentucky 40507 (hereinafter "Kentucky Utilities").

**WITNESSETH:**

**WHEREAS**, by Ordinance No. 175-2008, enacted July 8, 2008, the Government created a non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining an electric distribution system in Lexington-Fayette Urban County, Kentucky, for a period not to exceed three (3) years; and

**WHEREAS**, by Ordinance No. 175-2008, the Government authorized the advertising for bids on said franchise; and

**WHEREAS**, on July 30, 2008, Kentucky Utilities submitted a bid to acquire said franchise; and

**WHEREAS**, by Resolution No. 504-2008, enacted August 21, 2008, the Government accepted the bid of Kentucky Utilities as substantially responsive to Ordinance No. 175-2008 and in the best interest of the citizens of Lexington-Fayette Urban County; and

**WHEREAS**, the Government and Kentucky Utilities have agreed to accept the following as the terms of this Agreement and as those of the franchise.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of all of which are hereby acknowledged, the Government and Kentucky Utilities agree as follows:

1. Ordinance No. 175-2008, which is attached hereto as Exhibit "A" (the "Ordinance"), is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Kentucky Utilities for this franchise, which is attached hereto as Exhibit "B", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. The Government hereby grants unto Kentucky Utilities a non-exclusive franchise for the privilege of constructing, erecting, operating and maintaining an electrical energy distribution system upon, through, along, under and over the public streets, alleys, avenues, public roads, highways, sidewalks, and other public ways of the Lexington-Fayette Urban County Government in accordance with the terms of the Ordinance.

4. This Agreement shall commence on August 21, 2008, and shall expire on August 21, 2011.

5. In consideration of the granting of this franchise, Kentucky Utilities agrees to pay to the Government a sum equal to three percent (3%) of the gross annual

revenues received by Kentucky Utilities from electric service within Fayette County as provided in the Ordinance.

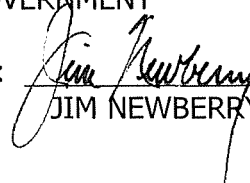
6. Kentucky Utilities, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in this Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

7. This Agreement contains and embodies the entire agreement between the parties and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto. No changes, modifications or other deletions in this Agreement shall be effective unless and until the same are reduced to writing and approved, adopted, and executed in the same fashion as this Agreement.

**IN TESTIMONY WHEREOF**, the Lexington-Fayette Urban County Government has caused its name to be affixed hereto by the Mayor and Kentucky Utilities Company, Inc., has caused its name to be affixed hereto by John P. Malloy, its properly authorized officer.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY:



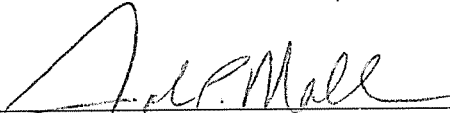
JIM NEWBERRY, MAYOR

ATTEST:



SUSAN LAMB, COUNCIL CLERK

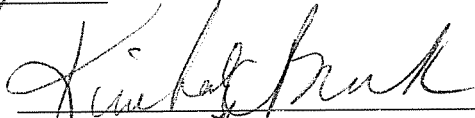
KENTUCKY UTILITIES COMPANY, INC.

BY:   
JOHN P. MALLOY, VICE PRESIDENT  
ENERGY DELIVERY - RETAIL BUSINESS

STATE OF KENTUCKY     )  
  )  
COUNTY OF Jefferson     )

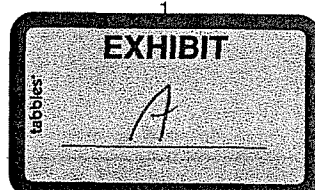
The foregoing Agreement was subscribed, sworn to and acknowledged before me by John P. Malloy, as Vice President of Energy Delivery - Retail Business, Kentucky Utilities Company, Inc., on this the 2nd day of September, 2008.

