

**CITY OF DAYTON, KENTUCKY
ORDINANCE NO. 2024#22**

AN ORDINANCE GRANTING A FRANCHISE TO DUKE ENERGY KENTUCKY, INC. TO OPERATE AN ELECTRIC AND NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE TERRITORIAL LIMITS OF THE CITY OF DAYTON, KENTUCKY, AND AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY AND DUKE ENERGY KENTUCKY, INC. FOR THE OPERATION OF AN ELECTRIC AND NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE CITY.

WHEREAS, Duke Energy Kentucky Inc. (“Grantee”) currently operates an electric and natural gas distribution system (“Gas & Electric System”) within the territorial limits of the City of Dayton, Kentucky (the “City”); and

WHEREAS, Grantee has responded to a Notice of Bids for Franchise issued by the City pursuant to the provisions of the Kentucky Constitution of its intent and desire to renew its Gas & Electric System franchise within the City and to negotiate a new franchise agreement between the Grantee and the City; and

WHEREAS, Grantee’s performance under its existing franchise has been satisfactory, and the franchisee has substantially complied with all material terms of the existing franchise and with applicable law; and

WHEREAS, the City and Grantee have negotiated a franchise agreement authorizing the Grantee the right to operate a Gas & Electric System in the City for a period of time not to exceed 20 years, pursuant to Section 164 of the Kentucky Constitution.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD OF COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:

SECTION I

The City hereby grants to Grantee a nonexclusive franchise to provide and operate a Gas & Electric System within the territorial limits of the City of Dayton, Kentucky, for a period not to exceed 20 years in accordance with the terms and conditions set forth in the Franchise Agreement with the Grantee, which attached hereto as Exhibit “A” and incorporated by reference herein and made part hereof.

The Mayor is hereby authorized and directed to execute the above-referenced Franchise Agreement with Duke Energy Kentucky Inc. on behalf of the City.

SECTION II

This Ordinance shall be adopted according to law, executed, recorded, and published and shall be effective upon publication, according to law.

First Reading: December 10, 2024
Second Reading: *January 14, 2025*

CITY OF DAYTON, KENTUCKY



BY: MAYOR BEN BAKER

ATTEST:

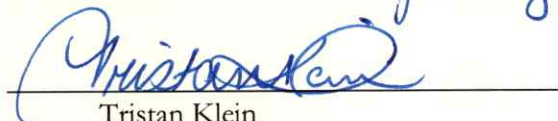


TRISTIAN KLEIN
CITY CLERK/TREASURER

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk/Treasurer of the City Council of Dayton, Kentucky and as such I further certify that the foregoing Ordinance, including the attached Exhibit "A," which is incorporated into the Ordinance, is a true, correct, and complete copy of the Ordinance duly adopted by the City Council of the City after two readings on the dates referenced above, and has been signed by the Mayor and is now in full force and effect, all as appears from the official records of the City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this 15 day of January 2024.



Tristan Klein
City Clerk/Treasurer

DISTRIBUTION OF ELECTRICAL AND NATURAL GAS ENERGY FRANCHISE AGREEMENT

This Distribution of Electrical and Natural Gas Energy Franchise Agreement (“Agreement”) is entered into and made effective as of _____, 2024 (“Effective Date”), by and between the City of Dayton, Kentucky, a municipal corporation and city of the home rule class (“City” or “Franchisor”), and Duke Energy Kentucky, Inc. (“Franchisee”).

Section 1. Non-Exclusive Franchise Granted Subject to Conditions.

A. The City hereby grants to Franchisee, subject to the conditions prescribed in this Agreement, the nonexclusive franchise rights and authority (“Franchise”) to construct, install, replace, repair, monitor, maintain, use, operate, and remove its equipment and facilities necessary for distribution of electrical and natural-gas energy (“Facilities”) in, under, on, across, over, and through those areas of the city where Franchisee is already providing said gas and/or electric service and other areas in the future as the parties may agree in writing. Franchisee hereby accepts the Franchise granted pursuant to this Agreement and agrees to provide quality service within the City as required and regulated by the Kentucky Public Service Commission (PSC).

