

January 27, 2020

RECEIVED

JAN 27 2020

PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

Ms. Gwen R. Pinson
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

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 Elsmere, Kentucky; Case No. 2020-00024

Dear Ms. Pinson:

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.

Please do not hesitate to contact me if you have any questions.

Sincerely,



L. Allyson Honaker

Enclosures

RECEIVED

JAN 27 2020

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. 2020- <u>00024</u>
NECESSITY TO BID ON A FRANCHISE)	
TO SERVE THE CITY OF ELSMERE,)	
KENTUCKY)	

APPLICATION

Comes now Duke Energy Kentucky, Inc. ("Duke Energy Kentucky" or "Company"), 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 Elsmere, in Kenton County, Kentucky ("Elsmere"), to provide electricity and natural gas transmission and distribution service, respectfully stating as follows:

1. Duke Energy Kentucky is a Kentucky corporation, originally incorporated on March 20, 1901, that is in good standing and operating as 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 1262 Cox Road, Erlanger, Kentucky, 41018. The Company's email address is KyFilings@duke-energy.com. Duke Energy Kentucky 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 Elsmere. However, that franchise has expired.

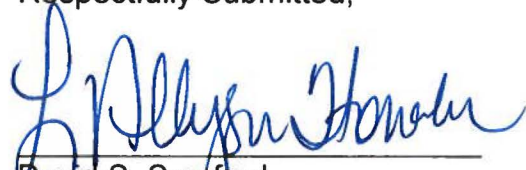
2. Duke Energy Kentucky proposes to bid upon a new municipal franchise to place electric and natural gas transmission and distribution facilities in public streets and places of Elsmere and to provide related service to Elsmere. The new franchise will be awarded by the Elsmere City Council.
3. The Elsmere City Council has passed an Ordinance setting forth the requirements and deadlines for submitting a bid to secure a new franchise. Elsmere has directed that bids shall be received on or before Saturday, February 15, 2020. A copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference. A copy of the subsequent Municipal Order extending the bid deadline is attached as Exhibit B and incorporated herein by reference. A copy of the Legal Notice that was published by Elsmere regarding said new franchise is attached hereto as Exhibit C and incorporated herein by reference.
4. 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.
5. Upon obtaining a franchise from Elsmere, 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 Elsmere, as set forth herein.

This the 27th day of January, 2020.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "L. Allyson Honaker", written over a horizontal line.

David S. Samford
L. Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road
Suite B-325
Lexington, Kentucky 40504
(859) 368-7740
David@gosssamfordlaw.com
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 ELSMERE, KENTUCKY
ORDINANCE NO. 1778-2019**

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

WHEREAS, Duke Energy Kentucky, Inc. (“Duke Energy”) and Owen Rural Electric are public utilities 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 for that use; and

WHEREAS, Duke Energy and Owen Rural Electric currently have access to the streets, alleys and public grounds of the City Of Elsmere, Kentucky (“City”) for the transmission and distribution of electric 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 and Owen Rural Electric had a franchise for the use of the City streets, alleys and public grounds for the transmission and distribution of electric through and for consumption within the City; but that franchise expired pursuant to the terms thereof a few years ago; and

WHEREAS, Duke Energy and Owen Rural Electric currently do not have a franchise for the use of the streets, alleys and public grounds of the City for the transmission and distribution of electric 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 Elsmere, 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 Elsmere, Kentucky in Kenton 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 word "facilities" means 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 Elsmere, Kentucky that has been dedicated or is otherwise open to public use and is subject to regulation by the City Of Elsmere, Kentucky.

1.6 The words "calendar quarter" mean three months (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 publicly, and award it to the highest and best bidder; but the City shall have the right to reject any and all bids.

3.2 Bond Requirement

Pursuant to the requirements of K.R.S. 96.020(1), each bid for the franchise hereby established shall include cash or a certified check equal to five percent (5%) of the fair estimated cost of the plant required to render the service. The deposit shall be forfeited to the City in case the bid is accepted and the bidder fails, for thirty (30) days after the confirmation of the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the plant to be erected. The bond shall be conditioned to be enforceable in case the person giving it fails, within a reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the sale; provided, however, that pursuant to the provisions of K.R.S. 96.020(2) this section 3.2 shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise hereby established.

3.3 Reservation of Rights

The City hereby reserves all of the rights reserved to cities of the Home Rule Class as set forth in KRS Chapter 96 and within the meaning thereof; and the City shall have all of the rights, privileges and authority established thereby; and the Franchisee shall 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.

3.4 Franchise Non-Exclusive

The franchise hereby established is an non-exclusive franchise and shall be granted to the Franchisee(s) in accordance with the Kentucky Certified Service Territories Act at KRS 278.016, et. seq. and other applicable law.

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

3.6 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.

3.7 Effective Period of Franchise

The franchise established hereby shall be effective for a period of ten (10) years, beginning at midnight on the evening of the October 1, 2019 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 September 1, 2029 thereafter, unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.

3.8 Franchise Termination

In the event of any continuing default by the Franchisee of any of the obligations of the franchise, and after a 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 cure 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 notice.

3.9 Franchisee Rights and Privileges During Effective Period

While the Franchise established hereby is effective, 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 3.3 hereof:

3.9.1 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.

3.9.2 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.

3.9.3 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.

3.9.4 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.

3.9.5 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.

