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R-504-2008

SEP 30 2008

PUBLIC SERVICE
COMMISSION

FRANCHISE AGREEMENT

THIS AGREEMENT made and entered into this 21st 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 31, 2008, and shall expire on August 31, 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.

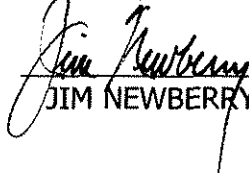
6. Kentucky Utilities, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in this Agreement, and further to 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 ~~August~~, 2008.

My commission expires: October 16, 2008



NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE

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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 EMBLACEMENT 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



AND SATISFACTION, RIGHT TO AUDIT AND TO PAYMENT OF COSTS IF THE COMPANY IS FOUND TO HAVE WITHHELD FIVE PERCENT OR MORE FOR ANY SIX MONTH PERIOD; INTEREST OF EIGHT PERCENT ON ANY LATE OR RECOMPUTED PAYMENTS AND AN ADJUSTMENT FOR OVERPAYMENTS; BIDS MUST ACCEPT THE CONDITIONS OF THIS ORDINANCE AND MAY INCLUDE ADDITIONAL CONSIDERATION PAYMENTS; VIOLATIONS OF THE FRANCHISE SHALL BE CONDITION FOR FORFEITURE, LAW OF KENTUCKY APPLIES; VENUE IN FAYETTE COUNTY; NO THIRD-PARTY RIGHTS; ANY UNLAWFUL PROVISION IS SEVERABLE; AND FRANCHISE EFFECTIVE WHEN THE COUNCIL ACCEPTS THE BID(S); ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created a non-exclusive franchise to acquire, lay, maintain and operate in the public streets, alleys, avenues, public roads, highways, sidewalks and other public ways of the Lexington-Fayette Urban County Government, a system or works for the generation, transmission and distribution of electrical energy from points either within or without the corporate limits of this Urban County, to this Urban County and the inhabitants thereof, and from and through this Urban County to persons, corporations and municipalities beyond the limits thereof, and 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, upon, over, under, across and along each and all of the streets, avenues, alleys, rights-of-way and public places (not including parks, greenways, and other public areas not traditionally used for public egress) within the present and future corporate limits of this Urban County (the "Rights-of-way"), subject to all the provisions of this Ordinance. This Ordinance does not excuse the franchisee from complying with any and all existing and future local laws and ordinances, as may be amended, including but not limited to the terms and provisions of Chapters 17, 17B, and 17C of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), or the provisions of its zoning ordinance, if applicable, which are incorporated herein by reference, and shall apply as if fully set forth herein to the extent that there is no express conflict with the terms or provisions of this Ordinance, or a direct conflict with federal or state law. This franchise does not include the right or privilege to provide for the operation of a telephone communication system, including telephone exchange service (as defined by 47 USC Section 153(47)) and exchange access (as defined by 47 USC Sec. 153 (16)), data transmission, cable service (as defined by 47 USC Section 522(6)) or open video service (as defined by 47 USC Section 76.1500(a)), unless such services are used exclusively within the Company and not for revenue.



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



shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of the Rights-of-way.

(e) The minimum clearance of wires and cables above the Rights-of-way and the placement of any underground facilities shall conform to accepted good engineering practices or national standards as recognized by the Kentucky Public Service Commission.

Section 5 – The Company shall comply with all of the requirements of the Code, and more specifically, Section 17C-19 of the Code and the provisions of the zoning ordinance, if applicable pertaining to Government construction and/or street projects.

Section 6 – In addition to any performance bond(s) required pursuant to Section 17C-23 of the Code, the Company may be required to provide a performance guarantee for significant projects with construction costs of one hundred thousand (\$100,000.00) or more involving the Rights-of-way. This performance guarantee shall be set in an amount and duration to be determined by the Director upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such performance guarantee exceed two hundred thousand dollars (\$200,000.00).

Section 7 – The Company agrees it shall defend, indemnify, and hold harmless the Government consistent with the indemnification and hold harmless provisions as set forth in Section 17C-17 of the Code, or as it may be amended in the future. This obligation to defend, indemnify, and hold harmless does not include defending, indemnifying and holding harmless the Government for its own negligent acts.