B. The foregoing Franchise rights and authority shall not be deemed to be exclusive to Franchisee and shall in no way prohibit or limit the City’s ability to grant other franchises, permits, or rights along, over, or under the areas to which this Franchise has been granted to Franchisee. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent the City from using its rights-of-way or affect the City’s jurisdiction over such rights-of-way in any way consistent with applicable law.

Section 2. Franchise Limitations. City does not warrant the suitability of any portion of its rights-of-way for the purposes for which Franchisee may desire to use them under this Agreement, nor does the City warrant the condition of any structure, pole, or other improvement currently located within the City’s rights-of-way. Franchisee hereby accepts the City’s rights-of-way and all publicly owned improvements located therein on an AS-IS, WHERE-IS, and WITH ALL FAULTS basis.

Section 3. Authority. The City Administrator or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Agreement and may develop such lawful and reasonable rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

Section 4. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a term period of five (5) years from the Effective Date of this Agreement (“Term”). The Term of this Agreement shall be automatically renewed for up to three (3) additional periods of five (5) years each (“Renewal Term”), unless either the City or Franchisee provides the other party written notice of their intention not to renew the Term of this Agreement at least 180 days prior to the expiration date of the then current Term or Renewal Term, as the case may be;

provided, however, the total duration of the Term of this Agreement shall not exceed twenty (20) years as provided under Section 164 of the Kentucky Constitution.

Section 5. Acceptance of Terms and Conditions. Failure on the part of Franchisee to provide an executed original of this Agreement to the City Clerk within sixty (60) calendar days (or longer or shorter as the parties may agree) of the City Council approving this Agreement shall be deemed a rejection thereof by Franchisee and shall result in this Agreement being null and void and having no further force or effect, and in such case, all rights granted under this Agreement shall terminate.

Section 6. Construction Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as noncompliance with the terms of this Agreement. To the extent that any of the rules, regulations, or restrictions set forth herein conflict with the rules, regulations, or restrictions of the Public Service Commission (PSC), the rules, regulations, or restrictions of the PSC shall be controlling.

A. Permit Required. No installation, construction, expansion, or material modification of the Facilities shall be undertaken in the Franchise Area without first obtaining all required right-of-way use and/or construction permits as required under all applicable ordinances of the City and under all regulations and other requirements of the Kentucky Public Services Commission (PSC) and all other governing bodies, where applicable. All construction, removal, alteration(s), and maintenance of Facilities shall abide by the City's permitting process, including the City's Public Right-of-Way Ordinance, § 96.50 *et seq.* of the City Code of Ordinances ("Code") and its Historic Preservation Ordinance, § 156.01 *et seq.* of the Code and all zoning and building codes, and any amendments to these ordinances or any regulations adopted in connection with these ordinances, whether currently in force or adopted in the future.

B. Construction Standards. Any construction, installation, maintenance, operation, and/or restoration activities performed by or for Franchisee within the Franchise Area shall be constructed and located in a manner so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All work and improvements made by Franchisee and its contractors shall be so performed in a safe and workmanlike manner and comply with all applicable federal, state, and local laws. This Franchise Agreement shall not be construed in a manner that would create an obligation, requirement, or duty on the part of the Franchisee that is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission. Franchisee shall not locate any new overhead wires or cables across any roadway without the express prior approval of the City. Express approval shall not be required for repairs and replacements to existing overhead Facilities. In the performance of any work by Franchisee relating to its Facilities under this Agreement, Franchisee, at its sole cost and expense, shall restore and repair any damage to the City's rights-of-way or any public improvements located therein to their original condition as existed prior to the commencement of such work. Any construction, installation, maintenance, operation, and restoration activities undertaken by the Franchisee within the Franchise area shall conform and be subject to all City ordinances and regulations, including the previously referenced Code §§ 96.50 *et seq.* and 156.01

et seq., and any subsequent amendments thereto, and further provided that any such work or project by the Franchisee shall be promptly and diligently prosecuted to completion, and that upon such completion, the streets, alleys, sidewalks, and other public ways of the City shall exist in as good condition and repair, same as before such work was commenced. To the extent City ordinances and regulations conflict with orders, rules, or regulations of the Kentucky Public Service Commission ("Commission"), the Commission's orders, rules, or regulations shall be controlling over City ordinances and regulations.

