

ELECTRIC AND NATURAL GAS FRANCHISE AGREEMENT

This Franchise Agreement ("**Agreement**") is hereby made, entered into and effective this 1st day of July, 2014 ("**Effective Date**") by the City of Ludlow, Kentucky, a city of the fourth class with its principal offices at 51 Elm Street, Ludlow, Kentucky ("**City**") and Duke Energy Kentucky, Inc., a Kentucky corporation with its principal place of business in Kentucky located at 4580 Olympic Boulevard, Erlanger, Kentucky ("**Duke Energy Kentucky**").

WITNESSETH:

WHEREAS, Duke Energy Kentucky 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, Section 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 Kentucky now uses 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; and

WHEREAS, Duke Energy Kentucky 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 electricity and natural gas through and for consumption within the City; but that franchise expired pursuant to the terms thereof; and

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

WHEREAS, the City enacted Ordinance 2013-14 to establish a franchise for the transmission and distribution of either or both electricity and natural gas through and for consumption within the City (the "**Ordinance**") and has published notice of said Ordinance in accordance with Kentucky law; and



WHEREAS, Duke Energy Kentucky submitted a bid to continue the transmission and distribution of either or both electricity and natural gas through and for consumption within the City; and

WHEREAS, the City has determined that Duke Energy Kentucky's bid satisfied the requirements of the Ordinance and accepted said bid by an affirmative vote that also authorized and directed the Mayor to enter into this Agreement with Duke Energy Kentucky.

NOW, THEREFORE, in consideration of the recitals, promises and mutual obligations set forth herein, the parties do hereby agree 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 Ludlow 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 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, which is Duke Energy Kentucky.

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

1.6 The words "**Calendar Quarter**" mean three months (25%) 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. Pursuant to action by the City, accepting the bid tendered by Duke Energy Kentucky and authorizing and directing the Mayor to enter into this Agreement, Duke Energy Kentucky is awarded an 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 ("**Franchise**").



Section 3.0 – Terms of Franchise. The terms and conditions of the Franchise hereby established are as follows:

3.1 Bond Requirement. Duke Energy Kentucky shall not be required to post a bond pursuant to K.R.S. 96.020(2) based upon the fact that it already owns plant and equipment sufficient to render the service required under the Franchise hereby established.

3.2 Reservation of Rights. Pursuant to the requirements of KRS Chapter 96, the City hereby reserves all of the rights identified therein and within the meaning thereof for cities of the fourth class; 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.

3.3 Franchise Not Assignable. The Franchise shall not be assignable without the written consent of the City; however, the Franchisee may assign the Franchise to any affiliate, parent, or subsidiary entity which may, during the Term of the Franchise assume the obligation to provide either or both electricity and natural gas throughout and for consumption within or outside the City without being required to seek the City's consent to such assignment.

3.4 Franchise Area. The Franchise established hereby shall be for the use of those portions of the Public Property within the City that are currently served by Duke Energy Kentucky or that are included in the territory for which the Franchisee has been certified by the Kentucky Public Service Commission ("**Commission**") pursuant to K.R.S. Chapter 278.

3.5 Effective Period of Franchise. The Franchise established hereby shall be effective for a period of three (3) years, beginning on the Effective Date of this Agreement and ending on June 30, 2017 ("**Term**"), unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.

3.6 Franchise Termination. In the event of any Continuing Default by Franchisee of any of the obligations of the Franchise hereby established, 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 defaulting 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.

3.7 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 3.2 hereof:

3.7.1 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.

3.7.2 New Facilities. The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing Franchisee Facilities, 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 for the reasons stated herein, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the date of 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.

3.7.3 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 of Franchisee's notice, 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.

3.7.4 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, operation, repair, replacement, or maintenance of the Franchisee's Facilities. If, during the Franchise Term, 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 and upon that Public Property, along with the rights to maintain and operate such Facilities as set forth in this Section.

3.7.5 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 that may otherwise be allowed by law.

3.8 Franchisee Obligations During the Franchise Term. While this Franchise is effective the Franchisee shall:

3.8.1 Surety Bond. Due to the net worth of the Franchisee, no Surety Bond shall be required.

3.8.2 Liability Insurance. Due to the net worth of the Franchisee, no Liability Insurance shall be required.

3.8.3 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 and may be amended from time to time, by the Commission. The Franchisee's tariff that is on file with the Commission, as may be amended from time to time, is incorporated herein as if set forth in full.

3.8.4 Maintenance of Facilities. Cause the Franchisee's Facilities within the Franchise area to be maintained, operated, and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare, and convenience.

3.8.5 Performance of Work. During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction, or installation of any of the Franchisee's Facilities, the Franchisee shall promptly and diligently perform such activities to completion within a reasonable time, and at the least



possible hazard to the City's 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.

3.8.6 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 Franchisee's Facilities, or at any other time, the Franchisee shall, remove, relocate, or adjust any of the Franchisee's Facilities in such Public Property within a reasonable time after a written request therefor from the City.

3.8.7 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 3.2 hereof.

3.8.8 Franchise Fee. Pay to the City within thirty (30) days after the end of the 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 ("**Franchise Fee**"), 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 Calendar 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 street, 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.

3.9 Franchisee Obligations During Effective Period. While this Franchise is effective, the Franchisee shall and hereby:

3.9.1 Release. Releases, acquits, and forever discharges the City, and all of the officers, agents, successors and assigns thereof, from each, every, any and all obligations and liabilities thereof, jointly and severally, 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 therefor, 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, 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.

3.9.2 Indemnification. Agrees to pay, indemnify, and hold the City and the 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 therefor, 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 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 that would create an obligation, requirement, or duty on the part of the Franchisee that is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

Section 5.0 – Miscellaneous.

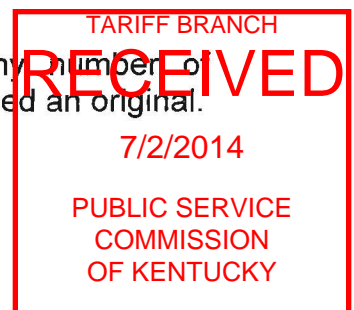
5.1 Headings. Headings of the provisions of this Agreement have been inserted for convenience only and shall in no way affect the interpretation of any term or provision hereof.

5.2 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Any proceeding arising from or relating to this Agreement shall be brought in the Kenton County Circuit Court.

5.3 Waivers. Any waiver at any time by a party of its rights with respect to a default or with respect to any other matters arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

5.4 Prior Agreements. The parties hereby acknowledge that this Agreement contains the entire agreement among the parties and supersedes all prior agreements and understandings related to the subject matter hereof.

5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original.



Section 6.0 – Effective Date. This Agreement shall be effective as of the date forth above.

City of Ludlow, Kentucky

By: *Kenneth Wynn*
Kenneth Wynn, Mayor

Date: 6/23/14

Duke Energy Kentucky, Inc.

By: *J.P. Henning* *AKS*
James P. Henning, President

Date: 6/27/14

ATTEST:

Laurie Sparks
LAURIE SPARKS, CITY CLERK

