

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY)	
CORP. FOR A CERTIFICATE OF CONVENIENCE)	CASE NO.
AND NECESSITY TO APPLY FOR A FRANCHISE)	2023-00336
FROM THE CITY OF LEWISPORT AND CITY OF)	
DIXON)	

ORDER

On October 10, 2023, Kenergy Corp. (Kenergy) tendered an application requesting an application seeking Certificates of Public Convenience and Necessity (CPCN) to authorize Kenergy to bid on franchises offered by the cities of Dixon, Kentucky, and Lewisport, Kentucky, respectively, for electric transmission and distribution service. The October 10, 2023 application contained unsigned documents with blank fields, including unsigned ordinances from Dixon and Lewisport that had not been enacted. On December 11, 2023, Kenergy filed an amended application withdrawing its “prior Application”¹ and requesting a CPCN to authorize Kenergy to bid on a franchise offered by the city of Lewisport, Kentucky, for electric transmission and distribution service. Kenergy provided a copy of Ordinance No. 23-08, which authorized granting a franchise for the sale and distribution of electricity within the city of Lewisport boundary that was approved and

¹ Amended Application (filed Dec. 11, 2023), unnumbered page 1.

adopted on November 16, 2023.² Kenergy also provided a copy of the advertisement to bid on the Lewisport franchise that was published on November 23, 2023.³

Sections 163 and 164 of the Kentucky Constitution and KRS Chapter 96 authorize municipal corporations to require public utilities, including non-governmental providers of electricity within the municipal corporations' boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on reasonable and necessary conditions. Under the provisions of KRS 278.020(5), no utility may apply for a franchise from any governmental agency until it has obtained a CPCN from this Commission based on our finding that there is a need and demand for the service sought to be rendered.

In light of the city of Lewisport's enacted ordinance creating a franchise for electric transmission and distribution service, the Commission determines that there is evidence of a need and demand for electric transmission and distribution service in the above-mentioned city. Since the Commission's authority in such matters is limited by statute to finding only whether there is a need and demand for the service sought to be rendered, no finding or determination is made as to the qualifications of the bidder, the validity of any of the provisions of the franchise offered by said city, or the manner in which any franchise fee is to be treated for rate purposes.

Regarding the request for a CPCN for a franchise to provide electric transmission and distribution service to the city of Dixon, per the amended application, Kenergy has withdrawn this request. The Commission notes that evidence of demand and need for

² Amended Application, Unnumbered Exhibit.

³ Notice of Advertisement (filed Dec. 11, 2023).

the franchise is demonstrated by, among other things, enacted ordinances. Thus, without evidence of demand and need for a franchise, the Commission does not have evidence in the case record upon which to render a decision. For this reason, the Commission directs Kenergy to file copies of evidence of demand and need for the franchise, such as enacted ordinances, when Kenergy files future applications for a CPCN on bid on such franchises. Kenergy is on notice that future franchise applications may be rejected for filing if the application is not supported by evidence, such as enacted ordinances.

The Commission directs Kenergy to the Commission's July 22, 2021 Order in Case No. 2020-00085⁴ regarding filings with the Commission.

IT IS THEREFORE ORDERED that:

1. Kenergy's amended application is accepted for filing as of December 11, 2023.
2. Kenergy is granted a CPCN that authorizes it to bid on a franchise offered by the city of Lewisport, Kentucky, for electric transmission and distribution service.
3. If Kenergy is not the successful bidder, Kenergy shall file with the Commission, within ten days of the award of the franchise at issue, a written notice stating that Kenergy was not the successful bidder.
4. If Kenergy is the successful bidder, Kenergy shall file with the Commission, within ten days of the award of the franchise at issue, a copy of the executed franchise agreement and a statement disclosing the amount of the initial franchise fee.

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

5. If Kenergy is the successful bidder, Kenergy shall file with the Commission, within ten days of an increase or decrease in the amount of the initial franchise fee set forth in the franchise agreement, documentation setting forth the revised fee.

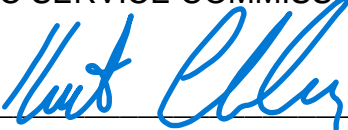
6. Any documents filed pursuant to ordering paragraphs 2, 3, or 4 of this Order shall reference the number of this case and shall be electronically submitted via the Commission's electronic Tariff Filing System.

7. This Order shall not be construed as granting a CPCN to construct utility facilities in said city.

8. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 13 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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