

CITY OF WINCHESTER, KENTUCKY
ORDER NO. 2015-165

AN ORDER AWARDING A TEN (10) YEAR ELECTRIC FRANCHISE TO KENTUCKY UTILITIES COMPANY FOR THE OPERATION OF AN ELECTRIC SYSTEM WITHIN THE CONFINES OF THE CITY OF WINCHESTER, KENTUCKY BASED UPON AND SUBJECT TO THE CONDITIONS OF ORDINANCE NO. 7-2015

WHEREAS, the City of Winchester by virtue of Ordinance No. 7-2015 heretofore passed by the Commission of the City of Winchester has advertised for bids to award a franchise for the use of certain streets, alleys, and public grounds of the City of Winchester, Kentucky, for the purpose of owning, operating, equipping, and maintaining a system for the transmission and distribution of electric energy.

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

WHEREAS, Kentucky Utilities Company was the sole bidder of the electric franchise and has agreed to the terms as set forth in described in Ordinance No. 7-2015.

NOW, THEREFORE, BE IT ORDERED BY THE WINCHESTER CITY COMMISSION THE FOLLOWING:

Section 1. That Kentucky Utilities Company be and is hereby awarded a ten (10) year electric franchise for operation of an electric system facility within the confines of the City of Winchester based upon and subject to the terms, specifications, restrictions and obligations set forth in Ordinance No. 7-2015.

Section 2. That the Mayor of the City of Winchester is hereby authorized and directed to execute any documents pertaining thereof, and City Staff is authorized to perform any and all acts pursuant to the implementation of the electric franchise.

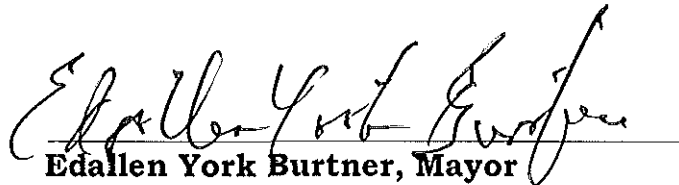
Section 3. That if any section, sentence, clause, or phrase of this Order is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Order.



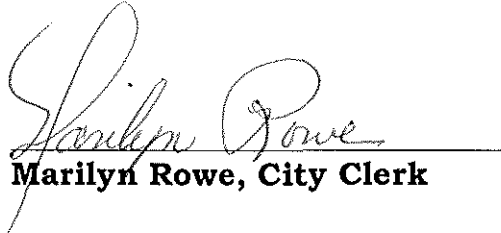
Section 4. That this Order shall be effective on the date of its passage.

Introduced and adopted at a meeting of the Winchester Board of Commissioners of the City of Winchester, Kentucky held on

October 6, 2015


Edallen York Burtner, Mayor

ATTEST:


Marilyn Rowe, City Clerk

Reviewed by William A. Dykeman, City Attorney October 2, 2015



FRANCHISE AGREEMENT

This Franchise Agreement (“Agreement”) is hereby made and entered into this 6th day of October, 2015 by and between the City of Winchester in the Commonwealth of Kentucky (“City”) and Kentucky Utilities Company (“Company”).

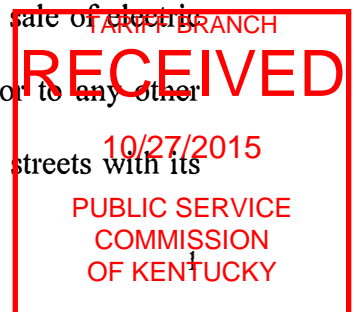
WITNESSETH:

WHEREAS, the City adopted an Ordinance (# 7-2015) on September 1, 2015, pursuant to which the City has awarded the Company an exclusive electric franchise (“Franchise”) over the public rights-of-way within the City’s corporate limits, subject to and in accordance with the terms of this Agreement; and

WHEREAS, the above-referenced Ordinance requires that the City and the Company execute this Agreement;

NOW, THEREFORE, in consideration of the faithful performance and strict observance by the Company and the City of all terms, provisions, conditions, obligations and reservations set forth herein, it is hereby agreed between the parties as follows:

1. Grant and Acceptance. The City hereby grants to the Company an exclusive franchise to enter upon, acquire, construct, operate, maintain, install, use, and repair, in the public right-of-way of the City, an electric distribution system within the corporate boundaries of the City as it now exists or may hereafter be constructed or extended, subject to the provisions of this Agreement. Such system 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 and to any other town or any portion of the county or to any other county (“Services”). Additionally, the Company shall have the right to use the streets with its



service and maintenance vehicles in furtherance of the Franchise. Prior to beginning the construction or installation of any new equipment under the 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 the 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.

