

ORDINANCE NO. 04-2024

AN ORDINANCE OF THE CITY OF FORT WRIGHT IN KENTON COUNTY, KENTUCKY ESTABLISHING 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 EITHER OR BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

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, 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 either or both electricity and natural gas through and for consumption within the City, but that franchise expired pursuant to the terms thereof; and

WHEREAS, Duke Energy does not currently have a franchise for the use of 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

NOW, THEREFORE, for the purpose of complying with the Constitution and Statutes of Kentucky and pursuant to the authority and requirements of Section 163 and 164 of the Kentucky Constitution and K.R.S. 96.010 through 96.045:

BE IT ORDAINED BY THE CITY OF FORT WRIGHT 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 Fort Wright 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.

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

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. There is hereby established a non-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 the City ("Franchise").

Section 3.0 – Terms of Franchise.

As required by K.R.S 96.010, the terms and conditions of the Franchise hereby established are as follows:

3.1 Bidding Requirement

Pursuant to Section 164 of the Kentucky Constitution, before granting the franchise hereby established, the City shall first, after due advertisement, receive bids publicly, and award it to the highest and best bidder; but the City shall have the right to reject any and all bids.

3.2 Bond Requirement.

Pursuant to the requirements of K.R.S. 96.020(1), each bid for the franchise hereby established shall include cash or certified check equal to five percent (5%) of the fair estimate cost of the plant required to render the service. The deposit shall be forfeited to the City in the case the bid is accepted and the bidder fails, for thirty (30) days after confirmation for the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth of the fair estimated cost of the plant to be erected. The bond shall be conditioned to be enforceable in case the person giving it fails, within a reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the sale; provided, however, that pursuant to the provisions of KRS 96.020(2) this section 3.2 shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise hereby established.

3.3 Reservation of Rights.

Pursuant to the requirements of K.R.S. Chapter 96, the City hereby reserves all of the rights identified therein and within the meaning thereof for cities of the home rule 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.

3.4 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 electricity and/or natural gas throughout and for consumption within the City without being required to seek the City's consent to such assignment.

3.5 Franchise Area.

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

3.6 Effective Period of Franchise.

The Franchise established hereby shall be effective for a period of twenty (20) years, beginning on the Effective Date ("Term"), unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.

3.7 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 to the Franchisee from 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 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.

3.8 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 3.3 hereof:

3.8.1 Continuation of Existing Facilities.

The continued operation, use, maintenance, repair, construction, and/or re-construction to the existing condition thereof all of the Franchisee Facilities within or upon any public property

within the City.

3.8.2 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 or if written approval is provided to Franchisee before thirty (30) days, 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.

3.8.3 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 or if written approval is provided to Franchisee before thirty (30) days, 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.

3.8.4 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.

3.8.5 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 for any lawful purpose.

3.9 Franchisee Obligations during the Franchise Term.

While this Franchise is effective, the Franchisee shall:

3.9.1 Surety Bond.

A bond shall be submitted by the franchisee to be enforceable in case the person giving it fails, within a reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the franchise. The successful bidder shall submit a bond to be approved by the Fort Wright City Council in an amount equal to 10% of gross revenue derived from Fort Wright customers for gas and electric services during 2024, for faithful performance of said contract and the observance of the provisions and conditions of this ordinance. Provided however if the franchisee is Duke Energy Kentucky, due to its net worth and existing plant and equipment sufficient to render the service required under this franchise, no Surety Bond shall be required.

3.9.2 Liability Insurance.

Provide the City with and continually maintain a comprehensive policy of liability insurance, with the Franchisee and the City as named insureds and with limits not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, by which the Franchisee and the City are insured against any legal liability to others that is in any way related to any acts or omissions of the Franchisee pursuant to the franchise hereby established; provided, however that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

3.9.3 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 Kentucky Public Service Commission ("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.

3.9.4 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.

3.9.5 Performance of Work.

During the construction, maintenance, repair, replacement, reconstruction, 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.

3.9.6 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.

3.9.7 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 3.3 hereof.

3.10 Franchise Fee.

Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee equal to five percent (5%) 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, 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 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 streets, 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.

3.10.1 Franchisee Obligations during Effective Period.

While this Franchise is effective, the Franchisee shall and hereby:

3.10.2 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 therefore, 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.

3.10.3 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 therefore, 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, which would create an obligation, requirement or duty on the part of the Franchisee, which is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

Section 5.0 – 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 6.0 – Effective Date

This ordinance will be read on two separate occasions, shall be signed by the Mayor and attested by the City Clerk, published in accordance with law and made a part of the record of the City of Fort Wright. Same shall be in effect at the earliest time provided by law.

Section 7.0 – Publication

This ordinance shall be published in summary pursuant to K.R.S. 83A.060(9).

