

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 28th day of May, 2019, by and between the **CITY OF FORT MITCHELL**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Fort Mitchell" or "City"), **DUKE ENERGY KENTUCKY, INC.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky (hereinafter "Duke Energy Kentucky").

WITNESSETH:

WHEREAS, by Ordinance No. 2019-02 adopted April 15, 2019, Fort Mitchell provided for the creation and sale of a non-exclusive franchise, for a term of fifteen (15) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Fort Mitchell, a system or works for the transmission, distribution and sale of electricity from points either within or without the corporate limits of Fort Mitchell, to Fort Mitchell and the inhabitants thereof, and from and through Fort Mitchell to persons, corporations and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; and

WHEREAS, Resolution No. 2018-15 authorized the advertising for bids on said franchise, and Duke Energy Kentucky submitted a timely bid to acquire said franchise; and

WHEREAS, by Ordinance No. 2019-02 Fort Mitchell accepted the bid of Duke Energy Kentucky to acquire said franchise; and

WHEREAS, Fort Mitchell and Duke Energy Kentucky have entered into this Franchise Agreement to memorialize the sale by Fort Mitchell to Duke Energy Kentucky of said franchise subject to the terms and conditions reflected in Ordinance No 2019-02.



NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Fort Mitchell and Duke Energy Kentucky hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 2019-02, which is attached hereto as Exhibit “A”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Duke Energy Kentucky for said franchise, which is attached hereto as Exhibit “B”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. Fort Mitchell has granted unto Duke Energy Kentucky a non-exclusive franchise, for a term of fifteen (15) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Fort Mitchell, a system or works for the sale, transmission and distribution of electricity within or without the corporate boundaries of Fort Mitchell subject to the provisions of the Ordinance and the conditions contained in Duke Energy Kentucky’s bid.

4. The franchise memorialized in this Franchise Agreement shall commence July 1, 2019, and shall expire as provided in the terms and provisions of Ordinance No. 2019-02.

5. Duke Energy Kentucky does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise, subject to the conditions contained in Duke Energy Kentucky’s bid, as memorialized in this Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.



6. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinance and Duke Energy Kentucky's bid, and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

IN WITNESS WHEREOF, Fort Mitchell and Duke Energy Kentucky have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

[Signatures on following page]

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OF KENTUCKY

CITY OF FORT MITCHELL

BY: _____

MAYOR



ATTEST:

Amy K. Swenitzer
CITY CLERK

DUKE ENGERY KENTUCKY

BY: _____



AMY B. SPILLER, President
Duke Energy Kentucky, Inc.



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Exhibit List

- A Ordinance No. 2019-02
- B Bid

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ORDINANCE 2019-02

AN ORDINANCE CREATING AND ESTABLISHING A NON-EXCLUSIVE FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF FORT MITCHELL FOR A FIFTEEN (15) YEAR DURATION, RESERVING THE RIGHT TO IMPOSE A FRANCHISE FEE IN THE SUM OF UP TO FIVE PERCENT (5%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF ELECTRICITY TO ELECTRIC-CONSUMING ENTITIES INSIDE THE CITY OF FORT MITCHELL'S CORPORATE LIMITS AND FURTHER PROVIDING COMPLIANCE WITH RELEVANT LAWS, REGULATION AND STANDARDS; INDEMNIFICATION; INSURANCE; AND CANCELLATION OR TERMINATION; ALL EFFECTIVE ON DATE OF PASSAGE.

WHEREAS, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of electricity within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, the City Council of the City of Fort Mitchell, Kentucky, has found and determined that the construction, operation, maintenance and utilization of an electric franchise over, across or under public right-of-way in the City of Fort Mitchell, benefits said utility and the customers it serves and the City Council has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructures does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and

WHEREAS, in order to protect the health, safety and welfare of the citizens of Fort Mitchell, Kentucky, to protect and preserve the City's public right of way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth herein below.

