

ORDINANCE # 495

STATE OF SOUTH CAROLINA)	MUNICIPAL SERVICE AGREEMENT
)	FOR THE PROVISION OF ELECTRIC
COUNTY OF <u>ANDERSON</u>)	SERVICE

THIS AGREEMENT, made and entered into this the 5 day of MAY 2009, by and between Duke Energy Carolinas, LLC a limited liability company organized and existing under the laws of the State of North Carolina, duly domesticated in the State of South Carolina, hereinafter, for itself and its successors and assigns, called "Company," and the City of BELTON, a municipality incorporated under the laws of the State of South Carolina, hereinafter called the "City".

WITNESSETH:

1. As payment for the rights enumerated hereinafter for the term of this Agreement, the Company will pay to the City, during the effective period of this Agreement, on or before the 60th day following the end of each calendar quarter, a sum of money equal to 5 percent (%) of the Company's gross electric receipts from the sale of electricity using approved electric rates derived by Company from within the corporate limits of the City, for the previous calendar quarter. If the first period of service is less than a full calendar quarter, the Company shall make the gross receipts payment to the City for that part of the calendar quarter the Agreement was in effect.

2. During the term of this Agreement, the City reserves the right to adjust the fee upon a vote by the City Council, and will provide 120 calendar days' prior notice of such adjustment to Company.

3. The payment of the percentage of gross electric receipts as provided in Section 1 shall be in lieu of all occupation, license, gross receipts, excise, franchise and all other levies or taxes, however designated, and in full payment of all such money demands and charges on such accounts. The Company shall still pay ad valorem taxes on the Company's property, standard building permit fees and standard right-of-way management/encroachment permit fees in amounts established by the City through its ordinances, regulations and practices that are otherwise applicable.

4. The City consents to the Company's use of all public streets, avenues, alleyways, and public right-of-way, however designated, for the provision of electric service to the City and its inhabitants and for the maintenance and operation of the Company's facilities within the corporate limits. The City grants its consent to the Company to construct and install, operate, maintain, renew, replace and repair its electrical distribution and transmission lines, poles, conduits, transformers, communications cables and connections and services thereto, and to operate, maintain, renew, replace and repair any existing, distribution and transmission lines, through, across, along and under the public streets, avenues, roads, alleys, and other public right-of-way in the City for the

transmission, distribution and sale of electricity and its own internal communications purposes, subject to the terms and conditions of this and other applicable municipal ordinances. PROVIDED, however, that no consent is granted hereby for the use of any public streets, avenues, roads, alleys, or other public rights of way in the City for the construction of any transmission line unless that transmission line is specifically necessary for and will be used primarily as an integral part of the electric distribution system serving electricity within the corporate limits of the City; PROVIDED FURTHER, however, that in the case of any transmission line annexed into the City after the effective date of this ordinance, the Company shall have the consent of the City to use the public streets, avenues, roads, alleys, or other public rights-of-ways in the city for the continued maintenance and operation of such line. AND FURTHERMORE, that in the event of annexation of any territory into the City within which the Company has filed with the Federal Energy Regulatory Commission and /or the South Carolina Public Service Commission for approval of the design, routing, site, and construction of a transmission line not necessary for or intended to be used as an integral part of the electric system for provision of electricity within the City limits and so long as the Company agrees to minimize to the maximum extent possible any possible adverse impact within the City, and to perform the work in accordance with ordinances applicable to all other such construction and utility work within the City Limits, then no further consent of the City shall be necessary for the use of the public streets, avenues, roads, alleys, or other public rights of ways in that annexed territory for the construction, maintenance, and operation of that transmission line. The parties hereto may make additional contracts not in conflict with this Agreement for the furnishing of said electric energy in accordance with state law, and under the rates and regulations of, or approved by, the Public Service Commission of South Carolina (the "Commission").

5. The Company's right to use public rights-of-way shall be non-exclusive. Should the City itself ever at any time construct, purchase, lease, acquire, own, hold, use or operate a transmission or distribution system to supply electricity to itself or to others, or should the City grant to another provider of electric service the right to use public right of ways for the transmission or distribution of electricity, then all such occupants and users of the rights of way shall also be required to receive permission from the City for such occupancy and use and shall pay the same percentage fee on gross receipts, recited in Section 1, so that the Company will not be at a competitive disadvantage as a consequence of the fee required by this Agreement.
6. All work upon the streets and public rights-of-way of the City shall be done under the general supervision and in compliance with applicable ordinances of the City. All street pavement, sidewalks, curb, gutter, sewer and storm drain utilities, and all appurtenances of any type which may be displaced by reason of such work shall be properly replaced and re-laid by the Company to the reasonable satisfaction of the City. If the city or the State of South Carolina

