

Goss ■ Samford PLLC



David S. Samford
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August 27, 2013

Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

RECEIVED

AUG 27 2013

PUBLIC SERVICE
COMMISSION

Re: In the Matter of: Application of Duke Energy Kentucky, Inc. for a
Certificate of Public Convenience and Necessity to Bid on a
Franchise to Serve the City of Union, Kentucky
PSC Case No. 2013-_____

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of Duke Energy Kentucky, Inc.'s Application regarding the above-styled matter. Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Very truly yours,

David S. Samford

Enclosures

M:\Clients\2000 - Duke Energy\2400 - Union, KY Franchise\
Correspondence\Ltr. to Jeff Derouen - 130827.docx

RECEIVED

AUG 27 2013

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND)	CASE NO. 2013-_____
NECESSITY TO BID ON A FRANCHISE)	
TO SERVE THE CITY OF UNION,)	
KENTUCKY)	

APPLICATION

Comes now Duke Energy Kentucky, Inc. ("Duke Energy Kentucky"), by counsel, pursuant to KRS 278.020(4), 807 KAR 5:001, Section 15(1), 807 KAR 5:001 Section 14 and other applicable law, and tenders hereby its application for a certificate of public convenience and necessity to apply for and obtain a franchise from the city of Union, in Boone County, Kentucky ("Union"), to provide electricity and natural gas transmission and distribution service, respectfully stating as follows:

1. Duke Energy Kentucky is a combined electric and natural gas utility serving approximately 240,000 customers in six Kentucky counties. Duke Energy Kentucky's business address is 139 East Fourth Street, Cincinnati, Ohio 45202 and its local address is Duke Energy Envision Center, 4580 Olympic Boulevard, Erlanger, Kentucky, 41018. Duke Energy Kentucky's articles of incorporation were filed with the Commission in Case No. 2013-00097 and are incorporated by reference pursuant to 807 KAR 5:001, Section 14(2)(a).
2. Duke Energy Kentucky is the successor to Union Light, Heat and Power which held a franchise for the use of the City streets, alleys and public

grounds to provide electricity and natural gas transmission and distribution facilities and services within the territorial limits of Union. However, that franchise has expired.

3. Duke Energy Kentucky proposes to bid upon a new municipal franchise to place electric and natural gas transmission and distribution facilities in public streets and places of Union and to provide related service to Union. The new franchise will be awarded by the Union City Council.
4. The Union City Council has passed an Ordinance setting forth the requirements and deadlines for submitting a bid to secure a new franchise. Union has directed that bids shall be received on or before Tuesday, September 10, 2013. A copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference. A copy of the Legal Notice that was published in the Community Recorder by Union regarding said new franchise is attached hereto as Exhibit B and incorporated herein by reference.
5. As evidenced by the Ordinance, there is, and will continue to be, a demand and need for the facilities and services sought to be rendered by Duke Energy Kentucky pursuant to the franchise.
6. Upon obtaining a franchise from Union, Duke Energy Kentucky will file a true and correct copy of same with the Commission.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests the Commission to approve this application and to issue to Duke Energy Kentucky a certificate of public convenience and necessity authorizing it to apply for and obtain a franchise from Union, as set forth herein.

This the 27th day of August, 2013.

Respectfully Submitted,



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Allyson@gosssamfordlaw.com

and

Rocco O. D'Ascenzo
Duke Energy Business Services, LLC
139 East Fourth Street/1303-Main
P.O. Box 960 Cincinnati, OH 45202
(513) 287-4320
Rocco.D'Ascenzo@duke-energy.com

Counsel for Duke Energy Kentucky, Inc.

**CITY OF UNION, KENTUCKY
ORDINANCE NO. 2013-003**

AN ORDINANCE OF THE CITY OF UNION, KENTUCKY ESTABLISHING A NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC GROUNDS OF THE CITY FOR THE DISTRIBUTION AND TRANSMISSION OF EITHER OR BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY; AND PROVIDING THE TERMS THEREOF.

WHEREAS, Duke Energy Kentucky, Inc. ("Duke Energy") is a public utility subject to the provisions of Sections 163 and 164 of the Kentucky Constitution and K.R.S. 96.010 through 96.045; and

WHEREAS, Sections 163 of the Kentucky Constitution prohibits public utilities from using the streets, alleys and other public grounds within a city without a franchise therefor for that use; and

WHEREAS, Duke Energy currently has access to the streets, alleys and public grounds of the City of Union, Kentucky ("City") for the transmission and distribution of either or both electricity and natural gas through and for consumption within the City; and

WHEREAS, Duke Energy is a successor to The Union Light, Heat and Power Company ("ULH&P"); and