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**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FORT MITCHELL,
KENTUCKY:**

SECTION 1

(a) There is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, 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 and without the corporate boundaries of the City as it now exists or may hereafter be constructed or extended, subject to the provisions of this Ordinance. Such systems 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 or to any other town or any portion of the county or to any other jurisdiction ("services"). Additionally, the Company shall have the right to use the streets with its service and maintenance vehicles in furtherance of this Franchise. Prior to beginning the construction or installation of any new equipment under this Franchise, the Company shall obtain any necessary governmental permits for such construction or installation, copies of which it shall provide to the City. Work performed by the Company under this Franchise shall be performed in a workmanlike manner and 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, 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. By way of example, brick pavers must be restored with brick pavers and stamped concrete must be restored with stamped concrete. However, in the event a street is opened at the request of the City for a reason other than providing adequate, efficient and reasonable service, then the City shall bear the expense of opening and restoring the street.

(b) Subject to the Company's requirement to provide adequate, efficient and reasonable service, if the City requests, the Company will replace segments of existing overhead facilities as well as construction of new facilities within the Right-of-Way with underground facilities at the cost to the City in accordance with its general underground practices and procedures and rules established by the Kentucky Public Service Commission, if such installation is feasible.

SECTION 2

The following definitions apply to this Ordinance:

City Council means the legislative body of the City of Fort Mitchell.

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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.

City means the City of Fort Mitchell.

Gross Receipts means those amounts of money which the Company receives from its customers within the City's geographical limits or boundaries for the retail sale of electricity under rates, temporary or permanent, authorized by the Public Service Commission and represent amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn-ons, meter sets, insufficient funds, late fees and interest, which are related to but are not a part of the actual retail sale of electricity.

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 City 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 City for the purpose of public travel and shall include Rights-of-Way as shall be now held or hereafter held by the City.

SECTION 3

The Franchise created herein shall be non-exclusive and shall continue for a period of fifteen (15) years from and after the effective date of this Ordinance, as set forth in Section 5. The Company may, at its option, terminate this Franchise upon one hundred eighty (180) days' written notice if (a) the City breaches any of its obligations hereunder and such breach is not cured within ninety (90) days of the Company's notice to the City of such breach, (b) the Company is not permitted to pass through to affected customers all fees payable by it.



under Section 9 herein; or (c) the City creates or amends any ordinance or regulation which, in the Company's sole discretion, would have the effect of (i) substantially altering, amending or adding to the terms of this Ordinance, (ii) substantially impairing the Company's ability to perform its obligations under the Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission. Without diminishing the Company's rights under this Section 3, the City agrees that to the extent it desires to pass or amend an ordinance or regulation which could have the effect of substantially (i) altering, amending, or adding to the terms of this Ordinance; (ii) impairing the Company's ability to perform its obligations under this Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission, that it will first discuss such proposed ordinance or regulation with the Company and the parties shall negotiate in good faith regarding the same.

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 no earlier than thirty (30) days after the City Council accepts the bid(s).

SECTION 6

Subject to Section 3 hereof, the Company will comply with all applicable provisions of lawful City ordinances and regulations (including any amendments thereto), unless such provisions (i) conflict with or impair the Company's ability to comply with any rule, regulation or order issued by the Kentucky Public Service Commission related to the Company's rates or services, (ii) conflict with any provision of the Franchise created by this Ordinance, or otherwise (iii) are preempted by the action of any state or federal authority with jurisdiction over the Company.

The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions.

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SECTION 7

Rights Reserved by City. Subject to the above provisions, the Franchise created by this Ordinance is expressly subject to the right of the City: (i) to repeal the same for misuse, nonuse, or the Company's failure to comply with applicable local, state or federal laws; (ii) to impose such other regulations as may be determined by the City to be conducive to the safety, welfare and morals of the public.

