

**CITY OF PARIS
ORDER NO. 2023-16**

**A MUNICIPAL ORDER ACCEPTING A BID FROM AND AWARDING A
SEVEN YEAR ELECTRIC DISTRIBUTION FRANCHISE TO
KENTUCKY UTILITIES COMPANY**

WHEREAS, the Board of Commissioners of the City of Paris previously adopted Ordinance No. 2023-1 which authorized the advertisement for bids to award a franchise for the purposes of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing an electric distribution system or service through, along, across, and under the public right-of-way within the geographical boundaries or limits of the City of Paris, Kentucky; and

WHEREAS, Kentucky Utilities Company has been granted a Certificate of Convenience and Necessity by the Commonwealth of Kentucky Public Service Commission dated March 8, 2023 that authorizes Kentucky Utilities Company to bid on a franchise for electric distribution services offered by the City of Paris; and

WHEREAS, Kentucky Utilities Company was the sole bidder of the electric distribution franchise and proposed terms substantially similar to the terms of the request for bids but offered; and

WHEREAS, the Board of Commissioners desires to reach agreement with the responsive bid of Kentucky Utilities Company while reserving concerns about the terminology and language contained in Article VII(C). However, to avoid any further debate and in an effort to compromise the parties' positions and reach agreement, the Board of Commissioners accepts the inclusion of Article VII(C) into the Franchise Agreement and advises future City officials and administrators to consider this language upon the issuance of any additional Franchise Agreement;

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF PARIS CITY COMMISSION AS FOLLOWS:

Section 1. Kentucky Utilities Company be and is hereby awarded a seven year electric distribution franchise for operation of a electric distribution system within the confines of the City of Paris based upon and subject to the terms, specifications, restrictions and obligations as set forth in the attached Franchise Agreement.

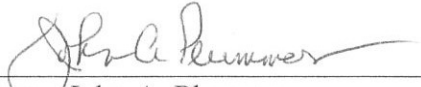
Section 2. The Mayor of the City of Paris is hereby authorized and directed to execute any necessary documents to memorialize this Order including execution of the Franchise Agreement, and City staff is authorized to perform any and all acts pursuant to the implementation of the electric distribution franchise.

Section 3. If any section, sentence, clause or phrase of this Order or the Franchise Agreement is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Order or the Franchise Agreement.



Section 4. That this Order shall take effect immediately.

The foregoing Order was adopted and approved at the Board of Commissioner's regular meeting of April 11, 2023.



Mayor, John A. Plummer

ATTEST:



City Clerk, Stephanie Settles



FRANCHISE AGREEMENT

Article I

DEFINITIONS:

As used in this agreement, the following words and phrases shall have the following meanings:

- (A) "Service Commission" means the Kentucky Public Service Commission.
- (B) "City Commission" means the governing body of the City of Paris.
- (C) "City" means the City of Paris, Bourbon County, Kentucky and any such territory that may in the future be included within the boundaries of the City of Paris.
- (D) "Franchise" shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise ordinance.
- (E) "Grantee" shall mean Kentucky Utilities Company.
- (F) "Grantor" shall mean the City of Paris, Kentucky
- (G) "Public Right-of-Way" shall mean the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, municipal utility easement or any other public ways owned, dedicated by plat, occupied or used by the public and within Grantor's geographical limits or boundaries established by applicable law.
- (H) "Revenues" refer to and are those amounts of money which the Grantee receives from its customers within the Grantor's geographical limits or boundaries for the retail sale of electric service or electricity under rates, temporary or permanent, authorized by the Service Commission and represents 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, non-sufficient funds, or late fees and interest, which are related to but are not a part of the actual retail sale of electric service or electricity.
- (I) "System" shall mean the system of works, poles, lines, wires, pipes, pipelines, facilities, fixtures, apparatus, machinery, equipment, structures, appliances, appurtenances, manholes, ducts, stations, towers, amplifiers, underground conductors and devices, transformers, or other infrastructure reasonably necessary for the storage, transportation, distribution or sale of electric service or electricity to residential, commercial, and industrial customers and the public generally, within the geographical limits or boundaries of the Grantor.

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Article II

GRANT OF FRANCHISE:

(A) There is hereby created and granted unto Grantee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain, replace and repair in the Public Right-of-Way the System, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed by Grantor upon the same terms and conditions herein, subject to the approval of the Service Commission, if any such approval is required.

(B) The franchise granted to Grantee by the Grantor shall not be exclusive and the Grantor reserves the right to grant a similar franchise to any other person or entity at any time. In the event the Grantor shall grant to another person or entity during the term hereof a franchise for an electric distribution system or sale of electricity within the geographical boundaries or limits of Grantor similar to the one herein granted to Grantee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional grantee than those terms contained herein. Additionally, it is agreed that any such new/additional grantee shall have no right to use any portion of the System without Grantee's written consent.