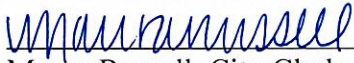
Passed by City Council on April 17, 2024

CITY OF FORT WRIGHT, KENTUCKY

By: 

Dave Hatter, Mayor

ATTEST:


Maura Russell, City Clerk

FIRST READING: 04-03 -2024
SECOND READING: 04-17 -2024
PUBLICATION: 04-23 -2024

NOTICE OF ADOPTION, TITLE AND SUMMARY OF
CITY OF FORT WRIGHT, KENTUCKY
ORDINANCE 04-2024

I certify that the following is the Title and Summary of Ordinance No. 04-2024 of the City of Fort Wright, in Kenton County, Kentucky, which was adopted on the 17th day of April 2024.

Title of the Ordinance

AN ORDINANCE OF THE CITY OF FORT WRIGHT, IN KENTON COUNTY, KENTUCKY ESTABLISHING 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 EITHER OR BOTH NATURAL GAS AND ELECTRICITY THROUGH AND FOR CONSUMPTION WITHIN THE CITY.

Summary of the Ordinance

Ordinance 04-2024 establishes a non-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 the City. As required by Kentucky Revised Statutes (KRS) 96.010, the terms and conditions include a bidding requirement pursuant to Section 164 of the Kentucky Constitution before a franchise can be granted. After due advertisement, the City shall receive bids publicly and award to the highest and best bidder, but the City reserves the right to reject any and all bids.

Per KRS 96.010(1), each bid shall include cash or certified check equal to five percent (5%) of the fair estimate cost of the plant required to render the service. However, pursuant to KRS 96.020(2) this shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise established.

The franchise area shall be those portions of public property within the City that are included in the territory served by Duke Energy Kentucky or the franchisee that has been certified by the Public Service Commission of Kentucky pursuant to KRS Chapter 278, or which it serves.

The Franchise shall be effective for a period of twenty (20) years, beginning on the effective date, unless previously terminated by the City.

This Ordinance requires that a bond be submitted by the franchisee to be enforceable in case the person giving it fails to establish a suitable plant for rendering service. Section 3.2 of the Ordinance states: "Pursuant to the requirements of K.R.S. 96.020(1), each bid for the franchise hereby established shall include cash or certified check equal to five percent (5%) of the fair estimate cost of the plant required to render the service. The deposit shall be forfeited to the City in the case the bid is accepted and the bidder fails, for thirty (30) days after confirmation for the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth of the fair estimated cost of the plant to be erected. The bond shall be conditioned to be enforceable in case the person giving it fails, within a

reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the sale; provided, however, that pursuant to the provisions of KRS 96.020(2) this section 3.2 shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise hereby established.”

This Ordinance also establishes a Franchise Fee. As stated in Section 3.10, Franchise Fee: [the franchisee must] “Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee equal to five percent (5%) 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, 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 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 streets, 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 a considerable expense to the franchisee.”

I, Timothy B. Theissen, an attorney licensed to practice law in the Commonwealth of Kentucky, for Strauss Troy, L.P.A., City Attorney for the City of Fort Wright, in Kenton County, Kentucky, do hereby certify that this Notice of Adoption, Title and Summary of Ordinance 04-2024 was prepared by me, and that it represents an accurate description of the summary of the contents of the Ordinance. The full text of the Ordinance, its Exhibits, and other information relative to the Ordinance, are on file at the office of the City Clerk of the City of Fort Wright, Kentucky, in the Fort Wright Municipal Building, 409 Kyles, Lane, Fort Wright, Kentucky 41011.

A handwritten signature in black ink, appearing to read 'Timothy B. Theissen', with a long horizontal flourish extending to the right.

Timothy B. Theissen, City Attorney for Fort Wright, Kentucky
Strauss Troy, L.P.A.



AFFIDAVIT OF PUBLICATION

See Proof on Next Page

LINK Reader
31 Innovation Aly, Ground Floor
(859) 878-1669

I, Nichole Seitz, of lawful age, being duly sworn upon oath depose and say that I am an agent of Column Software, PBC, duly appointed and authorized agent of the Publisher of LINK Reader, a publication that maintains a "notice website" as that phrase is defined in the State of Kentucky (KRS 424.145), that this affidavit is Page 1 of 2 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper or online notice website at <https://linkreader.column.us/search>, as provided by the requirements of KRS 424, in consecutive issues on the following dates:

PUBLICATION DATES:

Apr. 23, 2024

Notice ID: F9aeXMTIcZRhWQpMKYsl

Notice Name: Ord 04-2024

PUBLICATION FEE: \$301.64

Nichole Seitz

Agent

SHANNEA H HOLMES
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 1, 2026

VERIFICATION

State of New Jersey
County of Hudson

Subscribed and sworn to before me 04/23/2024

Shanea H. Holmes

Notary Public
Notarized remotely online using communication technology via Proof.

NOTICE OF ADOPTION, TITLE AND SUMMARY OF
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Timothy B. Theissen, City Attorney for Fort Wright, Kentucky Strauss Troy, L.P.A.