SECTION 8

As consideration for the granting of the Franchise created by this Ordinance, the Company agrees it shall defend, indemnify, and hold harmless the City from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against the City that the Company's use of the Right-Of-Way or the presence or operation of the Company's equipment on or along said Right-Of-Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by the City's negligence, gross negligence or willful conduct. The City shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

SECTION 9

Franchise Fees. For the privilege of utilizing said public streets and rights of ways, the Company, its successors and assigns, shall be required to pay to the City a quarterly payment of up to five (5) percent of gross receipts per month from the Company's sale of electricity inside the City's corporate limits. The City reserves the right to change the franchise fee at any time upon prior ninety (90) days written notice to the Company. Should the City exercise said right to amend the franchise fee, the City shall receive a quarterly payment pursuant to the new rate of gross receipts per month from the Company's sale of electricity inside the City's corporate limits beginning with the first billing cycle on or after the later of ninety (90) days after the date of the written notice or the effective date of the franchise fee specified in the City's notice; *provided, however,* the City shall notify the Company, at least thirty (30) days prior to the effective date, of any annexations or other changes in the City's boundaries and provide the Company a list, in electronic format, of all addresses within the territory annexed or added to or de annexed or otherwise removed from the City's limits that are to be served by the Company.

No acceptance of any franchise fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim the City may have for future or additional sums pursuant to this Franchise. Any additional amount due to the City shall be paid within ten (10) days following written notice to the Company by the City.

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Any other fees assessed to the Company in connection with the Company's use of the City's public ways, including fees associated with permits and licenses of whatever nature, shall be payable by the Company only if and to the extent the Company is authorized by the Kentucky Public Service Commission (or its successor) to pass through such fees to the entities served by it inside the City's corporate limits.

To the extent the Company actually incurs other reasonable incremental costs in connection with its compliance with the City's ordinances, the City agrees that the Company may recover such amounts from its customers pursuant to the terms of a tariff filed with and approved by the Kentucky Public Service Commission, if otherwise permitted by law.

SECTION 10

The Company shall 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. The Company shall maintain a general liability and auto liability coverage minimum limit of \$2,000,000 per occurrence. The Company may elect to self-insure all or part of this requirement.

SECTION 11

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 12

(a) In addition to all other rights and powers pertaining to the City by virtue of the Franchise created by this Ordinance or otherwise, the City, by and through its City Council, reserves the right to terminate and cancel this Franchise and all rights and privileges of the Company hereunder in the event that the Company:

- (1) Willfully violates any material provision of this Franchise or any material rule, order, or determination of the City made pursuant to this Franchise, except where such violation is without fault or through excusable neglect;
- (2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon the City;
- (3) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of this Franchise; or
- (4) Is no longer able to provide regular and customary uninterrupted service to its customers in the franchise area.



(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, the City's Mayor or his or her designee, or the City Council shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 12(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the City may place its request for termination of this Franchise as early as the next regular City Council meeting agenda. The City shall cause to be served upon Company, at least ten (10) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and a reasonable opportunity to cure, such violations, failure or default continue as set forth in Section 12(a).

SECTION 13

Right to Cancel. The City Council shall have the right to cancel the Franchise created by this Ordinance thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied, or has diligently commenced remediation of, all defaults thereunder; and,
2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

SECTION 14

In the event of a change of Kentucky law whereby the retail rates of electric customers are no longer regulated by the Public Service Commission, the City and the Company shall have the option of terminating this Franchise. If this Franchise is terminated by the City or

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the Company pursuant to this provision, the City and the Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise.

SECTION 15

The Company shall have the authority to trim trees that are located within or overhang the Right-Of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other Facilities of the Company after providing notice to the City. Any trimming, removal or other disturbance of trees shall conform to the Company's vegetation management plan required by the Kentucky Public Service Commission. The Company shall make available upon reasonable request of the City, information regarding its tree-trimming practices, including a copy of its vegetation management plan. The Company agrees that, unless impracticable due to an exigency outside of the Company's control, the Company will give the City seven (7) days' notice of any vegetation management being performed in the City. The City shall provide the contact information for the person to whom notice should be given and it is the responsibility of the City to update any change in contact information with the Company. In the event that the Company fails to timely and sufficiently respond to a legitimate and reasonable complaint regarding its tree trimming practices, and such complaint is made known to the City, the City shall contact the Company with respect to such matter and attempt to reach a satisfactory result. Notwithstanding the foregoing, this provision in no way limits any existing or future lawful rights that the City may have with respect to such trees.

SECTION 16

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 in Kenton County, Kentucky.