C. Relocation. Whenever the City causes any public improvement to be constructed within the Franchise Area, and such public improvement requires the relocation of Franchisee's Facilities, the City shall provide Franchisee with written notice requesting such relocation along with any plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination, and the development of a relocation plan. The City, including its engineer or other designee, and Franchisee shall meet at a time and location determined by the City to discuss the project requirements, including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall not be liable to Franchisee for any lost revenues or any other costs incurred by Franchisee in relocating its Facilities due to or as a result of any City public improvement project. Franchisee shall endeavor to relocate any Facilities within thirty (30) days after the City's request to the Franchise, but if Franchisee notifies the City of circumstances that prevent the Franchise from taking such action within 30 days, the parties will agree to a reasonable time frame beyond this time period to complete this work and the thirty-day requirement will be waived in such case.

D. Removal or Abandonment. Upon the removal from service of any electrical Facilities within the Franchise Area, Franchisee shall comply with all applicable standards and requirements prescribed by the City and/or PSC for the removal or abandonment of said electrical Facilities. No electrical Facilities constructed or owned by Franchisee may be abandoned in place without the express prior written consent of the City. This provision does not apply to natural gas Facilities.

E. "One-Call" Location & Liability. Franchisee shall subscribe to and maintain membership in the regional "call before you dig" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of work performed for any City project for which Franchisee has failed to properly locate its Facilities within the prescribed time limits and guidelines established.

F. As-Built Plans Required. Franchisee shall maintain accurate engineering plans and details of all installed system Facilities within the City jurisdictional limits, and upon request by the City, Franchisee shall provide such information in electronic form prior to the close-out of any permit issued by the City and any work undertaken by Franchisee pursuant to this Agreement.

G. Compliance with PSC Rules and Regulations and Notice of Rate Increases.

Franchisee shall at all times comply with all rules, regulations, and policies promulgated by the Kentucky Public Service Commission and shall at all times maintain in good standing any licenses, certificates of need, and other governmental approvals authorizing Franchisee to engage in the activities permitted under this Agreement. Franchisee agrees to provide City with notice of any application it files before the Commission for an increase in rates and charges for a certificate of public convenience and necessity for capital investment. This notice shall be in the medium required by the Commission and pursuant to Kentucky Administrative Regulations for any future rate filings during the term of this Franchise Agreement and the Franchisee will inform the City how to access these records filed in any such docket before the Commission.

H. Tree Trimming. Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the City rights-of-way that are interfering with the operation of its Facilities and/or related equipment only to the extent necessary to keep the branches of the trees from interfering with such Facilities. All trimming and pruning shall comply with all applicable ordinances of the City, and when trees are pruned, the Franchisee shall follow all industry standards regarding safety and quality as they pertain to pruning trees near electric utility lines (ANSI A300). Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the City a tree trimming or pruning plan for approval by the City Administrator or his or her designee. Franchisee shall provide notice to adjacent private property owners prior to trimming or pruning of these trees. Any person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, to be an employee or agent of Franchisee, and in no event shall such person be deemed an employee or agent of the City.

Section 7. Insurance. Franchisee already operates within the City by providing natural gas and electric service and is a self-insured entity with limits of \$1,000,000 in general liability, worker's compensation, and automobile coverage. For this reason, the Franchisee is not required to maintain separate liability insurance and is not required to post a surety bond, so these requirements are hereby waived.