Article III

TERM EFFECTIVE DATE AND ACCEPTANCE OF FRANCHISE:

(A) The term of this Franchise shall be for a term of seven (7) years.

(B) The franchise created here shall become effective with the first billing cycle on or after the expiration of the existing franchise agreement, following passage and approval by the City, in accordance with applicable laws and regulations, and upon acceptance and execution by the Grantee.

(C) The terms and conditions of any previous ordinance or act by the Board of Commissioners related to the granting of a franchise to or with Grantee are superseded by the terms and conditions of this Agreement.

(D) In addition, the term of the franchise may be extended up to twelve (12) months by agreement of the parties in order to provide for the good faith negotiation of a new franchise.

Article IV

GRANTEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:

The Grantee shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing an electric distribution system or service through, along, across, and under the Public Right-of-Way within the geographical boundaries or limits of the Grantor as it now exists or may hereafter be constructed or extended, subject to the inherent reasonable police powers conferred upon or reserved unto the Grantor and the provisions of this Agreement.

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Article V

OPERATION OF SYSTEM - EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The System shall always be installed, operated, and maintained in good working condition as will enable the Grantee to furnish regular and customary service to all its residential, commercial, and industrial customers. The System shall be designed, installed, constructed, and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance, and operation of electric distribution systems.

(B) Grantee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

(C) Grantee shall install all aspects of its Service overhead at such height and underground at such depth, and in such a manner, so as to not interfere, once installed, with existing pavement, curbs, gutters, overhead wires or cables, underground wires or cables, water or sewer pipes, or any other currently installed infrastructure that is controlled by the Grantor.

(D) Grantee understands and acknowledges that the City has enacted Ordinance 2018-15 that addresses excavations and construction in Public Rights-of-Way including permitting for work within the right-of-way and for restoration of an excavated street. Grantee agrees to comply with that Ordinance where applicable. Grantor agrees to provide written notice to Grantee in the event any revisions are made to that Ordinance during the term of this Franchise.

(E) Pursuant to Ordinance 2018-15, Grantee is also required to pay an additional amount to Grantor for its permitting of the Grantee's work in the Public Rights-of-Way. These permitting fees shall be in addition to the above franchise fee. These permitting fees are subject to change during the term of the franchise.

Article VI

DEGREDDATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

In the event that Grantor or any other entity acting on behalf of Grantor requests that Grantee remove, move, modify, relocate, reconstruct or adjust any part of the System from their then-current locations within the streets, alleys, and public places of Grantor in connection with a public project or improvement, then Grantee shall relocate the system facilities affected by such project or improvement. Grantor and Grantee shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. Costs associated with such relocation shall be borne by the party requesting the relocation. In addition, Grantor and Grantee shall communicate in a timely fashion to coordinate projects included in any of Grantor's capital improvement plans, Grantor's short-term work program, or Grantor's annual budget in an effort to minimize relocation of Grantee's facilities.



Article VII

COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND CONSIDERATION FOR FRANCHISE:

(A) In consideration for the granting and exercise of the rights and privileges created hereunder, and in further consideration of the grant to the Franchisee of the right to make use of Public Right-of-Way, Grantee shall pay to the Grantor, during the entire life of the franchise, a sum equal to the following amounts during the following periods of time:

- 1) Upon the effective date of this Franchise Agreement until May 1, 2025, two percent (2%) of its Revenues.
- 2) Upon May 1, 2025 until May 1, 2027, two and one-half percent (2.5%) of its Revenues.
- 3) Upon May 1, 2027 until the expiration of this Franchise Agreement or the adoption of a subsequent one, three percent (3%) of its Revenues.

The fee prescribed herein shall be paid to the Grantor on or before the 30th day after the end of each calendar quarter after the effective date hereof, and the Grantee shall furnish to the Grantor quarterly a statement of Grantee's Revenues.

(B) Grantor shall provide the Grantee a list, in electronic format, of all street addresses within Grantor's boundaries or corporate limits that are to be served by Grantee, which list shall be updated annually.

(C) The franchise fee described in paragraph (A) above shall be payable by the Grantee only if and to the extent the Grantee is authorized by the Service Commission (or its successor) to pass through such fee to the customers served by Grantee inside the Grantor's corporate limits.

(D) The franchise fee provided herein, together with any charges of the Grantor for water, sewage, and or other public utility services provided by the Grantor to Grantee, and any applicable occupational license fees or sales, ad valorem, or other taxes payable to the Grantor by the Grantee under applicable law, shall constitute the only amounts for which Grantee shall be obligated to pay to the Grantor and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Grantor, currently or in the future, may charge Grantee or assess against Grantee's property.