Section 8 - The Company shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or applicant for employment because of race, color, religion, national origin, sex, age or physical handicap.

Section 9 - The Company agrees to procure and maintain throughout the term of this franchise and any extension thereof, commercial general liability insurance in the principal amount of at least One Million dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000.00) aggregate, with an insurance company authorized to do business in the Commonwealth of Kentucky with the provision, "it is agreed and understood that the Lexington-



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



general base rates concurrent with said filing. Should the Government choose to intervene in such Commission action, the Company shall not oppose such intervention, and the Government shall be given access to records related to said application, as required by the Commission.

Section 11 - (a) The franchise hereby created shall be a period of three (3) years from the date of acceptance by the Urban County Council. This franchise is not exclusive and the Government reserves the right to grant similar franchises to more than one Company.

(b) This franchise creates no vested rights in the Company and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk. If the Company is not granted a new franchise upon the expiration of the term for which the franchise is granted, or if the Company's franchise is terminated or cancelled, as provided for herein, the Government shall have the right to require the Company to remove at its own expense all portions of the system from all public rights-of-way within the confines of Fayette County.

(c) No assignment of this franchise or the electric transmission and distribution system subject to this franchise shall take place without at least sixty (60) days advance written to the Government, and consent by the Government, which consent shall not be unreasonably withheld. The Company shall not object to the Government's intervention and participation in any action before the Public Service Commission involving the transfer of control of the Company.

Section 12 - (a) If, after the Company is provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, the Government finds that the Company has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Commissioner shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.

(1) For failure to commence removal of any pending construction project within thirty (30) days of receiving notice from the Government that the franchise has expired and will not be renewed, the Company shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues;

(2) For failure to provide data and reports requested by the Government and as required by this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues;



(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;



(2) Willfully attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;

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

(4) Is experiencing a foreclosure or other judicial sale of all or a substantial part of the Company's Facilities located within Fayette County. The Company shall provide the Government at least thirty (30) days advance written notice of such foreclosure or sale;

(5) Is no longer able to provide regular and customary uninterrupted service to its customers in the franchise area.

(b) Prior to attempting to terminate or cancel this franchise pursuant to this section, the Mayor or his designee, or the Urban County Council 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 14(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such 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 the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky.

(1) It shall be a defense to any attempt to terminate and cancel the 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 Council shall consider the request of the Government 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 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 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



privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Each bid shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Government reserves the right to review any of bidder's supporting documentation which justifies bidder's determination of said estimated cost. Such deposit need not be made by a corporation or person already owning within the territorial limits of Fayette County a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars (\$500.00) to cover the Government's cost of advertising and other administrative expenses incurred. In the event that the total amount submitted by all bidders exceeds the Government's actual costs, it will refund the overcharge to each Company on a pro rata basis within thirty (30) days.

Section 18 - (a) In consideration for the granting of the franchise the Company agrees to pay to the Government a franchise fee in a sum equal to three percent (3%) of the gross annual revenues received by the Company from electric service provided by the Company within Fayette County. The term gross annual revenues is intended to include revenue received from customers within Fayette County supplied under residential, commercial, industrial, public street and highway lighting, and other public authorities classifications. It shall also include any revenue that is otherwise derived from the use of the Company's facilities that are located in the Rights-of-way, if explicitly approved by the Kentucky Public Service Commission. The Company shall file all documents necessary for approval of this franchise agreement and/or its associated fees with the Kentucky Public Service Commission within ten (10) working days after the acceptance of the franchise by the Government, and shall provide the Government with copies of any such filed documents. The Company is otherwise required to continue submitting payments to the



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 at the time and under the terms as set forth in Chapter 17C of the Code. The Company may seek tariff approval from the Kentucky Public Service Commission for the recovery of such payments as set forth in Section 18(a). *Notwithstanding the foregoing, the Company may elect to pay for its permit fees upon application for each respective permit upon approval of the Director. These permitting fees are subject to change during the term of the franchise based upon an audit of the actual cost of permitting for the Government or a change in the amount of the respective permitting fees found in Section 17C-22 of the Code. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.*

(g) To the extent the Company actually incurs other reasonable incremental costs in connection with its compliance with the Government's ordinances; the Government agrees that the Company may recover such amounts from its customers pursuant to the terms of a tariff filed with an approved by the Kentucky Public Service Commission, if otherwise permitted by law.