SECTION 17

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 City or the Company.

SECTION 18

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 19

The Company agrees to reimburse the City its actual costs of advertising, legal and other administrative expenses incurred as a result of this franchise, up to a total amount of three thousand dollars (\$3,000.00) once invoiced by the City.

The Company currently owns within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance and therefore no bond will be required to be posted by the Company.

SECTION 20

The Franchise shall not be assignable without the written consent of the City; however, 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 electricity throughout and for consumption within or outside the City without being required to seek the City's consent to such assignment. If the Company experiences a foreclosure or other judicial sale of all or a substantial part of the Company's Facilities located within the City of Fort Mitchell, the Company shall provide the City at least thirty (30) days advance written notice of such foreclosure or sale.

SECTION 21

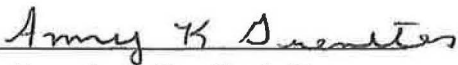
This Ordinance shall be in full force and effect from and after its passage and publication according to law, and said publication may be in summary form.

CITY OF FORT MITCHELL, KENTUCKY

BY: 

Jude S. Hehrman, Mayor

ATTEST:


Amy Guenther, City Clerk/Treasurer

Date of First Reading: 3-18-2019

Date of Second Reading and Enactment: 4-15-2019

Date Published: 4-22-2019

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ENQUIRER MEDIA

PART OF THE USA TODAY NETWORK

Advertiser:

CITY OF FT MITCHELL
2355 DIXIE HWY

FORT MITCHELL KY 41017

AFFIDAVIT OF PUBLICATION

Newspaper: CIN-EN Kentucky Enquirer

**LEGAL NOTICE
ATTACHED**

State of Wisconsin

RE: Order # 0002962984

Account #: CIN-385863

Total Cost of the Ad: \$124.23

Last Run Date: 06/07/2018

I, Erin Oettinger

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:

06/07/18

Erin Oettinger
Subscribed and sworn to before me this 7th day of June, 2018

Vicky Felty
Notary Public

9-19-21

Commission expires

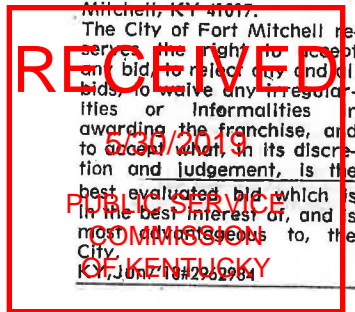


REQUEST FOR BIDS FOR THE CITY OF FORT MITCHELL, KENTUCKY'S ELECTRIC FRANCHISE

The City of Fort Mitchell is soliciting bids from parties interested in obtaining franchises to operate and provide electric systems within the confines of the City of Fort Mitchell, Kentucky. Franchise(s) awarded pursuant to this Request for Bids will be non-exclusive and for a term of one (1) year. Bids must meet all of the requirements set forth in the draft Ordinance, a copy of which may be obtained from the office of the Fort Mitchell City Clerk.

Sealed bids must be received no later than 12:00 p.m. local time on 9th day of July, 2018, at which time the bids will be opened and read aloud publicly in the office of the City Administrator for the City of Fort Mitchell, KY. Sealed bid proposals should be sent to the attention of: Sharmill Reddy, City Administrator, City of Fort Mitchell, 2355 Dixie Highway, Fort Mitchell, KY 41017.

The City of Fort Mitchell reserves the right to accept or reject any and all bids, to waive any irregularities or informalities in awarding the franchise, and to accept what, in its discretion and judgement, is the best evaluated bid which is in the best interest of, and is most advantageous to, the City.
CIN-385863
06/07/2018
0002962984





Amy B. Spiller
President
Duke Energy Kentucky

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

513.287.4359
amy.spiller@duke-energy.com

VIA HAND DELIVERY

July 9, 2018

Sharmili Reddy, City Administrator
City of Fort Mitchell
2355 Dixie Highway
Fort Mitchell, KY 41017

BID FOR ELECTRICITY AND NATURAL GAS FRANCHISE

In response to your offer contained in Resolution No. 2018-15, passed by you on May 21, 2018, (the "Resolution") titled:

