

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Electronic Application Of Kentucky Power Company	)	
For A Certificate of Public Convenience And	)	
Necessity Authorizing The Applicant To Apply For	)	Case No. 2023-00348
And Obtain A Franchise From The City Of Jenkins In	)	
Letcher County, Kentucky	)	

**Notice of Filing of Updated Exhibit 2 to Application**

Kentucky Power Company hereby files Updated Exhibit 2 to its Application filed herein on October 24, 2023, which is comprised of the ordinance providing for the advertisement and sale of the City of Jenkins franchise.

Respectfully submitted,



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COUNSEL FOR KENTUCKY POWER  
COMPANY

**Updated Exhibit 2**

Ordinance No. 261

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE ELECTRIC FRANCHISE AUTHORIZING THE FRANCHISEE TO OWN, MAINTAIN, OPERATE, AND CONSTRUCT FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF JENKINS FOR A TEN (10) YEAR TERM, IN CONSIDERATION OF PAYMENT TO THE CITY OF JENKINS OF THE SUM OF THREE PERCENT (3%) OF THE REVENUES RECEIVED BY THE FRANCHISEE FROM ELECTRIC SERVICE PROVIDED BY THE FRANCHISEE WITHIN THE CORPORATE LIMITS OF THE CITY OF JENKINS SEPARATE FROM AND EXCLUSIVE OF ANY LOCAL TAX, STATE TAX, AND FUEL COSTS, RESERVING THE RIGHT TO INCREASE SAID FRANCHISE FEE TO UP TO FOUR PERCENT (4%) OF FRANCHISEE'S REVENUES RECEIVED BY THE FRANCHISEE FROM ELECTRIC SERVICE PROVIDED BY THE FRANCHISEE INSIDE THE CITY OF JENKINS' CORPORATE LIMITS SEPARATE FROM AND EXCLUSIVE OF ANY LOCAL TAX, STATE TAX, AND FUEL COSTS AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; INDEMNIFICATION; INSURANCE; CANCELLATION OR TERMINATION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE OF THE ORDINANCE GRANTING THE FRANCHISE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JENKINS:**

**SECTION 1.**

[a] Subject to the provisions of this Ordinance, there is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, own, maintain, install, use, and repair, in the Right-Of-Way of the City, a system or works for the generation, transmission, and distribution of electrical energy within the corporate boundaries of the City as said boundaries now exist or may hereafter be extended and to persons and entities beyond said boundaries. Such system may include pipes, wire, manholes, ducts, structures, stations, towers, amplifiers, poles, overhead conductors and devices, underground conductors and devices, transformers, and any other apparatus, equipment and facilities (collectively, "Equipment") necessary, essential, and/or used or useful to the distribution and sale of electric service through the City and to persons and entities beyond said boundaries ("Services"). Work performed by the Company under this Franchise shall be performed in such a way as not to unnecessarily interfere with the public's use of City streets. Whenever the surface of any City street is opened by the Company, it must be restored at the expense of the Company within a reasonable time to a condition comparable to what it was prior to the opening thereof. Contractors of the Company performing work pursuant to the franchise shall comply with the City's ordinances except to the extent that such ordinances are inconsistent with the terms of the franchise granted to the Company.

[b] The Company will replace segments of existing overhead facilities within the Right-Of-Way with underground facilities at the request of and cost to the City, in accordance with the Company's general underground practices and procedures and the rules and regulations established by the Kentucky Public Service Commission and the terms of the Company's tariff. Subject to said tariff and such practices, regulations, procedures and rules, repairs or replacements of existing facilities or construction of new facilities within areas where existing facilities have

already been placed underground at the request of the City, shall also be placed underground provided, however, that the City pays all incremental costs associated with placing new facilities in such areas underground, if any.

**SECTION 2.** The following definitions apply to this Ordinance:

*City Council means* the legislative body of the City of Jenkins, Kentucky.

*Company means* the Party or Person that shall become the purchaser of said franchise, or any successor or assignee of such Party or Person.

*Facility includes* all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of the utility in the Right-Of-Way.

*Government or City means* the City of Jenkins, Kentucky.

*Party or Person means* any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

*Public Utility or Utility means* a Party or Person that is defined in KRS Chapter 278.010 as a utility and (i) is subject to the jurisdiction of the Kentucky Public Service Commission or the Federal Energy Regulatory Commission, or (ii) is required to obtain a franchise from the Government to use and occupy the Right-Of-Way pursuant to Sections 163 and 164 of the Kentucky Constitution.

*Right-Of-Way means* the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the Government for the purpose of

public travel and shall include Rights-Of-Way as shall be now held or hereafter held by the Government.

**SECTION 3.**

[a] The Franchise created herein shall be non-exclusive and shall continue for a term of ten (10) years from the effective date of the Ordinance, granting the franchise.

[b] The Company may, at its option, terminate this Franchise upon forty-five (45) days written notice if: (i) the City breaches the terms of this franchise and such breach is not cured within thirty (30) days of the Company providing written notice to the City of such breach; (ii) the Company is not permitted to pass through to affected customers all fees payable by it under Section 8 herein by increasing the charges to customer classifications within the City by a like percentage and separately stating on each affected customer's bill the aforesaid charges; or (iii) the City creates or amends any ordinance or regulation which, in the Company's sole discretion, would have the effect of: (a) substantially altering, amending or adding to the terms of this Ordinance; (b) substantially impairing the Company's ability to perform its obligations under the Franchise in an efficient, unencumbered and profitable way; or (c) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission.