My commission expires: October 16, 2008

  
NOTARY PUBLIC  
KENTUCKY, STATE-AT-LARGE

ORDINANCE NO. 175-2008

AN ORDINANCE CREATING AND ESTABLISHING A NON-EXCLUSIVE ELECTRIC FRANCHISE AND PROVIDING FOR: THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHTS-OF-WAY; THE INCORPORATION OF THE PROVISIONS OF CODE OF ORDINANCES AND THE APPLICABLE ZONING LAWS; DEFINITIONS; A POLICE POWER LIMITATION; CONSTRUCTION, INSTALLATION, MAINTENANCE AND FACILITY STANDARDS; DUE REGARD FOR RIGHTS OF GOVERNMENT AND OTHERS; COMPLIANCE WITH THE GOVERNMENT'S PERMITTING PROCESS FOR PROJECTS; ADDITIONAL PERFORMANCE GUARANTEES OF UP TO \$200,000 ON PROJECTS WITH CONSTRUCTION COSTS EXCEEDING \$100,000; AN INDEMNIFICATION AND HOLD HARMLESS PROVISION; COMPLIANCE WITH NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS; COMMERCIAL GENERAL LIABILITY INSURANCE POLICY IN THE AMOUNT OF AT LEAST \$1,000,000 PER OCCURRENCE AND \$2,000,000 AGGREGATE; ACCESS, INSPECTION AND AUDITING BY THE GOVERNMENT; NOTIFICATION OF RATE CASES BEFORE THE PUBLIC SERVICE COMMISSION AND AN AGREEMENT NOT TO CONTEST INTERVENTION BY THE GOVERNMENT; A THREE YEAR DURATION; NO VESTED RIGHTS FOR INSTALLATION OR EMPLACEMENT OF FACILITIES AND RIGHT TO REQUIRE REMOVAL OF FACILITIES AT COMPANY'S EXPENSE IF NO FRANCHISE EXISTS; NOTIFICATION OF ASSIGNMENT WITH CONSENT NOT TO BE UNREASONABLY WITHHELD; NO OBJECTION TO GOVERNMENT INTERVENTION IN A TRANSFER OF CONTROL CASE BEFORE THE PUBLIC SERVICE COMMISSION; THE FOLLOWING PENALTIES RECOVERABLE FOR VIOLATIONS AFTER COMPANY IS PROVIDED THE OPPORTUNITY TO PRESENT EVIDENCE TO THE COMMISSIONER OF PUBLIC WORKS AND DEVELOPMENT OR HIS DESIGNEE, WITH SUCH DECISIONS APPEALABLE TO A COURT OF COMPETENT JURISDICTION: \$500 A DAY FOR FAILURE TO COMMENCE REMOVAL OF A PENDING CONSTRUCTION PROJECT UPON EXPIRATION OF THE FRANCHISE, \$100 A DAY FOR FAILURE TO PROVIDE DATA AND REPORTS REQUESTED BY THE GOVERNMENT AS REQUIRED BY THE ORDINANCE, OR FOR FAILURE TO TIMELY PAY THE FRANCHISE FEE OR AN ITEMIZED BILL; A \$100 A DAY PENALTY APPEALABLE TO A COURT OF COMPETENT JURISDICTION FOR A FAILURE TO COMPLY WITHIN THIRTY DAYS TO A COUNCIL RESOLUTION DIRECTING COMPLIANCE WITH A PROVISION OF THE ORDINANCE; NON-WAIVER AND CONTINUED PERFORMANCE AND ENFORCEMENT UPON THE GOVERNMENT'S