Section 8. Other Permits & Approvals. Nothing in this Agreement shall relieve Franchisee from any obligation to obtain approvals or necessary permits from applicable federal, state, and local authorities for all activities in the Franchise Area.

Section 9. Transfer of Ownership. The rights, privileges, benefits, title, or interest provided by this Agreement shall not be sold, transferred, assigned, or otherwise encumbered without the prior written consent of the City, which consent may be conditioned upon such transferee agreeing in writing to be bound by all of the terms and conditions of this Agreement. Approval shall not be required for any transfer from Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee or if Franchisee adopts a new company name without a change in control.

Section 10. Fees. It is the intention of the City that Franchisee compensate City for the use of the City's rights-of-way because they are valuable assets of the City that: (a) the City has acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for the benefit of its citizens; and (c) the grant to Franchisee of the use of the City's rights-of-way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way acquisition costs. Accordingly, it is the intention of the City and Franchisee to obtain and to pay a fair and reasonable compensation for grant of this Franchise.

- A. Permit Fees. Franchisee shall pay to City all fees the City requires to obtain permits and for processing permit applications for the Facilities pursuant to any ordinance of City, as now codified or as shall be codified in the future, or pursuant to its permit application fee structure generally applicable to all other users of the City rights-of-way.
- B. Franchise Fees. The initial Franchise Fee to the City will be 3.5% of the gross receipts of the Franchisee from the sale of natural gas and electricity for consumption within City. The Franchise Fee is due to be paid the City within thirty (30) days after the end of each Calendar Quarter and will be based on the gross receipts of the Franchisee from the sale of electricity or natural gas within the City during the previous Calendar Quarter. This payment will be accompanied by 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 on private property for the transmission and distribution of natural gas and electricity, at considerable expense to the Franchisee.
- C. Customer Billings/Complaints: City acknowledges and agrees that Franchisee's customer billing payment methods are presently adequate and include U.S. Mail, automatic bank draft, one-time electronic bank draft, paperless billing, card payments via mobile app, web, automated phone system via Speedpay, and its pay agent network consisting of seventy-five (75) locations in the Commonwealth of Kentucky, including 16 fee-free Kroger locations. City further acknowledges and agrees that Franchisee's procedures for receiving customer complaints about billings, service issues, and other issues are presently adequate.

Section 11. Notices. Any notice to be served upon the City or Franchisee shall be delivered to the following addresses respectively by either personal delivery or by nationally recognized overnight delivery service:

CITY/FRANCHISOR:

FRANCHISEE:

City of Dayton, Kentucky
Attn: Mayor
514 Sixth Avenue
Dayton, KY 41074

Attn: _____

With copy to:

With copy to:

City Administrator
Attn: Jay Fossett
514 Sixth Avenue
Dayton, KY 41074

Attn: _____

Section 12. Indemnification. To the extent permitted by applicable law and except with respect to Claims based on the City's gross negligence or willful misconduct, Franchisee shall at all times fully defend, indemnify, protect, and save harmless the City and its elected officials, nonelected officers, employees, agents, and representatives (individually, an "Indemnitee," and collectively, the "Indemnitees") from and against any and all occurrences, claims, demands, actions, suits, proceedings, liabilities, losses, fines, penalties, damages, expenses, costs, including reasonable attorneys' fees and legal costs (collectively, "Claims"), which might be claimed now or in the future and arise out of, or are caused by, whether directly or indirectly: (a) the installation, construction, operation, modification, maintenance, repair, and removal of the Facilities; (b) the acts or omissions of Franchisee, or its contractors, subcontractors, employees, and agents in the operation and maintenance of the Facilities; (c) Franchisee's failure to comply with the provisions of any applicable law to which it or the Facilities are subject; and (d) Franchisee's failure to comply with the terms and conditions contained in this Agreement.

Franchisee shall, at its sole risk and expense, upon demand of the City made by and through its City Administrator or City Attorney or their successors, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted by third persons or duly constituted authorities against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of the Franchisee in the exercise or the enjoyment of such Franchise or the granting thereof by the City.