[c] The City may, at its option, terminate this Franchise upon forty-five (45) days written notice if the Company breaches the terms of this franchise; and such breach is not cured by the Company within thirty (30) days of the City providing written notice to the Company of the breach.

**SECTION 4.** The Company is authorized to operate throughout all the territory within the corporate limits of the City for which it is authorized under state or federal law.

**SECTION 5.** This Ordinance shall become effective on the date of its passage and publication as required by law. The Franchise created by this Ordinance shall take effect on the effective date of the Ordinance granting the franchise.

**SECTION 6.** 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 anyone or more of such terms or conditions.

**SECTION 7.** The grantee of this franchise shall save the City harmless from any and all liability arising, in any way, from negligence of the Company in the erection, maintenance or operation of said lines and appurtenances.

**SECTION 8.**

[a] As compensation for the Franchise created by this Ordinance, the City shall receive payment of a total annual fee of three percent (3%) of the revenues received by the Company from the provision of electric service within the corporate limits of the City, separate from and exclusive of any local tax, state tax, and fuel costs. The City shall have the right to increase said franchise fee described above up to four percent (4%) of the revenues received by the Company from the provision of electric service within the corporate limits of the City separate from and exclusive of any local tax, state tax, and fuel costs, and the increase will become effective one hundred eighty (180) days after the date the written notice of the increase is provided to the Company. The City shall provide the Company not less than twenty (20) days' prior written notice of each City Council Meeting at which any increase of the franchise fee will be considered in order to enable a representative of the Company to attend each such meeting. The aforesaid written notice shall be sent by certified mail to Company's registered agent.

[b] Payment of any franchise fees due under the terms of this Franchise shall be made on a quarterly basis within forty-five (45) days of the end of the preceding quarter.

[c] The City shall promptly notify the Company of any alterations made to the boundaries of the City during the term of the franchise and shall promptly provide the Company with all information required by it to calculate and bill the franchise fee due on the revenue received by the Company for providing electric service in the areas affected by the altered boundaries of the City. The Company's obligation to pay the franchise fee due on the revenues it receives from providing electric service in the areas affected by the altered boundaries of the City shall commence thirty (30) days following the Company's receipt of the information required to calculate and bill the franchise fee, and payments of the resulting franchise fee due the City shall be made by the Company within the same forty-five (45) day period as provided in Section 8(b).

[d] Any erroneous underpayment of the franchise fee shall be corrected by the Company within thirty (30) days following the provision of written notice to the Company of the underpayment. No acceptance of any partial payment of the franchise fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount.

**SECTION 9.** The Company shall either self-insure in whole or in part or maintain in force through the term of the Franchise insurance coverage for general liability insurance, auto liability and workers compensation, in accordance with all applicable laws and regulations.

**SECTION 10.** The Company agrees to charge such rate or rates as may from time to time be fixed by the Public Service Commission of Kentucky or any successor regulatory body.

**SECTION 11.** -Company shall have the right to trim and cut trees in order to maintain its equipment and facilities. Company will provide a copy of its vegetation management plan as filed with the Kentucky Public Services Commission to the City upon reasonable request by the City.



The Company will keep debris resulting from said trimming and cutting out of waterways, culverts, and drainage ditches and will keep streets and sidewalks free of such debris.

**SECTION 12.** 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 and any Franchise awarded pursuant to it shall be in a court of competent jurisdiction.

**SECTION 13.** 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 14.** If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

**SECTION 15.** It shall be the duty of the City's Mayor, or his/her designee, to offer for sale the Franchise and privileges created hereunder. Said Franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the City's Mayor after he or she has given due notice thereof by publication or advertisement as required by law. In awarding the franchise, the City shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the franchise.

**SECTION 16.** 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 City's Mayor, or his/her designee, upon the date(s) and at the times(s) fixed by him or her in said publication(s) or advertisement(s) for receiving same. Thereafter, the City's Mayor shall report and submit to the City Council, at the time of its next regular meeting or as soon as practicable


thereafter, said bids and proposals for its approval. The City 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 City's Mayor shall be rejected by the City Council, it may direct, by resolution or ordinance, said franchise and privileges to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.

In addition, any bid submitted by a corporation or person not already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must 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 the City a plant, equipment, and/or Facilities sufficient to render the service required by this

Ordinance. Each bidder for said franchise, privilege, right and authority shall file, as a part of its bid, a certified copy of a Certificate of Convenience and Necessity from the Public Service Commission of Kentucky, issued under the authority of KRS 278.020(3).

FIRST READING: Sept. 11<sup>th</sup> 2023

SECOND READING: Oct. 2<sup>nd</sup>, 2023

  
MAYOR, CITY OF JENKINS, KENTUCKY

ATTEST:  
  
CLERK, CITY OF JENKINS, KENTUCKY

PUBLISHED: 10/18/23

The Mountain Eagle