WHEREAS, ULH&P had a franchise for the use of the City streets, alleys and public grounds for the transmission and distribution of natural gas and electricity through and for consumption within the City; but that franchise expired pursuant to the terms thereof some years ago; and

WHEREAS, Duke Energy currently does not have a franchise for the use the streets, alleys and public grounds of the City for the transmission and distribution of either or both electricity and natural gas through and for consumption within the City;

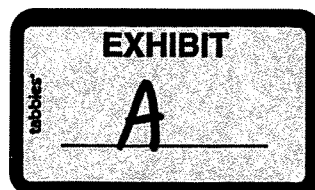
NOW, THEREFORE, for the purpose of complying with the Constitution and Statutes of Kentucky and pursuant to the authority and requirements of Sections 163 and 164 of the Kentucky Constitution and K.R.S. 96.010 through 96.045:

BE IT ORDAINED by the City of Union, Kentucky as follows:

Section 1.0 **Definitions**

As used herein, the following words and phrases have the meanings indicated for them:

- 1.1 The word "City" means the City of Union, Kentucky in Boone County, Kentucky.
- 1.2 The words "continuing default" mean a default lasting for a period of more than thirty (30) consecutive calendar days.
- 1.3 The words "facilities" mean the tangible apparatus, equipment and instrumentalities and the appurtenances thereto used for the transmission and distribution of either or both



electricity and natural gas through and within public property in the City, including, without limitation, poles, wires, cables, cross-arms, conduits, anchors, junction boxes, manholes, mains, pipes and valves.

1.4 The word "Franchisee" means the person to whom the City has awarded and granted a franchise hereby established.

1.5 The words "public property" mean real estate in the City of Union that has been dedicated or is otherwise open to public use and is subject to regulation by the City of Union.

1.6 The words "calendar quarter" mean three months ($\frac{1}{4}$) of a calendar year composed of the months of either: (a) January, February and March; or (b) April, May and June; or (c) July, August and September; or (d) October, November and December.

Section 2.0 **Franchise**

There is hereby established a non-exclusive franchise for the use of the public property within the City for the transmission and distribution of either or both electricity and natural gas for consumption both within and outside of the City.

Section 3.0 **Terms of Franchise**

As required by K.R.S. 96.010, the terms and conditions of the franchise hereby established are as follows:

3.1 Bidding Requirement

Pursuant to Section 164 of the Kentucky Constitution, before granting the franchise hereby established, the City shall first, after due advertisement, receive bids therefor publically, and award it to the highest and best bidder; but the City shall have the right to reject any and all bids.

3.2 Reservation of Rights

Pursuant to the requirements of K.R.S. 96.060, the City hereby reserves all of the rights identified therein and within the meaning thereof; and the City shall have all of the rights, privileges and authority established thereby; and the Franchisee shall, at its own cost and expense comply with all of the lawful exercise thereof by the City and with all other laws, rules and regulations of all governmental agencies having jurisdiction thereof.

3.3 Franchise Non-exclusive

The franchise hereby established is not an exclusive franchise. It is a non-exclusive franchise; and the City reserves the right to also grant the franchise hereby established to others in accordance with the Kentucky Certified Service Territories Act at KRS 278.016, *et seq* and other applicable law..

3.4 Franchise Not Assignable

The franchise established hereby shall not be assignable without the written consent of the City; however, the Franchisee may assign the franchise to any affiliate which may, during the term of the franchise assume the obligation to provide electricity and/or natural gas

throughout and for consumption within the City without being required to seek the City's consent to such assignment.

3.5 Franchise Area

The franchise established hereby shall be for the use of those portions of the public property within the City that are included in the territory for which the Franchisee has been certified by the Public Service Commission of Kentucky pursuant to K.R.S. Chapter 278, or which it currently serves.

3.6 Effective Period of Franchise

The franchise established hereby shall be effective for a period of ten years, beginning at midnight on the evening of the 15th day of August, 2013 or as soon thereafter as is proper under law, following the grant and award of a franchise hereby established to a Franchisee and ending at midnight on the evening of the 15th day of August, 2023, unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.

3.7 Franchise Termination

In the event of any continuing default by the Franchisee of any of the obligations pursuant of the franchise and after written notice and description thereof has been delivered to the Franchisee by the City by certified mail, return receipt requested, and upon the failure of the Franchisee to reasonably cured the default within a reasonable period of time, the City may terminate the franchise awarded and granted to the Franchisee, through a written notice thereof to the Franchisee, by certified mail, return receipt requested, to be effective no less than ninety (90) days from delivery of said written notice.

3.8 Franchisee Rights and Privileges During Effective Period

During the term of the franchise, the Franchisee may engage in the following activities; but always subject to the rights reserved by the City pursuant to the provisions of the previous Section 3.2 hereof:

3.8.1 Continuation of Existing Facilities

The continued operation, use, maintenance, repair construction and/or re-construction to the existing condition thereof all of the facilities of the Franchisee within or upon any public property within the City.

