

**CITY OF FLORENCE, KENTUCKY
ORDINANCE O-19-2025**

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE ELECTRIC FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF FLORENCE FOR A TWENTY (20) YEAR DURATION, RESERVING THE RIGHT TO IMPOSE A FRANCHISE FEE IN AN AMOUNT UP TO FIVE PERCENT (5%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF ELECTRICITY TO ELECTRIC-CONSUMING ENTITIES INSIDE THE CITY OF FLORENCE'S CORPORATE LIMITS AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; INDEMNIFICATION; INSURANCE; CANCELLATION OR TERMINATION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLORENCE:

SECTION 1.

(a) There is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, maintain, install, use, and repair, in the Right-Of-Way of the City, a system or works for the generation, transmission, and distribution of electrical energy within the corporate boundaries of the City as they now exist or may hereafter be constructed or extended, subject to the provisions of this Ordinance. Such system may include pipes, wires, 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 and all rights-of-way with its service and maintenance vehicles in furtherance of this Franchise.

(b) The Company will replace segments of existing overhead facilities within the Right-Of-Way with underground facilities at the request of and cost to the City in accordance with its general underground practices and procedures and rules established by the Kentucky Public

Service Commission. Subject to such practices and procedures and rules, repairs or replacements of existing facilities or construction of new facilities within areas where existing facilities have been placed underground at the request of the City also shall be placed underground; provided, however, the City pays incremental costs associated with placing new facilities in such areas underground, if any.

SECTION 2. The following definitions apply to this Ordinance:

Council means the legislative body of the City of Florence.

Company means the Party or Person that shall become the purchaser of said franchise, or any successor or assignee of such Party or Person.

Facility includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of the utility in the Right-Of-Way.

Government or *City* means the City of Florence.

Gross Receipts means those amounts of money which the Company receives from its customers within the City's geographical limits or boundaries for the retail sale of electricity under rates, temporary or permanent, authorized by the Kentucky Public 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. Gross Receipts does not include miscellaneous service charges, including but not limited to turn ons, meter sets, non-sufficient funds, contributions in aid of construction, line extension costs, late fees and interest, which are related to but are not a part of the actual retail sale of electricity.

Party or Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or assign of any of the foregoing, or any other legal entity.

Public Utility or Utility means a Party or Person that is defined in KRS Chapter 278.010 as a utility and (i) is subject to the jurisdiction of the Kentucky Public Service Commission or the Federal Energy Regulatory Commission, or (ii) is required to obtain a franchise from the Government to use and occupy the Right-Of-Way pursuant to Sections 163 and 164 of the Kentucky Constitution.

Right-Of-Way means the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the Government for the purpose of public travel and shall include Rights-Of-Way as shall be now held or hereafter held by the Government.

SECTION 3. The Franchise created herein shall be non-exclusive and shall continue for a period of twenty (20) years from and after the effective date of this Ordinance, as set forth in Section 5. The Company may, at its option, terminate this Franchise upon forty-five (45) days' written notice if (a) the City breaches any of its obligations hereunder and such breach is not cured within thirty (30) 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 Section 9 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 Ordinance, (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. Without 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 Ordinance; (ii) impairing the Company's ability to perform its obligations under this Franchise in an efficient, unencumbered, and profitable way; or (iii) preventing the Company from complying with applicable rules or orders issued by the Kentucky Public Service Commission or other statutes or regulations, that it will first discuss such proposed ordinance or regulation with the Company and the parties shall negotiate in good faith regarding the same.

SECTION 4. 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.

SECTION 5. This Ordinance shall become effective on the date of its passage and publication as required by law. The Franchise created by this Ordinance shall take effect no earlier than thirty (30) days after the City Council accepts the bid(s).

SECTION 6. 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 state or federal authority with jurisdiction over the Company.

The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist

upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions.

SECTION 7. Rights Reserved by City. Subject to the above provisions, the Franchise created by this Ordinance is expressly subject to the right of the City to repeal the same for misuse, nonuse, or the Company's failure to comply with applicable local, state, or federal laws.

SECTION 8. As consideration for the granting of the Franchise created by this Ordinance, the Company agrees it shall defend, indemnify, and hold harmless the Government from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against the Government that the Company's use of the Right-Of-Way or the presence or operation of the Company's equipment on or along said Right-Of-Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by the Government's negligence. The Government shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

SECTION 9. Franchise Fees. The City shall have the right to access a franchise fee in an amount up to five (5) percent of gross receipts per year from the Company's sale of electricity to electric-consuming entities (which includes businesses, industrial facilities, and dwellings) on or after the later of ninety (90) days after the date of the written notice or the effective date of the franchise fee specified in the City's notice. If the City exercises its right to access franchise fees, the City shall notify the Company at least thirty (30) days prior to the effective date of any annexations or other changes in the City's boundaries and provide the Company the 911 list in

electronic format of all addresses of the territory annexed or added to or de-annexed or otherwise removed from the Government's limits that are to be served by the Company.