A RESOLUTION OF THE CITY OF FORT MITCHELL, KENTUCKY AUTHORIZING THE SOLICITATION OF BIDS FOR 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 ELECTRICITY AND NATURAL GAS THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

THE UNDERSIGNED, Duke Energy Kentucky, Inc., for itself, its successors and assigns, hereinafter "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: (1) pay to the City of Fort Mitchell, hereinafter called "City," the franchise fee of up to 5% of gross receipts from the sale of electricity and natural gas for consumption, per month; and (2) reimburse the City up to \$3,000.00 to cover the actual costs of publication and attorney's fees the City incurs in the establishment of this Electricity and Natural Gas Franchise Agreement.

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 electric and natural gas 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

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also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton Counties.

Since the City has not formally passed an Ordinance containing the terms of the franchises, Duke Energy Kentucky's bid is being tendered in reliance upon the draft ordinances provided by the City's attorney and attached to this bid as Exhibits 1 and 2 (Draft Ordinances). Except as set forth herein, any changes made to the terms of the Draft Ordinances would have to be specifically agreed to by Duke Energy Kentucky in writing or this bid would be void. Moreover, it is agreed by Duke Energy Kentucky that all terms of the Natural Gas and Electric Franchises will be contained in a Franchise Agreement that will be entered into by the City and Duke Energy Kentucky.

Duke Energy Kentucky's bid is conditioned upon several items in the Draft Ordinances being amended or acknowledged. The first item is contained in Section 1(b). Duke Energy Kentucky cannot accept this section as written as it would impose considerable expense upon the customers of Duke Energy Kentucky both inside and outside the municipal boundaries of Ft. Mitchell and said provision is generally inconsistent with the Company's tariff. Accordingly, this bid is expressly conditioned upon Section 1(b): (1) being stricken from the terms of any final Franchise Ordinance and Franchise Agreement; or (2) being revised to read as follows and be included in any subsequent ordinance or resolution accepting this bid and made a part of the Franchise Agreement:

Subject to the Company's requirement to provide adequate, efficient and reasonable service, 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 its general underground practices and procedures and rules established by the Kentucky Public Service Commission, if such installation is feasible. Subject to such practices and procedures and rules, repairs or replacements of existing facilities or construction of new facilities within areas where existing facilities have been placed underground at the request of the City also shall be placed underground; **provided, however, the City pays incremental costs associated with placing new facilities in such areas underground, if any.**

Duke Energy Kentucky currently owns both electric and natural gas plant and equipment in the City that is sufficient to render service as required under the Draft Ordinances tendered by the City. As such, pursuant to KRS 96.020(2) and Section 20 of the Draft Ordinance, this bid is



tendered with the understanding that no bond is required with the submission of this bid. Moreover, the Company gives notice that it is a self-insured entity as contemplated in Section 10 of the Draft Ordinances. Duke Energy respectfully requests that these items be included in any subsequent ordinance or resolution accepting this bid and made a part of the Franchise Agreement.

Duke Energy Kentucky acknowledges the City reserves the right to increase the franchise fee at any time upon prior ninety (90) days written notice to Duke Energy Kentucky. Should the City exercise said right to increase the franchise fee, the City shall receive a monthly payment of up to five (5) percent of gross receipts per month from Duke Energy Kentucky's sale of electricity and natural gas to electric- and gas-consuming entities (which includes businesses, industrial facilities, and dwellings) inside the City's corporate limits beginning with the first billing cycle on or after the later of ninety (90) days after the date of the written notice or the effective date of the franchise fee specified in the City's notice.

Duke Energy Kentucky agrees to comply with all of the remaining terms contained in the Draft Electric and Natural Gas Franchise Ordinances.

In compliance with the Draft Ordinances (as amended), 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.

If this bid is acceptable to the City with the conditions contained herein, Duke Energy Kentucky does respectfully request that its terms be set forth in an Electric and Natural Gas Franchise Agreement to be made and entered into between the City and the Company.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Amy B. Spiller, President
Duke Energy Kentucky, Inc.

Enclosures

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