2. Definitions. Terms not defined but referred to herein shall be construed to reflect a common usage or the common usage as would apply in the electric service industry.

3. Term of Franchise; Termination. The Franchise shall be exclusive and shall continue for a period of ten (10) years from and after the effective date of this Agreement, as set forth in Section 5. The Company may, at its option, terminate the Franchise and this Agreement upon ten (10) days' written notice if (a) the City breaches any of its obligations hereunder and such breach is not cured within sixty (60) 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 Sections 9 and 10 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 Agreement, (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. ~~With~~ ~~the~~ ~~effect~~ ~~of~~ ~~substantially~~ ~~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 Agreement; (ii) 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, that it will first discuss such proposed ordinance or regulation with the Company and the parties shall negotiate in good faith regarding the same. Additionally, the City, may at its option, terminate the Franchise and this Agreement upon ten (10) day's written notice if the Company breaches any of its obligations hereunder and such breach is not cured within sixty (60) days of the City's notice to the Company of such breach.

4. Territorial Extent of the Franchise. 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.

5. Effective Date. This Agreement shall become effective 90 days after the execution hereof.

6. Compliance With City Regulations. 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, or otherwise (ii) are preempted by the action of any authority with jurisdiction over the Company.

7. Rights Reserved by City. Subject to the above provisions, the Franchise 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; and/or (iii) to control and regulate the use of its streets, roads, alleys, bridges, public places and space about and beneath them.

8. Liability and Indemnification. The Company shall indemnify, defend, and hold harmless the City from and against claims by third parties asserted against the City that the Company's use of the public streets or the presence or operation of the Company's equipment on or along said streets 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 or misconduct.

9. Franchise Fees. As compensation for the Franchise granted to the Company, the City shall receive payment of a total annual fee of one and three quarter (1.75) percent of gross receipts per year from the Company's sale of electricity to electric-consuming entities inside the City's corporate limits with the reserved right to increase to a total annual fee of up to three (3) percent of gross receipts at each one (1) year anniversary of the franchise agreement; *provided, however,* that such fee 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 fee to the entities served by it inside the City's corporate limits; *and provided further,* the City shall provide the Company a list, in electronic format, of all addresses within the City's corporate limits and a City limits boundary map, which shall be updated annually.

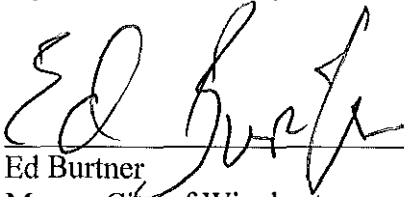
10. Other Fees. Any other fees assessed to the Company in connection with the Company's use of the City's public ways, including fees associated with permits and licenses of whatever nature, shall be payable by the Company only if and to the extent the Company is authorized by the Kentucky Public Service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

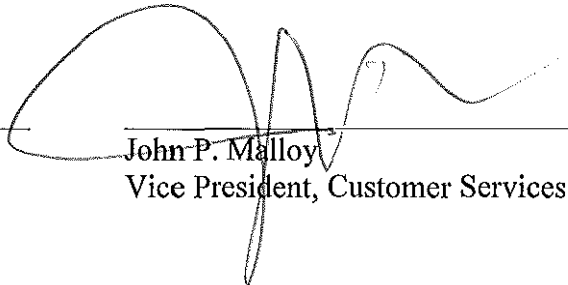


11. Insurance Bonds. The Company shall maintain in force through the term of the Franchise both general liability insurance and motor vehicle insurance, in accordance with all applicable laws and regulations.

12. Rate Regulation. 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.

Agreed to this 6th day of October, 2015.


Ed Burtner
Mayor, City of Winchester


John P. Malloy
Vice President, Customer Services