FAILURE TO INSIST ON SPECIFIC PERFORMANCE; THE PAYMENT OF PENALTIES NOT AN EXCUSE FOR NON-PERFORMANCE; RESERVATION OF RIGHTS TO REGULATE RATES AND SERVICES WITH ACKNOWLEDGMENT OF PUBLIC SERVICE COMMISSION AUTHORITY; RIGHTS OF SUBSCRIBERS DEFINED IN CUSTOMER BILL OF RIGHTS; COMPANY WILL ABIDE BY ORDERS AND TARIFFS PERTAINING TO SERVICE AND OPERATIONS IN FAYETTE COUNTY; COMPANY SHALL WORK TO IMPROVE IDENTIFICATION AND REPLACEMENT OR REPAIR OF NONFUNCTIONING STREET LIGHTS; TERMINATION UPON WILLFUL VIOLATIONS OF THE FRANCHISE, WILLFUL EVASION OF PROVISIONS OF THE FRANCHISE, FRAUD AND DECEIT UPON THE GOVERNMENT, KNOWINGLY MAKING MATERIAL MISREPRESENTATIONS, UPON A FORECLOSURE OR JUDICIAL SALE OF ALL OR A SUBSTANTIAL PORTION OF THE COMPANY'S FACILITIES, OR UPON COMPANY'S FAILURE TO PROVIDE REGULAR AND CUSTOMARY SERVICE, AND PROCEDURES FOR TERMINATING THE FRANCHISE; GOVERNMENT'S RIGHT TO CANCEL FRANCHISE THIRTY DAYS AFTER THE APPOINTMENT OF A RECEIVER OR TRUSTEE UNLESS CERTAIN CONDITIONS ARE MET; SALE AT PUBLIC AUCTION OF THE FRANCHISE AND DUE ADVERTISEMENT REQUIREMENTS THEREON; WRITTEN BIDS, RIGHT TO REJECT, PAYMENT OF FIVE PERCENT OF THE ESTIMATED COST OF THE SYSTEM UNLESS THE COMPANY ALREADY HAS SUFFICIENT FACILITIES TO PROVIDE THE FRANCHISE SERVICES, AND PAYMENT OF \$500 FOR ADVERTISEMENT AND ADMINISTRATIVE COSTS WITH ANY EXCESS AMOUNTS EXCEEDING ACTUAL COSTS TO BE RETURNED TO BIDDER(S) WITHIN THIRTY DAYS; PAYMENT OF THE SUM OF AT LEAST THREE PERCENT OF THE COMPANY'S GROSS ANNUAL REVENUES FROM THE PROVISION OF ELECTRIC SERVICE WITHIN FAYETTE COUNTY; AGREEMENT TO WORK WITH THE GOVERNMENT TO PROVIDE CERTAIN REDUNDANT POWER SOURCES; AGREEMENT TO PROVIDE POLE ATTACHMENT SPACE UNLESS OTHERWISE PROVIDED IN AN AGREEMENT; PAYMENT OF PERMITTING FEES; THE FILING OF AN APPLICATION OR TARIFF WITH THE KENTUCKY PUBLIC SERVICE COMMISSION WITHIN TEN DAYS OF ACCEPTANCE OF THE BID; SUSPENSION OF PAYMENT OF THE FRANCHISE FEE IF NO FINAL DETERMINATION REGARDING TARIFF APPROVAL IS MADE AND ALLOWING THE GOVERNMENT TO TERMINATE THE FRANCHISE UPON SUCH CONDITION; RIGHT TO TERMINATE IF DEREGULATION RESULTS IN MATERIAL SHORTFALL IN REVENUE; ALL PAYMENTS TO BE MADE MONTHLY OR QUARTERLY WITHIN THIRTY DAYS OF THE PRECEDING PAYMENT PERIOD; PAYMENT IS NOT AN ACCORD