Payment of any amount due under this Franchise shall be made on a quarterly basis within forty-five (45) days of the end of the preceding payment period.

No acceptance of any franchise fee payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim the Government may have for future or additional sums pursuant to this Franchise. Any additional amount due to the Government shall be paid within thirty (30) days following written notice to the Company by the Government.

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.

To the extent the Company actually incurs other reasonable incremental costs in connection with its compliance with the Government's ordinances, the Government agrees that the Company may recover such amounts from its customers pursuant to the terms of a tariff filed with and approved by the Kentucky Public Service Commission, if otherwise permitted by law.

SECTION 10. The Company shall maintain in force through the term of the Franchise insurance coverage for general liability insurance, auto liability, and workers compensation, in accordance with all applicable laws and regulations. The Company shall maintain a general liability and auto liability coverage minimum limit of \$2,000,000 per occurrence.

SECTION 11. The Company agrees to charge such rate or rates for electrical service as may from time to time be fixed by the Public Service Commission of Kentucky or any successor regulatory body.

SECTION 12.

(a) In addition to all other rights and powers pertaining to the Government by virtue of the Franchise created by this Ordinance or otherwise, the Government, by and through its City Council, reserves the right to terminate and cancel this Franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any material provision of this Franchise or any material rule, order, or determination of the Government made pursuant to this Franchise, except where such violation is without fault or through excusable neglect;

(2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon the Government;

(3) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of this Franchise;

(4) If experiencing a foreclosure or other judicial sale of all or a substantial part of the Company's Facilities located within the City of Florence, the Company shall provide the Government at least thirty (30) days advance written notice of such foreclosure or sale; or

(5) Is no longer able to provide regular and customary service to its customers in the franchise area.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, the City's Mayor or his or her designee or the City Council shall make a written demand that the Company do or comply with any such provision, rule, order, or determination. If the violation, found in Section 12(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of this Franchise as early as the next regular City Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(1) It shall be a defense to any attempt to terminate and cancel this Franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The City Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the City Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(4) If the City Council determines such violation by the Company was without just cause, then the City Council may, by resolution, declare that this

Franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the City Council may fix.

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and an opportunity to cure, such violations, failure, or default continue as set forth in Section 12(a).

SECTION 13. Right to Cancel. The City Council shall have the right to cancel the Franchise created by this Ordinance thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

SECTION 14. In the event the sale of electricity is deregulated within the Commonwealth of Kentucky, and deregulation results in a material shortfall of revenue to the Government, the Government shall have the option of terminating this Franchise with the Company. If this Franchise is terminated by the Government pursuant to this provision, the Government and the

Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise to the Company.

SECTION 15. The Company shall have the authority to trim and/or clear trees and other vegetation located within or overhanging the Right-Of-Way to prevent branches from coming into contact with or growing into the wires, cables, or other Facilities of the Company. However, any planned right-of-way clearing shall be coordinated in advance with the City of Florence to ensure proper oversight. In the event that the Company fails to timely and sufficiently respond to a legitimate and reasonable complaint regarding its failure to trim such trees, and such complaint is made known to the Government, the Government shall contact the Company with respect to such matter and attempt to reach a satisfactory resolution.

SECTION 16. This Ordinance and any Franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance and any Franchise awarded pursuant to it shall be in a court of competent jurisdiction in Boone County, Kentucky.

SECTION 17. This Ordinance and any Franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

SECTION 18. If any section, sentence, clause, or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

SECTION 19. It shall be the duty of the City's Mayor or his/her designee to offer for sale at public auction the Franchise and privileges created hereunder. Said Franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the City's Mayor

after he or she has given due notice thereof by publication or advertisement as required by law. In awarding the franchise, the City shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the franchise.

SECTION 20. Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City's Mayor or his/her designee upon the date(s) and at the times(s) fixed by him or her in said publication(s) or advertisement(s) for receiving same. Thereafter, the City's Mayor shall report and submit to the City Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the City's Mayor shall be rejected by the Council, it may direct, by resolution or ordinance, said franchise and privileges to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Upon the approval of a satisfactory bid, the City Council shall award a franchise only after the execution of a written franchise agreement between the City and the Company that incorporates the provisions of this Ordinance.

In addition, any bid submitted by a corporation or person not already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall

be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Government reserves the right to review any of bidder's supporting documentation which justifies bidder's determination of said estimated cost. Such deposit need not be made by a corporation or person already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance.

SECTION 21. This Ordinance shall be published by posting on the City's internet website.

PASSED AND APPROVED ON FIRST READING THIS 16th DAY OF SEPTEMBER 2025.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 23rd DAY OF SEPTEMBER 2025.

APPROVED:

/s/ Julie M. Aubuchon
Julie M. Aubuchon, Mayor

ATTEST:

/s/ Melissa Kramer
Melissa Kramer, City Clerk