(E) The Grantor, through its duly authorized representative and at all times reasonable, shall have access to, and the right to inspect Grantee's books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

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Article VIII

SERVICE TO NEW AREAS:

(A) If during the term of this franchise the boundaries of the Grantor are expanded, the Grantor will promptly notify Grantee in writing of any geographic areas annexed by the Grantor during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Grantee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area, a list of all street addresses within the Grantor's limits that are to be served by the Grantee, and such other information as Grantee may reasonably require in ascertaining whether there exist any customers of Grantee receiving electric service in said annexed area. To the extent there are such customers therein, then the revenue of Grantee derived from the retail sale of electric service or electricity to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Grantee's billing cycle immediately following Franchisee's receipt of the Annexation Notice.

(B) The failure by the Grantor to advise Grantee in writing through proper Annexation Notice of any geographic areas which are annexed by the Grantor shall relieve Grantee from any obligation to remit any franchise fees to Grantor based upon revenues derived by Grantee from the retail sale of electric service or electricity to customers within the annexed area prior to Grantor delivering an Annexation Notice to Grantee in accordance with the terms hereof.

Article IX

BREACH OF FRANCHISE – REMEDIES:

In the event of a breach by Grantee of any material provision hereof, the Grantor may terminate the franchise and rights granted to Grantee hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(A) Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body. Such notice must:

i. fairly and fully set forth in detail each of the alleged acts or omissions of Grantee that the Grantor contends constitutes a substantial breach of any material provision hereof,

ii. designate which of the terms and conditions hereof the Grantor contends Grantee breached, and

iii. specify the date, time, and place at which a public hearing will be held by the governing body of the Grantor for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

(B) Within sixty (60) days following the adjournment of the public's hearing described in Subsection (A) above, the Grantor must deliver to Grantee, by certified or registered mail, a written

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notice signed by the mayor or other duly authorized member of Grantor's governing body, setting forth:

i. the acts and omissions of Grantee described in the first notice that the governing body of the Grantor determines to have in fact occurred and

ii. the specific terms and conditions hereof listed in the first notice that the governing body of the Grantor determines to have in fact been breached by such acts or omissions of Grantee.

(C) The Grantor must permit Grantee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection (B) above within sixty (60) days after Grantee's receipt of such notice.

(D) In the event of a breach by Grantor of Article IV of this Agreement, the Grantee may terminate this Agreement, provided, however, that such termination shall not be effective unless and until the Grantee provides Grantor written notice of the breach and Grantor be provided sixty (60) days from the receipt of such notice to remedy such breach.

Article X

FORCE MAJEURE:

(A) Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the parties are prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which the parties are so prevented shall not be counted against them for any reason.

(B) The term "force majeure," as used herein, shall mean any cause not reasonably within the parties' control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of electric supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Agreement.

Article XI

ADDITIONAL REQUIREMENTS – MISCELLANEOUS PROVISIONS:

(A) Grantee shall at all times indemnify and hold harmless the Grantor from and against any and all lawful claims for injury to any person or property by reason of Grantee's or its employees' failure to exercise reasonable care in installing, maintaining and operating the System. Provided, however, that none of the provisions of this paragraph shall be applicable to the extent the Grantor, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about injury to any person or property. In such event,

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any liability shall be apportioned between the Grantor and the Grantee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

(B) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the Grantor.

(C) Without diminishing the Grantee's rights hereunder, Grantor agrees that to the extent it desires to pass or amend an ordinance which could have the effect of substantially impairing Grantee's ability to perform its obligations under this Agreement in an efficient and unencumbered way, that Grantor will provide notice of such proposed ordinance to Grantee.

(D) If any section, subsection or provision of this Agreement or any part thereof is for any reason found or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this Agreement, which shall remain in full force and effect.

(E) This Agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.


(F) To the extent that any other ordinances of the Grantor or portions thereof are in conflict or inconsistent with any of the terms or provisions hereof, then the terms of this Agreement shall control.

(G) To the extent any federal or state law or regulation, or Order or rule of the Kentucky Public Service Commission or Grantee's approved tariffs, are in conflict or inconsistent with any terms or conditions of this franchise, then the terms of such law, regulation, Order, rule or tariff shall control.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the City of Paris, Kentucky, acting by and through its Mayor John A. Plummer and on behalf of Kentucky Utilities Company acting by and through its Vice-President of Customer Services, Eileen L. Saunders.

CITY OF PARIS, KENTUCKY

KENTUCKY UTILITIES COMPANY

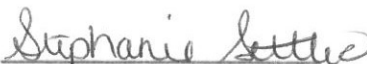

JOHN PLUMMER
MAYOR, CITY OF PARIS


EILEEN L. SAUNDERS
VICE PRESIDENT, CUSTOMER SERVICES

DATE: 4/11/2023

DATE: 3/30/2023

ATTEST:


City Clerk

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