

ORDINANCE NO. 2382

**AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY KENTUCKY REVISING THE FRANCHISEE RELEASE PROVISIONS OF ORDINANCE 2378 BY WHICH THERE WAS ESTABLISHED 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.**

**WHEREAS**, both Duke Energy Kentucky, Inc. ("Duke Energy") and the Owen County Rural Electric Cooperative (OCREC) 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**, neither Duke Energy nor OCREC currently 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;

**WHEREAS**, Ordinance 2378 of the City establishes a non-exclusive three (3) year franchise for the use of the City streets, alleys and public grounds for the transmission and distribution of electricity through and for consumption within the City;

**WHEREAS**, pursuant to the requirements K.R.S. 96.010, ordinance 2378 established the terms and conditions of the franchise, which included Section 3.10.9 that provided for the release by the Franchisee of causes of action that accrue to the Franchisee as a consequence of the negligence of the City;

**WHEREAS**, pursuant to the requirements of Section 164 of the Kentucky Constitution and KRS Chapter 424, the City advertised for bids for the franchise established by ordinance 2378 and publically received bids therefor from both Duke Energy and OCREC;

**WHEREAS**, the bids of both Duke Energy and OCREC were conditioned upon the same revision of Section 3.10.9 of ordinance 2378, which revision is satisfactory to the City;

**NOW, THEREFOR, BE IT ORDAINED BY THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:**

**Section 1.0 – Amendment of Section 3.10.9**

Section 3.10.9 of Erlanger ordinance 2378 is hereby amended as follows, with the words being added indicated by a single solid line beneath them and the words being deleted indicated by a line through them

3.10.9 Release

Except to the extent otherwise prohibited under Kentucky law, Release ~~release~~ acquit and forever discharges the City, and all of the officers, agents, employees, successors and assigns thereof, from each, every, any and all uninsured obligations and liabilities of any of them to the Franchisee and the successors and assigns thereof 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, 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 City that is in any way related to the administration of the franchise established hereby or the award or grant thereof by the City 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 established hereby

#### **Section 2.0 – Provisions Several**

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

#### **Section 3.0 – Conflicting Ordinances Repealed**

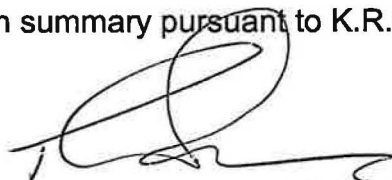
All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

#### **Section 4.0 – Effective Date**

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

#### **Section 5.0 - Publication**

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



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**THOMAS L. ROUSE, Mayor**



## CERTIFICATION

The undersigned, Melissa Andress, City Clerk of the City of Erlanger, in Kenton County, Kentucky, hereby certifies as follows:

1. The foregoing Ordinance No. 2382 was introduced in writing and read to the City Council for the City of Erlanger at regular or special meetings thereof on the 25th day of June, 2013, and at which quorums were present; and said ordinance was enacted by the City Council of the City of Erlanger upon the affirmative vote of at least a majority of a quorum thereof, at the meeting thereof on the 26th day of June, 2013, with the vote of each member of the City Council entered upon the official record of such meeting; and
2. After the passage and adoption of the foregoing Ordinance by the City Council of the City of Erlanger, it was submitted to the Mayor of the City of Erlanger who approved said Ordinance by affixing his signature thereto within ten (10) days after the submission thereof to him; and
3. The foregoing Ordinance was published on the 29th day of June, 2013, in THE KENTUCKY ENQUIRER, a newspaper qualified therefore, pursuant to the provisions of K.R.S. Chapter 424.



Melissa Andress

Director of Administration/City Clerk





**Affidavit of Publication**

**Publisher's Fee 74.12 Affidavit Charge 10.00**

**State of Ohio**

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SS.