determines that it is necessary to reconstruct, widen, or relocate a road or other public right-of-way, the City may require the Company at the Company's sole expense to relocate its facilities then located in the public right-of-way to an acceptable alternate location within the public right-of-way, as reconstructed, widened, or relocated. If the Company's equipment is located on private property at the time relocation is required by the City's reconstruction, widening, or relocation of the public right-of-way, then the City shall pay for the cost of relocation of any Company equipment located on private property. This provision on expense allocation shall not require the City to pay for the expense of relocation of facilities located on private property when the right-of-way change is one required by the State of South Carolina. Nor shall the Company be obligated to incur expenses for the relocation of its facilities when the sole basis for relocation is one of aesthetic preference of the City which is unrelated to infrastructure improvement for public health and safety or for project specific economic development.

7. In the event that the Company's electric service shall be wholly or partially interrupted or suspended, or shall fail due to any cause reasonably beyond the control of the Company and not due to its neglect, or in the event that the Company shall deem it necessary to suspend said service for the purpose of inspecting its lines, substations, or other equipment, or making repairs or alterations thereto, the Company shall not be obligated to provide said service during any such period of interruption, suspension or failure, and shall not be liable for any damage or loss resulting there from.
8. It is expressly agreed that the Company does not hereby contract to furnish power for pumping water for extinguishing fires. It is expressly agreed that the Company shall not in any event, be liable to the city for any loss or damage occasioned by fire which may result from the failure of the Company to supply electric power to operate any pumping apparatus.
9. It is understood and agreed that this Agreement and all service rendered hereunder are subject to the Rules and Regulations of the Commission and the Service Regulations of the Company filed with the Commission as the same now exist, or as they, or any of them, may be hereafter amended, modified, changed, or annulled in accordance with the laws and regulations thereto pertaining but only to the extent such rules and regulations may be applicable within municipal limits. All service rendered to the City by the Company shall be in accordance with the Rate Schedules, Service Regulations, Underground distribution Installation Plan, Municipal Overhead to Underground Conversion Plan underground plan and forms of contract of the Company, on file with the Commission.
10. Whenever the Company owns real property which is outside the corporate limits of the City but which becomes eligible for annexation under any procedure authorized by the general law of the state, then this Agreement shall

constitute written consent by the Company for the annexation of its eligible property. The signature provided below on behalf of the Company shall bind the Company as the signature requirement at the time, if any.

11. The initial term of this Agreement shall be (10) years, with an effective date of July 1, 2009 and a termination date of June 30, 2019. Thereafter, the agreement will renew automatically in five-year increments, unless either party provides the other with written notice of termination of this Agreement at least 180 days prior to the date of the automatic renewal. Should such notice of termination be given by either party, the parties agree to negotiate, in good faith, modifications to this Agreement. In the event the negotiations are unsuccessful, then this Agreement will terminate as of June 30, 2019 or if it has been renewed automatically, then at the end of the five-year renewal date. In any event, this Agreement shall not extend past June 30, 2029.
12. In the event the South Carolina General Assembly enacts legislation which deregulates or otherwise restructures the generation and distribution of retail electrical service in this State, then the Company and City agree to discuss modifications to this Agreement. Failure to agree on modifications within 90 days of the effective date of the legislation, but in no event sooner than 180 days of the effective enactment of the legislation, will entitle either the Company or the City to provide 90 days written notice to the other party of termination. Upon expiration of such notice period, this Agreement shall become null and void. Upon the expiration of this Agreement, all sums due to the City which have accrued but which have not yet been paid, shall become due and payable within 60 days of the last day of the month in which termination occurs.
13. Implementation of this Agreement and the application of its terms shall be made in good faith by the parties and in accord with such additional terms they may mutually agree to for that purpose.
14. Upon execution of this Agreement, all prior agreements of any other type, however designated, which relate to the provision of electric service by the Company to the City of which pertain to the use of public rights-of-way within the City shall become null and void, except to the extent the provisions contained therein are separately renewed in this Agreement or in any collateral agreement permitted by this Agreement.

IN TESTIMONY WHEREOF, the parties hereto executed this Agreement in duplicate originals, as of the day and year first above written.

WITNESSED:

CITY OF BELTON (the "City")

Laurie E. Kennedy

By: Rafael Callabero

APPROVED AS TO FORM:

W. N. [Signature]
City Attorney