3.10 Franchisee Obligations During Effective Period

While this franchise is effective the Franchisee shall:

3.10.1 Surety Bond

Due to the net worth of Duke Energy and Owen Rural Electric, City agrees to waive surety bond.

3.10.2 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.

3.10.3 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 Commission.

3.10.4 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.

3.10.5 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.

3.10.6 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 remove, relocate or adjust any of the facilities of the Franchisee in such public property within a reasonable time after a written request from the City.

3.10.7 Reserved Rights of the City

Comply with the exercise by the City of all of the rights thereof reserved by the City pursuant to the provisions of the previous Section 3.3 hereof.

3.10.8 Franchise Fee

Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee equal to three percent (3%) of the gross receipts of the Franchisee from the sale of electricity and natural gas for consumption within the City during the previous calendar quarter, along with a certification signed by an officer of the Franchisee or a Certified Public Accountant employed by or on behalf of the Franchisee indicating the quarter's gross receipts, payment calculation, and any necessary gross-ups for collections by the franchisee. The franchise fee required hereby is

not in substitution or in lieu of any other tax, fee, imposition or charge for which the franchisee would otherwise be responsible and liable. The franchise fee required hereby is in consideration of the use of the public streets, alleys, and other public grounds within the city by the Franchisee pursuant to the provisions of the franchise hereby established, since such use is a valuable right in property, the acquisition and maintenance of which is very expensive to the City; and, without such use, the franchisee would be required to acquire easements in private property for the transmission and distribution of either or both electricity and natural gas, at considerable expense to the franchisee.

3.10.9 Franchise Fee Annual Cap

Any single customer paying in excess of \$4,000.00 annually will be entitled to a refund of the franchise fee listed above by the City of Elsmere upon written request and documented proof of such overpayment. Said overpayment must be requested by July 30th of the year following collection of the franchise fee.

3.11 Franchisee Obligations During and After Effective Period

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

3.11.1 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 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.

3.11.2 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 be read on two separate occasions, shall be signed by the Mayor, attested by the City Clerk, published in accordance with law and made a part of the records of the City of Elsmere. Same shall be in effect at the earliest time provided by law.

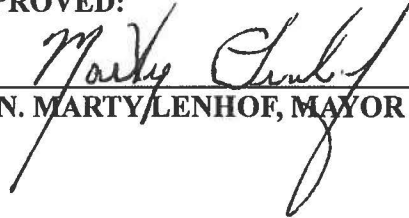
Section 7.0 – Publication

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

FIRST READING August 13, 2019

SECOND READING August 27, 2019

APPROVED:



HON. MARTY LENHOF, MAYOR

ATTEST:



MISTY EZELL CITY CLERK

AYES: 5

NAYS: 0

ABSTAIN: 1

PUBLISHED: _____

CITY OF ELSMERE, KENTUCKY
MUNICIPAL ORDER 15-2019

A MUNICIPAL ORDER EXTENDING THE TIME TO RECEIVE BIDS FOR THE
UTILITY FRANCHISE

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF ELSMERE,
KENTUCKY:

WHEREAS, the City of Elsmere, Kentucky duly advertised, pursuant to Kentucky revised Statutes, for a non-exclusive franchise for the use of the public streets, alleys, and other public grounds of the city for the transmission and distribution of either or both natural gas and electricity through and for consumption within the city; and

WHEREAS, no had bid during the bid process and the city needs to extend the deadline to bid until February 15, 2020; and

Now therefore it be Ordered The City of Elsmere, Kentucky hereby extends the time to bid until February 15, 2020.

DATED THIS THE 7th DAY OF JANUARY, 2020


HON. MARTY LENHOF MAYOR

Pursuant to Elsmere, Kentucky City Code this Municipal Order shall be approved by the City Council for the City of Elsmere, Kentucky and such approval vote was done on the 7th January, 2020.

ATTEST:


MISTY EZELL, CITY CLERK

AYES: 5

NAYS: 0

ABSTAIN: 0



ENQUIRER MEDIA

PART OF THE USA TODAY NETWORK

Advertiser:

CITY OF ELSMERE
318 GARVEY AVE

ELSMERE KY 41018

AFFIDAVIT OF PUBLICATION

Newspaper: CIN-EN Kentucky Enquirer

**LEGAL NOTICE
ATTACHED**

State of Wisconsin

RE: Order # 0004000341

Account #: CIN-385862
Total Cost of the Ad: \$57.20
Last Run Date: 01/14/2020

of Affidavits: 1

This is not an invoice

I, Kathleen Allen

of the The Enquirer, a newspaper printed in Cincinnati, Ohio and published in Cincinnati, in said County and State, and of general circulation in said county, and as to the Kentucky Enquirer published in Ft. Mitchell, Kenton County, Kentucky, who being duly sworn, depose and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper times, once in each issue as follows:

01/14/20

Kathleen Allen
Subscribed and sworn to before me this 22th day of January, 2020

Shelly Hora
Notary Public

8-25-23
Commission expires

SHELLY HORA
Notary Public
State of Wisconsin



The City of Elsmere adopted Ordinance 1778-2019 on August 27, 2019 the Ordinance Re-Established a Non-Exclusive Franchise for the Use of Public Streets, Alleys and other Public Grounds of the City for the transmission and distribution of either or both natural gas and electricity through and for consumption within the city. As of the deadline to bid, the city had not received any bids, and deemed it necessary to extend the time. On January 7, 2020 the city passed Municipal Order 15-2019 which extends the time to bid until February 15, 2020.
KY, Jan14, '20#4000341