CITY OF UNION, KENTUCKY
ORDINANCE NO. 2023-09

AN ORDINANCE OF THE CITY OF UNION, 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; AND PROVIDING THE TERMS THEREOF.

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

WHEREAS, Sections 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 currently has access to the streets, alleys and public grounds of the City Of Union, Kentucky ("City") for the transmission and distribution of electric through and for consumption within the City; and

WHEREAS, Duke Energy currently has a franchise for the use of the streets, alleys and public grounds of the City for the transmission and distribution of gas and electric through and for consumption within the City;

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

BE IT ORDAINED by the CITY OF UNION, KENTUCKY 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 Union, Kentucky in Boone 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 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 Union, Kentucky that has been dedicated or is otherwise open to public use and is subject to regulation by the City Of Union, Kentucky.

1.6 The words "calendar quarter" mean three months (1/4) 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/ 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 of the City.

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 case or a certified check equal to three percent (3%) of the fair estimated cost of the plant required to render the service. The deposit shall be forfeited to the City in case the bid is accepted and the bidder fails, for thirty (30) days after the confirmation of the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth (1/4) 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

The City hereby reserves all of the rights reserved to cities of the fifth class as set

forth in KRS Chapter 96 and within the meaning thereof; 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 Exclusive

The franchise hereby established is an exclusive franchise and shall be granted to the Franchisee(s) in accordance with the Kentucky Certified Service Territories Act at KRS 278.016, ET. Seq. and other applicable law.

3.5 Franchise Not Assignable

The franchise established hereby shall not be assignable without the written consent of the City; however, the Franchisee may assign the franchise to any affiliate which may, during the term of the franchise assume the obligation to provide natural gas throughout and for consumption within the City without being required to seek the City's consent to such assignment.

3.6 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 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.

3.7 Effective Period of Franchise

The franchise established hereby shall be effective for a period of three (3) years, beginning at midnight on the evening of the July 15, 2023or as soon thereafter as is proper under law, following the grant and award of a franchise hereby established to a Franchisee and ending at midnight on the evening of the July 15, 2026 thereafter, unless previously terminated by the City pursuant to the provisions hereof or asotherwise provided by operation of law.

It is agreed by the parties that the Franchise may be renewed for two (2) additional three (3) year periods by the City. It is agreed the City shall give Duke ninety (90) days Notice if it does not intend to renew under the terms of the Agreement. If Notice not to renew is not given timely, the Agreement will renew for the additional three (3) year period.

3.8 Franchise Termination

In the event of any continuing default by the Franchisee of any of the obligations of the franchise, and after a written notice and description thereof has been delivered to the Franchisee by 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 notice.

3.9 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:

3.9.1 Continuation of Existing Facilities

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

3.9.2 New Facilities

The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing facilities of the Franchisee, 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, 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 written denial or approval is not received within thirty (30) days of the Franchisee's notice, 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.

3.9.3 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, 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.

3.9.4 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 or maintenance of facilities. If, during the franchise period, 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 that public property, along with the rights to maintain and operate such facilities.

3.9.5 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.

3.10 Franchise Obligations during Effective Period
While this Franchise is effective the
Franchisee shall:

3.10.1 Surety Bond

Due to the net worth of Duke Energy, City agrees to waive surety bond.

3.10.2 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.

3.10.3 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 by the Commission.

3.10.4 Maintenance of Facilities

Cause the facilities of the Franchisee within the franchise area to be maintained and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare and convenience.

3.10.5 Prosecution of Work

During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction or installation of any of the facilities of the Franchisee, the Franchisee shall promptly and diligently prosecute such activities to completion within a reasonable time, and at the least possible hazard to the 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.

3.10.6 Relocation ofFacilities

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 facilities of the Franchisee, or at any other time, the Franchisee shall remove, relocate or adjust any of the facilities of the Franchisee in such public property within a reasonable time after a written request from the City.

3.10.7 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.

3.10.8 Franchise Fee

Pay to the City within thirty (30) days after the end of each calendar quarter a franchise fee equal to three percent (3%) of the gross receipts of the Franchisee from the sale of electricity and natural gas for consumption within the City during the previous calendar quarter, 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.

3.10.9 Administration Fee

As consideration for the rights conferred by the granting of this three (3) year franchise, and to compensate the City of Union for its superintendence of the franchise, the successful bidder hall pay to the City of Union a fee of Two Thousand Five Hundred Dollars ($2500.00) upon the following conditions:

a. The successful bidder will remit to the City of Union, the sum of Two Thousand Five Hundred Dollars ($2500.00) within forty-five (45) days of the bid being accepted by the City.

b. The successful bidder will reimburse the City for costs incurred by the City in advertising the bid and for publication of the necessary ordinances and for the doing of all other acts necessary to the letting of this bid.

3.10.10 Franchise Fee Annual Cap

Any single customer paying in excess of $4,000.00 annually will be entitled to a refund of the franchise fee listed above by the City Of Union upon written request and documented proof of such overpayment. Said overpayment must be requested by July 30th of the year following collection of the franchise fee.

3.11 Franchisee Obligations During and After Effective Period

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

3. 11.1 Release

Release, acquit and forever discharge the City, and all of its officers, agents, successors and assigns thereof, from each, every, and any and all obligations and liabilities thereof, jointly and severally, to the Franchisee and the successors and assigns thereof for each, every, and 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, during the term of the Franchise, 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.

3.11.2 Indemnification

Agrees to pay, indemnify and hold the City and its 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 during the term of the Franchise 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 other 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 be read on two separate occasions, shall be signed by the Mayor, attested by the City Clerk, published in accordance with law and made a part of the records of the City Of Union. 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).

FIRST READING: **MAY 1, 2023**

SECOND READING: **MAY 15, 2023**

APPROVED:

HON. LARRY K. SOLOMON, MAYOR

ATTEST:

Tammy Wilhoite

TAMMY WILHOITE, CITY CLERK

AYES: 3

NAYS: 1

ABSTAIN: 0

Published: _____