Section 13. Environmental Laws. Franchisee shall comply with and shall cause its contractors, subcontractors and vendors to comply with all rules, regulations, statutes, or orders of the U.S. Environmental Protection Agency, the Kentucky Department for Environmental Protection, and any other governmental agency with the authority to promulgate and enforce environmental rules and regulations applicable to Franchisee's use of any portion of the City rights-of-way under this Agreement ("Environmental Laws"). Franchisee shall promptly reimburse the City for any costs, expenses, fines, or penalties levied against the City because of Franchisee's failure, and/or the failure of its contractors, subcontractors and/or vendors to comply with Environmental Laws.

Neither Franchisee -- nor its contractors, subcontractors, or vendors -- shall possess, use, generate, release, discharge, store, dispose of, or transport any hazardous or toxic materials on, under, in, above, to, or from its work sites except in compliance with the Environmental Laws. "Hazardous Materials" mean any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Franchisee shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances into the City's storm sewer system or sanitary sewer system or elsewhere on or in the City rights-of-way or on other property within the City in violation of the Environmental Laws.

Section 14. Severability. If any section, sentence, clause, or phrase of this Agreement is held to be invalid or unenforceable, the remaining sections, sentences, clauses, and phrases shall not be affected thereby and shall remain in full force and effect and be legally binding upon the parties hereto.

Section 15. Reservation of Rights. The parties agree that this Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Agreement or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this Agreement. It is the intention of the parties to the Agreement to preserve their respective rights and remedies under the law, and the execution of this Agreement does not constitute a waiver of any rights or obligations by either party under the law.

Section 16. Police Powers. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Franchisee shall not by this Agreement obtain any vested rights to use any portion of the City rights-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Agreement. This Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits or later codified by the City.

Section 17. Governing Law. This Agreement shall be governed by the domestic laws of the Commonwealth of Kentucky, County of Campbell, and any applicable federal laws of the United States of America that may preempt state laws.

Section 18. Counterparts. This Agreement may be executed in counterpart signature pages by the parties hereto.

Section 19. Authorization. The entering into of this Agreement has been authorized by the Dayton Board of City Council by passage of Ordinance 2024-22.

Section 20. Organization and Standing. Franchisee is duly organized, validly existing, and in good standing under the laws of the state of its organization and is duly authorized to conduct business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer services within the Commonwealth of Kentucky, and to execute, deliver, and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

Section 21. Relationship of Parties. Franchisee shall be responsible and liable for its contractors, subcontractors, sublicensees, and vendors. The City has no control or supervisory powers over the manner or method of Franchisee's, or its contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, contractors, subcontractors, or sublicensees and not City employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of Franchisor and Franchisee, not that of partners or joint venturers.

Section 22. Entire Agreement. This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties.


Section 23. Amendment. This Agreement may only be amended or modified by a written instrument executed by all of the parties hereto.

Section 24. Non-Waiver. If either party fails to require the other to perform a term or condition of this Agreement, that failure does not prevent the party from later enforcing that term or condition. If either party waives a breach of this Agreement by the other party, that waiver does not waive a later subsequent breach of this Agreement.

Section 25. Mechanics Liens. Franchisee shall keep all portions of the City's rights-of-way wherein its Facilities and related equipment are located or placed free from any mechanics liens or encumbrances arising from any work performed, materials furnished, or obligations incurred by or at the request of Franchisee. If any lien is filed against the City's rights-of-way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or its employees, agents, or contractors, Franchisee shall discharge the lien or bond off the lien in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party that the lien has been filed.

IN WITNESS WHEREOF, the parties have hereunto set their signatures as of the Effective Date described above.

CITY:



City of Dayton, Kentucky
By: Ben Baker
Title: Mayor

FRANCHISEE:

Duke Energy Kentucky, Inc.
By: _____
Title: _____