**Hamilton County**

Personally appeared **Janice Colston**

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, 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:

6/29/13

- Cincinnati Enquirer
- Kentucky Enquirer
- Cincinnati.Com

**LEGAL NOTICE**  
**ERLANGER ORDINANCE NO. 2382**  
**TITLE**  
 AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY KENTUCKY REVISING THE FRANCHISEE RELEASE PROVISIONS OF ORDINANCE NO. 2378.  
**NARRATIVE**  
 Erlanger Ordinance / No. 2382 was enacted on June 26, 2013; and it is an ordinance that revises the Franchisee release provisions in Section 3.10.9 of Ordinance No. 2378 to narrow the scope of the release by the Franchisee.  
**FINES, PENALTIES, FORFEITURES, TAXES OR FEES**  
 No fine, penalty, forfeiture, tax or fee is imposed by Ordinance No. 2382.  
 1001769072

*Janice Colston*

AFFIANT  
Sworn to before me, this

6/29/13

*Crystal Williams*

Notary Public of Ohio



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

TARIFF BRANCH  
**RECEIVED**  
 7/16/2013  
 PUBLIC SERVICE  
 COMMISSION  
 OF KENTUCKY

**LEGAL NOTICE**

ERLANGER ORDINANCE NO. 2382

**TITLE**

AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY KENTUCKY REVISING THE FRANCHISEE RELEASE PROVISIONS OF ORDINANCE NO. 2378.

**NARRATIVE**

Erlanger Ordinance No. 2382 was enacted on June 26, 2013; and it is an ordinance that revises the Franchisee release provisions in Section 3.10.9 of Ordinance No. 2378 to narrow the scope of the release by the Franchisee.

**FINES, PENALTIES, FORFEITURES, TAXES OR FEES**

No fine, penalty, forfeiture, tax or fee is imposed by Ordinance No. 2382.



ORDINANCE NO. 2383

**AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY KENTUCKY ACCEPTING THE BID OF DUKE ENERGY KENTUCKY, INC. FOR A THREE YEAR NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC GROUNDS OF THE CITY FOR THE TRANSMISSION AND DISTRIBUTION OF BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.**

**WHEREAS**, Duke Energy Kentucky, Inc. ("Duke Energy") and the Owen County Rural Electric Cooperative (OCREC) 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 K.R.S. Chapter 278; 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 does not currently 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;

**WHEREAS**, Ordinance 2378 of the City establishes a non-exclusive three (3) year franchise for the use of the City streets, alleys and public grounds for the transmission and distribution of either or both electricity and natural gas through and for consumption within the City;

**WHEREAS**, pursuant to the requirements of Section 164 of the Kentucky Constitution and KRS Chapter 424, the City advertised for bids for the franchise established by ordinance 2378 and publically received a bid from Duke for both an electric and a natural gas franchise and a bid from the OCREC for an electric franchise, copies of which are attached hereto and incorporated herein by reference;

**WHEREAS**, Duke and OCREC have been certified by the Public Service Commission of Kentucky for different territories pursuant K.R.S. Chapter 278 and each of them currently serve different territories within the City, so that their respective bids are not in conflict;

**NOW, THEREFOR**, BE IT ORDAINED BY THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:

**Section 1.0 – Acceptance of Bids**

The attached bid from Duke Energy is hereby determined to be the highest and best bid for the territory within the City for which Duke been certified by the Public Service Commission of Kentucky pursuant K.R.S. Chapter 278; and that bid is hereby accepted as tendered.

**Section 2.0 – Grant of Electric and Natural Gas Franchise**

Pursuant to Erlanger Ordinance 2378, as amended, and subject to the provisions thereof, Duke Energy is hereby granted a non-exclusive three (3) year franchise for the use of the City streets, alleys and public grounds for the transmission and distribution of either or both electricity and natural gas through and for consumption within the City.