Section 2 - The person, firm or corporation that shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company" herein. The Lexington-Fayette Urban County Government shall be referred to as the "Government". The definitions and terminology contained in the provisions of the Code are hereby incorporated herein by reference.

Section 3 - The Company acquiring this franchise shall have the right and privilege of laying, maintaining and operating a system or works for the generation, transmission and distribution of electrical energy for the sale of same for light, heat, power and other purposes, to erect and maintain poles or other structures, wires and other apparatus necessary for the operation of said system in, along and under the Rights-of-way within the corporate boundaries of the Government as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon, or reserved to the Government, including but not limited to those contained in the Code.

Section 4 - In addition to complying with the requirements contained in federal or state law or regulation, and the Code, the Company agrees that:

(a) All working facilities and conditions used during construction, installation and maintenance of Facilities shall comply with the standards of the Occupational Safety and Health Administration;

(b) It shall construct and operate the system and related Facilities in accordance with all generally accepted related industry codes and standards that are applicable;

(c) All construction shall be performed in a workmanlike manner, and all materials, equipment, and/or Facilities used or installed shall be in compliance with industry standards;

(d) In the construction or reconstruction or maintenance or removal of any of said Facilities, the Company shall have due regard for the rights of the Government and others, and shall not unduly interfere with, or in any way damage the property of the Government or others under, on, or above the ground. The Company shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the Company hereunder

Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insureds, in the same manner as if a separate policy had been issued, under the provision of the policies required to be issued during the term of this franchise or as otherwise required by this Ordinance." All insurance policies shall be broad form in nature and shall be through a company with an A.M. Best Rating of "A" or better, admitted to do business in Kentucky, and the contract shall be non-cancelable without at least thirty (30) days advance written notice by registered mail to the Government from the insurance company and shall provide the Government with a certificate of insurance evidencing the insurance policy required by this section. The certificate shall state that the insurance policy shall not be canceled, materially changed or non-renewed until after thirty (30) days written notice has been provided to the Government; however, insurance may be canceled and replaced with a policy that continues to meet or exceed the requirements of this section. The Company may satisfy the insurance requirements and conditions of this section under a self-insurance plan that is acceptable to the Government's Division of Risk Management.

Section 10 – (a) The Government, through its Mayor or his designee, or through such assistants as the Government may employ or designate, may, at all reasonable times, and at the Government's expense, have the right to inspect such books and records of the Company as are necessary for the Government to verify the accuracy of the amounts paid by the Company to the Government under this franchise. This provision shall survive the term of any franchise agreement awarded pursuant to this Ordinance for a period of one (1) year. In the event that the Government determines that it desires an audit of this franchise, the Company agrees to comply with all reasonable requests of the Government pertaining to obtaining any necessary information or documentation from the Company. If such audit or review is performed in connection with the granting or renewal of a franchise, a sale or transfer of control, or a modification, the Company shall reimburse the Government for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants. Any additional amount due to the Government as a result of the Government's audit shall be paid within ten (10) days following written notice to the Company by the Government which notice shall include a copy of the audit report.

(b) The Company agrees further to furnish the Mayor or his designee timely written notice of its filing an application with the Public Service Commission for an increase in



(3) For failure to pay the franchise fee when due pursuant to Section 18 of this Ordinance, or any itemized bill presented by the Government pursuant to Section 5 of this Ordinance or this section, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. However, this provision shall not apply if interest is assessed by the Government pursuant to Section 19(c).

(b) If the Company fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.

(c) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 14 of this Ordinance.

Section 13 -- The Government reserves all rights it might presently have, or which it may hereafter acquire, to regulate the Company's rates and services. The parties acknowledge the current general regulatory authority that the Kentucky Public Service Commission has been provided in this area. The rights of all subscribers are defined by the Customer Bill of Rights, which is contained in the Company's tariffs. The Company will abide by any all Commission orders and/or tariffs pertaining to service and operations in Fayette County. As further consideration for the granting of this franchise, the Company shall work with the Government to improve the identification and replacement or repair of nonfunctioning street lights.

Section 14 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

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

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

Section 15 – The Council 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:

(a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved 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 16 - It shall be the duty of the Mayor or his designee as soon as practicable after the passage of this Ordinance to offer for sale at public auction said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor after he or she has given due notice thereof by advertisement in at least one (1) issue of the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky. This advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date of bid opening.

