

ORDINANCE NO. 2431

AN ORDINANCE OF THE CITY OF ERLANGER IN KENTON COUNTY KENTUCKY ACCEPTING THE BID OF AND GRANTING TO DUKE ENERGY KENTUCKY, INC. 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 BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY FOR THE PERIOD OF JULY 1, 2016 THROUGH JUNE 30, 2019.

WHEREAS, Duke Energy Kentucky, Inc. ("Duke Energy") 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 K.R.S. Chapter 278; 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, Erlanger Ordinance 2378 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; and

WHEREAS, a franchise pursuant to Erlanger Ordinance 2378 for the period of July 1, 2013 through June 30, 2016 was granted to Duke Energy by Erlanger Ordinance 2383; and

WHEREAS, pursuant to the requirements of Section 164 of the Kentucky Constitution and KRS Chapter 424, Erlanger advertised for bids for a franchise pursuant to Erlanger ordinance 2378 for the period of July 1, 2016 through June 30, 2019 and received the attached bid therefor from Duke Energy for the territory within Erlanger for which it has been certified by the Public Service Commission of Kentucky pursuant to K.R.S. Chapter 278

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

Section 1.0 – Acceptance of Bid

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 Energy has 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 that portion of the City for which Duke Energy has been certified by the Public Service Commission of Kentucky, for the period from and including July 1, 2016 through and including June 30, 2019.

Section 3.0 – Provisions Severable

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).



TYSON HERMES, Mayor

TARIFF BRANCH
RECEIVED
6/14/2016
PUBLIC SERVICE
COMMISSION
OF KENTUCKY



James P. Henning
President
Duke Energy Kentucky

139 E. 4th Street
Room 1409-M
Cincinnati, OH 45202

513.287.4078
jim.henning@duke-energy.com

VIA HAND DELIVERY

March 31, 2016

City of Erlanger, Kentucky
Erlanger Municipal Center
Attention: City Clerk
505 Commonwealth Avenue
Erlanger, Kentucky 41018

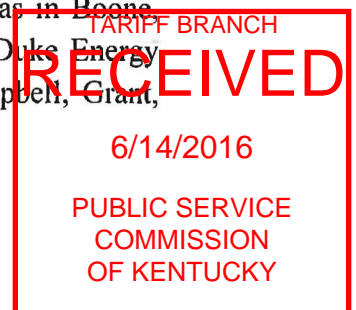
BID FOR ELECTRIC AND NATURAL GAS FRANCHISE

In response to your offer contained in Municipal Order No. 02-16-16-02, incorporating the existing Ordinance Nos. 2378 and 2382, authorized by you on or about February 19, 2016, as amended (the "Ordinance") titled:

A MUNICIPAL ORDER OF THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AUTHORIZING A REQUEST FOR BIDS FOR THE AWARD OF A THREE (3) YEAR NON-EXCLUSIVE FRANCHISE FROM THE CITY FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC GROUNDS IN THE CITY FOR THE TRANSMISSION AND DISTRIBUTION OF EITHER OR BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

THE UNDERSIGNED, Duke Energy Kentucky, Inc., for itself, its successors and assigns, herein called Duke Energy Kentucky or Company, submits its bid and requests that such electric and natural gas franchise be awarded to it in consideration of which the Company shall pay the City of Erlanger, hereinafter called City, the cost of publishing necessary Ordinances hereto, render service and perform all the terms and conditions set forth in such Ordinances.

Duke Energy Kentucky is a Kentucky corporation with its principal office and principal place of business at 139 East Fourth Street, Cincinnati, Ohio 45202. The Company's local office in Kentucky is Duke Energy Envision Center, 4580 Olympic Boulevard, Erlanger, Kentucky 41018. Duke Energy Kentucky is a utility engaged in the natural gas and electric business. Duke Energy Kentucky purchases, sells, stores and transports natural gas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky. Duke Energy Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton Counties.



In response to the Ordinance, Duke Energy Kentucky agrees to be bound by the terms and conditions stated therein with one exception. In response to "Section 3.10.9 Release" that would require the Company to release and discharge the City and all its officers, agent, employees, etc., from *the City's* negligence, Duke Energy Kentucky cannot agree to the provision as currently set forth as the Company believes it is overbroad, unreasonable and potentially contrary to Kentucky law, most notably KRS 371.180. Duke Energy Kentucky does agree however, to release and acquit and discharge the City and its officers, etc., from the City's negligence as set forth below and conditions its bid on the City's acceptance of the following revision:

3.10.9 Release

Except to the extent otherwise prohibited under Kentucky law, release, acquit and forever discharge 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.