3.8.2 New Facilities

The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing facilities of the Franchisee, or the construction or installation of new facilities within the franchise area and the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the extension, expansion, construction or installation described in those plans and specifications is contrary to the public health, safety, welfare and

convenience. In the event that any request for the extension or expansion of any existing facilities of the Franchisee or the construction or installation of new facilities of the Franchisee is denied by the Mayor or his designee, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If written denial or approval is not received within thirty (30) days of the Franchisee's notice, the extension, expansion, construction or installation request shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate, efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving, or failing to give, any approval described herein. The Franchisee shall not be required to pay any fee to apply for, or obtain, any permit required by this section.

3.8.3 Pavement Removal, Excavation and Grading

The Franchisee shall provide commercially reasonable notice of any non-emergency removal or revision of any pavement and any excavation and grading reasonably necessary within any public property in the franchise area and the plans and specifications for such new facilities to the City. The Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the proposed pavement removal, excavation or grading is contrary to the public health, safety, welfare and convenience. In the event that any request for pavement removal or revision, excavation or grading is denied by the Mayor or his designee, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the Franchisee's notice. If a written denial or approval is not received within thirty (30) days, the removal or revision of any pavement and any excavation and grading shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate, efficient and reasonable service and that the Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving, or failing to give, any approval described herein. The Franchisee shall not be required to pay any fee to apply for, or obtain, any permit required by this section.

3.8.4 Right of Way Maintenance

The Franchisee shall have the right, without payment of fees, to cut, trim or remove any trees, overhanging branches or other obstructions on public property which in the reasonable opinion of the Franchisee may endanger or interfere with the efficient installation or maintenance of facilities. If, during the franchise period, the City closes to public use any public property in or on which facilities of the Franchisee are located, the City shall make such provisions as may be legal and necessary to grant the Franchisee the right to retain the facilities thereof within that public property, along with the rights to maintain and operate such facilities.

3.8.5 Other Activities

All other activities that are reasonably necessary for the use by the Franchisee of the public property within the franchise area pursuant to the provisions of the franchise hereby established or for any lawful purpose.

3.9 Franchisee Obligations During Effective Period

While this franchise is effective the Franchisee shall:

3.9.1 Surety Bond

Provide the City with and continually maintain a surety bond with (a) the City as the Obligee; and (b) the Franchisee as the Principle; and (c) a surety approved by the Mayor of the City, in an amount equal to \$50,000.00, conditioned upon the faithful performance by the Franchisee of the terms and conditions of the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

3.9.2 Liability Insurance

Provide the City with and continually maintain a comprehensive policy of liability insurance, with the Franchisee and the City as named insureds, and with limits not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, by which the Franchisee and the City are insured against any legal liability to others that is in any way related to any acts or omissions of the Franchisee pursuant to the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

3.9.3 Provision of Electricity and Natural Gas

Provide either or both electricity and natural gas to the consumers thereof within the City that is no less in character, quantity and geographical area than that provided at the time a franchise established hereby is granted and awarded to the Franchisee; and also equal to and no less in character and quantity than that provided to consumers thereof outside of the City and according to the same terms, conditions, rates, charges and costs as approved by the Kentucky Public Service Commission ("Commission")

3.9.4 Maintenance of Facilities

Cause the facilities of the Franchisee within the franchise area to be maintained and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare and convenience.

3.9.5 Prosecution of Work

During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction or installation of any of the facilities of the Franchisee, the Franchisee shall promptly and diligently prosecute such activities to completion within a reasonable time, and at the least possible hazard to the public health, safety, inconvenience and general welfare; and, upon completion thereof, the public property of the City in which

those activities occurred shall be restored by the Franchisee to a condition that is as good or better than the condition thereof at the time of the commencement of those activities.

3.9.6 Relocation of Facilities

During any construction, maintenance, repair, replacement, improvement or expansion by the City of any of the public property within the franchise area or any improvements therein other than the facilities of the Franchisee, or at any other time, the Franchisee shall at the sole cost and expense thereof, remove, relocate or adjust any of the facilities of the Franchisee in such public property within a reasonable time after a written request therefor from the City.

3.9.7 Reserved Rights of the City

Comply at its own cost and expense with the exercise by the City of all of the rights thereof reserved by the City pursuant to the provisions of the previous Section 3.2 hereof.