**Section 3.0 – Provisions Several**

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such



other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

**Section 4.0 – Conflicting Ordinances Repealed**

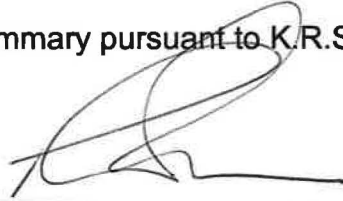
All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**Section 5.0 – Effective Date**

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

**Section 6.0 - Publication**

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



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**THOMAS L. ROUSE, Mayor**





CERTIFICATION

The undersigned, Melissa Andress, City Clerk of the City of Erlanger, in Kenton County, Kentucky, hereby certifies as follows:

1. The foregoing Ordinance No. 2383 was introduced in writing and read to the City Council for the City of Erlanger at regular or special meetings thereof on the 25th day of June, 2013, and at which quorums were present; and said ordinance was enacted by the City Council of the City of Erlanger upon the affirmative vote of at least a majority of a quorum thereof, at the meeting thereof on the 26th day of June, 2013, with the vote of each member of the City Council entered upon the official record of such meeting; and
2. After the passage and adoption of the foregoing Ordinance by the City Council of the City of Erlanger, it was submitted to the Mayor of the City of Erlanger who approved said Ordinance by affixing his signature thereto within ten (10) days after the submission thereof to him; and
3. The foregoing Ordinance was published on the 29th day of June, 2013, in THE KENTUCKY ENQUIRER, a newspaper qualified therefore, pursuant to the provisions of K.R.S. Chapter 424.

  
Melissa Andress

Director of Administration/City Clerk





**Affidavit of Publication**

**Publisher's Fee 113.05 Affidavit Charge 10.00**

**State of Ohio**

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} **SS.**  
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**Hamilton County**

**Janice Colston**

Personally appeared

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 1 times, once in each issue as follows:

6/29/13

- Cincinnati Enquirer
- Kentucky Enquirer
- Cincinnati.Com

**LEGAL NOTICE**  
**ERLANGER ORDINANCE NO. 2383**  
**TITLE**  
 AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY, KENTUCKY ACCEPTING THE BID OF DUKE ENERGY KENTUCKY, INC. FOR A THREE YEAR NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC GROUNDS OF THE CITY FOR THE TRANSMISSION AND DISTRIBUTION OF BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

**NARRATIVE**  
 Erlanger Ordinance No. 2383 was enacted on June 26, 2013; and it is an ordinance that accepts the bid and grants and awards to Duke Energy Kentucky, Inc. a 3 year non-exclusive franchise for the use of the public streets, alleys and other public grounds of the city for the transmission and distribution of both natural gas and electricity through and for consumption within the city.

**FINES, PENALTIES, FORFEITURES, TAXES OR FEES**  
 No fine, penalty, forfeiture, tax or fee is imposed by Ordinance No. 2383.  
 1001769075

*Janice Colston*

AFFIANT  
Sworn to before me, this

*6/29/13*

*Crystal Williams*

Notary Public of Ohio



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

TARIFF BRANCH  
**RECEIVED**  
7/16/2013  
PUBLIC SERVICE  
COMMISSION  
OF KENTUCKY

**LEGAL NOTICE**

ERLANGER ORDINANCE NO. 2383

**TITLE**

AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY, KENTUCKY ACCEPTING THE BID OF DUKE ENERGY KENTUCKY, INC. FOR A THREE YEAR NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC GROUNDS OF THE CITY FOR THE TRANSMISSION AND DISTRIBUTION OF BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

**NARRATIVE**

Erlanger Ordinance No. 2383 was enacted on June 26, 2013; and it is an ordinance that accepts the bid of and grants and awards to Duke Energy Kentucky, Inc. a 3 year non-exclusive franchise for the use of the public streets, alleys and other public grounds of the city for the transmission and distribution of both natural gas and electricity through and for consumption within the city.

**FINES, PENALTIES, FORFEITURES, TAXES OR FEES**

No fine, penalty, forfeiture, tax or fee is imposed by Ordinance No. 2383.