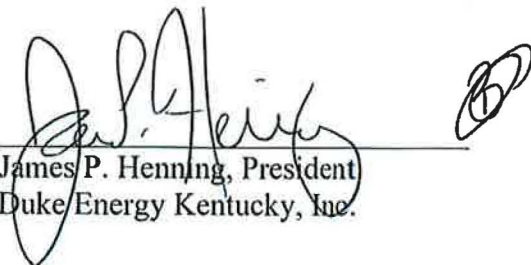
Duke Energy Kentucky currently owns both electric and natural gas plant and equipment in the City of Erlanger that is sufficient to render service as required under the franchise established by the City. As such, pursuant to K.R.S. 96.020(2) and Section 3.2 of the Ordinance, this bid is tendered with the understanding that no bond is required with the submission of this bid. Moreover, the Company's bid is also conditioned upon the City's Mayor granting a waiver of the Surety Bond requirement set forth in Section 3.10.1 and the Liability Insurance requirement set forth in Section 3.10.2 of the Ordinance, as contemplated therein. The Company's bid is also submitted, in part, in reliance upon the representation of counsel for the City that there are currently no fees associated with applying for or receiving the permits described in Section 3.9 of the Ordinance, and that no such fees are contemplated. Duke Energy Kentucky respectfully requests that each of these waivers be included, and that each of these conditions be accepted, in any subsequent ordinance accepting this bid.

In compliance with the Ordinance, the attached tariffs, which are made a part hereof, shall upon acceptance hereof and due filing, be applicable to service rendered within the City, until lawfully changed.



Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



James P. Henning, President
Duke Energy Kentucky, Inc.


enclosure

TARIFF BRANCH
RECEIVED
6/14/2016
PUBLIC SERVICE
COMMISSION
OF KENTUCKY

CERTIFICATION

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

1. The foregoing Ordinance No. 2431 was introduced in writing and read to the City Council for the City of Erlanger at regular or special meetings thereof on the 5th day of April, 2016, 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 3rd day of May, 2016, 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 12th day of May, 2016, in THE KENTUCKY ENQUIRER, a newspaper qualified therefore, pursuant to the provisions of K.R.S. Chapter 424.


Sherry Hoffman
City Clerk



ENQUIRER MEDIA

PART OF THE USA TODAY NETWORK

Advertiser:

CITY OF ERLANGER
505 COMMONWEALTH AVE
ERLANGER KY 41018

AFFIDAVIT OF PUBLICATION

Newspaper: CIN-EN Kentucky Enquirer

STATE OF OHIO

RE: Order #:0001263652

LEGAL ATTACHMENT

LEGAL NOTICE
ERLANGER ORDINANCE NO. 2431
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. 2431 was enacted on May 3, 2016 and it is an ordinance that accepts the bid of and grants and awards to Duke Energy Kentucky, Inc. a non-exclusive franchise for the use of the public streets, alleys and other public grounds of the city for the transmission and distribu-

Account #: CIN-620034
Total Cost of Ad: \$184.79

Last Run Date :05/12/2016

I, Thane Sauger

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:

05/12/16

Subscribed and sworn to me this 24 day of May, 2016

Dedra Petty
NOTARY PUBLIC



Dedra Petty _____ Cincinnati Enquirer
Notary Public, State of Ohio
My Commission Expires _____ Kentucky Enquirer
April 3, 2017 _____ Cincinnati.Com

TARIFF BRANCH
RECEIVED
6/14/2016
PUBLIC SERVICE
COMMISSION
OF KENTUCKY

LEGAL NOTICE

ERLANGER ORDINANCE NO. 2431

TITLE

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NARRATIVE

Erlanger Ordinance No. 2431 was enacted on May 3, 2016 and it is an ordinance that accepts the bid of and grants and awards to Duke Energy Kentucky, Inc. 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 both natural gas and electricity through and for consumption within the city for the 3 year period of July 1, 2016 through June 30, 2019

FINES, PENALTIES, FORFEITURES, TAXES OR FEES

No fine, penalty, forfeiture, tax or fee is imposed by Ordinance No. 2431; but the following provisions of section 3.10.8 of Ordinance No. 2378 obligates the Franchisee to pay a franchise fee to the City that the Kentucky Public Service Commission allows the Franchisee to recover from its customers in the City.

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.