Section 17 – Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or his designee upon the date and at the time fixed by him or her in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Urban County Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The said Urban County Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the Urban County Council, it may direct, by resolution or ordinance, said franchise and

Government under the terms of its existing tariff and/or franchise until such time as this tariff approval is obtained.

(b) As further consideration for the granting of this franchise, the Company shall work with the Government to provide of redundant power feeds/lines sufficient to meet operational needs from separate power substations to all Government facilities housing security, communications, and or information technology services.

(c) As further consideration for the granting of this franchise, the Company shall permit the Government to utilize its pole, conduit, or raceway space at no charge when such space is vacant or available for public safety or governmental purposes. If such space is not available, then the Company shall make such space available on the most favorable terms extended to any other customer. This provision shall not supersede any existing or future agreement that the Government has with the Company pertaining to the use of the Company's space.

(d) If, after a period of sixty (60) days from the filing of Company's application or tariff, the Kentucky Public Service Commission has made no final determination concerning the prompt and satisfactory recovery of amounts payable under this Section by the Company, then the Company's obligation to pay the amount specified in Section 18(a) shall be suspended, provided the Company shall first give the Government ten (10) days written notice of its intention to suspend payment pending the decision of the said Commission. In the event of suspension of the Company's obligation as herein provided, the Government shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company.

(e) In the event the sale of electricity is deregulated within the Commonwealth of Kentucky, and deregulation results in a material shortfall of revenue to the Government, the Government shall have the option of terminating the franchise agreement with the Company. If the franchise agreement is terminated by the Government pursuant to this provision, the Government and the Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise agreement to the Company.

(f) In addition to the franchise fees in Section 18(a), the Company is also required to pay the Government an additional amount intended to adequately compensate the Government for its permitting and inspection of the Company's construction activities in the Rights-of-way pursuant to Section 17C-22 of the Code. This amount is to be paid separately to

the Government for all of the reasonable costs associated with the audit or review, including all out-of-pocket costs for attorneys, accountants and other consultants.

(c) 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%). Overpayments discovered by the Government or the Company shall be an adjustment on the next monthly payment without interest.

Section 20 – Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for payments contained in Sections 18 and 19, which shall be considered as a condition of this franchise. Any check deposited by an unsuccessful bidder shall be returned when the Urban County Council shall have accepted the bid or bids, which in its judgment is or are the highest and best.

Section 21 – Any violation by the Company, its vendee, Lessee, or successor of the material provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth in Section 14.

Section 22 – The Company shall have the authority to trim trees that are located within or overhang the Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other Facilities of the Company. Any trimming, removal or other disturbance of trees shall conform to all lawful ordinances, requirements and directives of the Government, including but not limited to the Government's Street Tree Ordinance (Chapter 17B of the Code of Ordinances), and the Company shall make available upon reasonable request of the Government, information regarding its tree trimming practices. In the event that the Company fails to timely and sufficiently respond to a legitimate and reasonable complaint regarding its failure to trim such trees, and such complaint is made known to the Government, the Government shall contact the Company with respect to such matter and attempt to reach a satisfactory result.

Notwithstanding the foregoing, this provision in no way limits any existing or future lawful rights that the Government may have with respect to such trees.



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
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P.O. Box 615  
Frankfort, Kentucky 40602-0615  
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David L. Armstrong  
Chairman

James Gardner  
Vice-Chairman

John W. Clay  
Commissioner

July 24, 2008

Honorable Allyson K. Sturgeon  
Attorney at Law  
E.ON U.S. Services, Inc.  
220 West Main Street  
Louisville, KY 40202

July 24, 2008

CERTIFICATE OF SERVICE

RE: Case No. 2008-00278  
Kentucky Utilities Company

I, Stephanie Stumbo, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on July 24, 2008.

Executive Director

SS/rs  
Enclosure