Section 19 - (a) Payment of any amount due under this Ordinance shall be made on a monthly basis or quarterly basis within thirty (30) days of the end of the preceding payment period. Such payments shall be monthly unless the Company has historically paid the Government on a quarterly basis. In the event of suspension of the Company's obligation pursuant to Section 18(b) herein, said suspension shall not have application to any amount due hereunder for the preceding calendar month, and the gross income received by the Company during any such suspension period shall be excluded from the Company's annual gross revenues for the purpose of calculating amounts due under Section 18(a) herein.

(b) No acceptance of any franchise fee payment by the Government 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 the Government may have for future or additional sums pursuant to this Ordinance. Any additional amount due to the Government as a result of the Government's audit pursuant to Section 10(a) 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. If as a result of such audit or review the Government determines that the Company has underpaid its franchise fee by five percent (5%) or more for any payment period then in addition to making full payment of the relevant obligation, the Company shall reimburse

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OF KENTUCKY

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.



Section 23 -- This Ordinance and any franchise awarded pursuant to it 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 Ordinance or a franchise shall be in the court of competent jurisdiction in Fayette County, Kentucky.

Section 24 - This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

Section 25 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

Section 26 - The franchise created by this Ordinance shall become effective when the Urban County Council accepts the bid(s) for it.

Section 27 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 8, 2008

/s/ Jim Newberry
MAYOR

ATTEST:

/s/ Susan Lamb
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: July 16, 2008-1t

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an *e-on* company
Kentucky Utilities Company
One Quality Street
Lexington, KY 40507
502-627-4110

July 30, 2008

Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, Room 338
Lexington, KY 40507-1310

Dear Lexington-Fayette Urban County Government:

On behalf of Kentucky Utilities Company (KU), please consider this letter as KU's bid for an electric franchise with the Lexington-Fayette Urban County Government. This bid is in response to the Urban County Government's request as contained in the Legal Notice section of the July 16, 2008 issue of the Lexington Herald Leader. It is our understanding that said franchise will be for a three-year period as authorized by Ordinance No. 175-2008, passed by the Lexington-Fayette Urban County Council on July 8, 2008. With regard to Section 18 (c), please note that Kentucky Utilities Company has a separate pole attachment agreement with the City, and therefore this section does not apply to this franchise.

KU agrees to the terms and conditions of the franchise created by Ordinance No. 175-2008, and encloses herewith a check in the amount of \$500.00, to be applied toward advertising and other administrative expenses incurred by the Lexington-Fayette Urban County Government, pursuant to the terms of Section 17 of said franchise.

Please be advised that KU has also filed for a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission in connection with the submission of this bid.

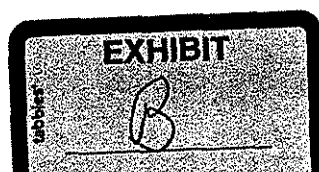
We appreciate the opportunity to present this bid, and welcome any questions regarding the same.

Respectfully,

John Wolfram
Director, Customer Service & Marketing

Enclosures

cc: The Honorable Jim Newberry





Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

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

David L. Armstrong
Chairman

James Gardner
Vice-Chairman

John W. Clay
Commissioner

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

July 24, 2008

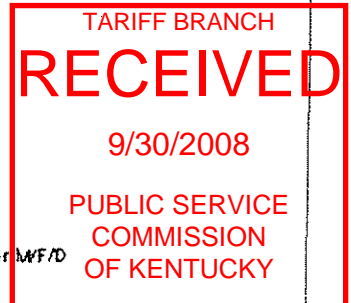
JUL 25 2008

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