3.9.8 Franchise Fee

As consideration for the rights conferred by the granting of this ten year franchise, and to compensate the City of Union, Kentucky for its superintendence of the franchise, the successful bidder shall pay to the City of Union, Kentucky a fee of Five Hundred Dollars (\$500.00) upon the following conditions:

- a. The successful bidder will remit to the City of Union, Kentucky the sum of Five Hundred Dollars (\$500.00) within forty-five (45) days of the bid being accepted by the City.
- b. The successful bidder will reimburse the City for costs incurred by the City in advertising the bid and for publication of the necessary ordinances and for the doing of all other acts necessary to the letting of this bid.

3.10 Franchisee Obligations During and After Effective Period

While this Franchise is effective and also thereafter, the Franchisee shall and hereby:

3.10.1 Release

Release, acquit and forever discharge the City, and all of its officers, agents, successors and assigns thereof, from each, every, and any and all obligations and liabilities thereof, jointly and severally, to the Franchisee and the successors and assigns thereof for each, every, and any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to the Franchisee and the successors and assigns thereof, through any act, omission, event or occurrence proximately caused by any negligence of the Franchisee, during the term of the Franchise, which is in any way related to the franchise established hereby or the award or grant thereof to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the Franchise.

3.10.2 Indemnification

Agrees to pay, indemnify and hold the City and its officers, agents, successors and assigns

thereof harmless and to defend them at the request of the City and at the sole cost and expense of the Franchisee, from each, every, any and all obligations and liabilities thereof to others and the executors, administrators, heirs, successors and assigns of such others for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to such others and their executors, administrators, heirs, successors and assigns, through any act, omission, event or occurrence proximately caused by the negligence of the Franchisee during the term of the Franchise, which is in any way related to the franchise established hereby or the award or grant thereof to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee pursuant to the Franchise.

Section 4.0 – Construction

This ordinance shall not be construed in a manner which would create an obligation, requirement or duty on the part of the Franchisee which is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

Section 5.0 – Conflicting Ordinances Repealed

All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 6.0 – Effective Date

This Ordinance shall be effective as soon as possible according to law.

Section 7.0 – Publication

This ordinance shall be published in summary pursuant to K.R.S. 83A.060 (9).

FIRST READING THIS 9th day of July, 2013.

SECOND READING THIS 13th day of August, 2013.

APPROVED:



DONALD KIRBY, MAYOR

ATTEST:

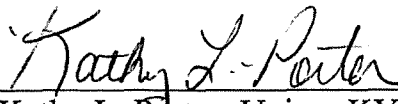


KATHY PORTER, CITY CLERK

CERTIFICATION: KRS 81A.470 FILINGS

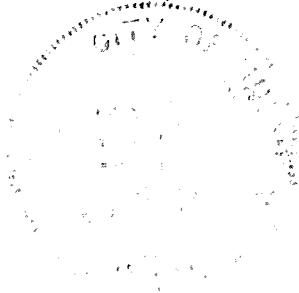
I certify I am the duly qualified City Clerk of the City of Union, Kentucky,
and the foregoing seven (7) pages of Ordinance No. 2013-003 are true,
correct and complete copies duly adopted by the City Commission at a duly
convened meeting held on the 13th day of August, 2013, all as appears in
the official records of said City.

WITNESS, my hand and seal of said City, this 13th day of August 2013.



Kathy L. Porter, Union, KY
City Clerk/Treasurer

Seal (Notarial or City Seal)



Affidavit of Publication

Publisher's Fee 29.18 Affidavit Charge 5.00

State of Ohio

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}
} **SS.**
}
}

Hamilton County

Personally appeared **Janice Colston**

Of the The Community Press and Recorder Newspapers, published weekly in said County and State, and of general circulation in said county, who being duly sworn, deposes and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper 1 times, once in each issue as follows:

8/15/13

- Community Press
- Community Recorder
- Cincinnati.Com

Janice Colston

AFFIANT
Sworn to before me, this

8/15/13

Crystal Williams

Notary Public of Ohio

**CITY OF UNION
SOLICITATION OF
BIDS AND PROPOSALS**

The City of Union (City), 1843 Mount Zion Road, Union, Kentucky 41091, hereby solicits bids and proposals for the award of a ten (10) year non-exclusive franchise for the use of the public streets, alleys and other public grounds of the City for distribution and transmission of either or both natural gas and electricity through and for consumption within the City, the terms of which are included in Ordinance No. 2013-003 that is available from the City Clerk.

All bids and proposals in response to this solicitation must be received by the Union City Clerk at the Warren S. Moore Union City Building in a sealed envelope labeled "2013 Energy Franchise Bid". The time for receipt of proposals has been extended to September 10, 2013 at 4:00 P.M., prevailing time, and they shall remain open for acceptance by the City for thirty (30) days thereafter.

The City of Union reserves the right to reject any and all bids and proposals submitted in response to this advertisement and solicitation.
1001775215



Crystal Williams
Notary Public - State of Ohio
My Commission Expires 08-24-2015

