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MEMORANDUM

TO: **All Jurisdictional Utilities**

FROM: **Beth O'Donnell**
Executive Director

Date: **August 10, 2007**

RE: **Commonwealth of Kentucky, ex rel., Gregory D. Stumbo, Attorney General v. Kentucky Public Service Commission and Union Light, Heat and Power Company, Franklin Circuit Court, Division I, Civil Action No. 06-CI-269**

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On August 1, 2007, Circuit Judge Phillip Shepherd entered an Opinion and Order in the above-captioned case, in which he struck down KRS 278.509 as unconstitutional and found that the Commission may not allow a surcharge without specific statutory authorization. A copy of this Opinion is available on the Commission website at www.psc.ky.gov. Though the case related solely to the approval in the context of a general rate case of an accelerated main replacement program implemented by Duke Kentucky, the implications of the Opinion and Order for jurisdictional utilities are broader.

Representatives of the Attorney General's Office of Rate Intervention – which successfully brought the challenge to the Commission's authority to implement surcharges as an appropriate rate methodology – confirm that Judge Shepherd's Opinion and Order can be read to include existing surcharges, rates or fees established outside the context of a general rate case and not specifically authorized by statute, including such things as fuel adjustments, gas cost adjustments and water main extension surcharges. The Commission's review of the Opinion and Order suggests that the list of affected surcharges could be substantially greater and will likely affect all jurisdictional industries.

In light of the uncertainty surrounding many existing surcharges and rates, the Commission will hold a meeting on Thursday, August 16, 2007, beginning at 1:30 PM, in Hearing Room 1 of the Commission's offices in Frankfort to discuss the scope and application of the Opinion and Order as it relates to particular jurisdictional utilities and to receive comment on the actions that the Commission may be compelled to take to comply with the Opinion and Order.

All other stakeholders in the utility regulatory process, including representatives of consumer groups, interested governmental agencies and the Attorney General's office, are invited and encouraged to attend and comment.