

ORDINANCE NO. 380

CITY OF TEGA CAY, SOUTH CAROLINA

AN ORDINANCE GRANTING TO DUKE ENERGY CAROLINAS, LLC THE NON-EXCLUSIVE CONSENT OF THE GOVERNING BODY OF THE CITY OF TEGA CAY TO CONSTRUCT, MAINTAIN, AND OPERATE A TRANSMISSION OR DISTRIBUTION SYSTEM TO SUPPLY ELECTRICITY IN, OVER AND UPON THE STREETS, ALLEYS, OR ANY OTHER RIGHTS-OF-WAY THROUGH THE CITY OF TEGA CAY.

BE IT ORDAINED by the Mayor and Council of the City of Tega Cay in Council duly assembled that the attached MUNICIPAL ELECTRIC SERVICE AGREEMENT is done this 24th day of June, 2009.

Done in Council meeting at which time a quorum of the members were present.

FIRST READING: June 15, 2009


SECOND READING: June 24, 2009

SIGNED:

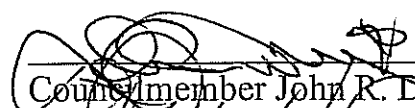
Mayor Bob Runde



Mayor Pro Tempore George Sheppard



Councilmember Les Conner

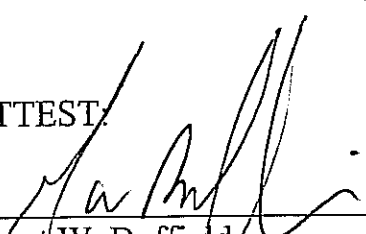


Councilmember John R. Dervay, II



Councilmember Larry S. Harper

ATTEST:



Grant W. Duffield
City Manager, City of Tega Cay

STATE OF SOUTH CAROLINA) MUNICIPAL SERVICE AGREEMENT
) FOR THE PROVISION OF ELECTRIC
COUNTY OF YORK) SERVICE

THIS AGREEMENT, made and entered into this the 24th day of June 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 Tega Cay, 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 five percent (5%) 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 hereby consents to the Company's use of all public streets, avenues, alleyways, and public rights-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 rights 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. However, with respect to the construction, maintenance, and operation of any electric transmission line, not specifically necessary for, or used as ,an integral part of the electric system for provision of electricity within the City Limits,the Company agrees to install,operate,and maintain its transmission facilities within the corporate limits of the City in a manner designed to mitigate,to the extent possible, any adverse impact within any public street,road,alley or other public right of way,including,but not limited to,the use of the Company's established transmission line construction and siting process. The parties hereto may make additional contracts not in conflict with this Agreement for the furnishing of said electric energy at the rates to be 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 rights-of-way 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 therefrom.
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, municipal 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 five (5) years, with an effective date of July 1, 2009 and a termination date of June 30, 2014. Thereafter, the agreement will renew automatically for an additional five year term, unless either party provides the other with written notice at least 180 days prior to the date of the automatic renewal. Should such notice be given by either party, the parties agree to negotiate, in good faith, modifications to this Agreement.
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 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 or 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.
15. Notice to the City or the Company shall be mailed or delivered to the addresses as follows:

If to City of Tega Cay:

City of Tega Cay
PO Box 3399
Tega Cay, SC 29708
Attn: Grant Duffield

If to Duke Energy Carolinas, LLC:

Duke Energy Carolinas, LLC
PO Box 1006
Charlotte, NC 28201
Atten: Vice President of Government
and Community Relations

All notices, demands and requests which may be given or which are required to be given hereunder by either party to the other must be in writing. All such notices, demands and requests shall be sent by certified mail, return receipt requested, postage prepaid, or by overnight courier service (e.g., Federal Express), or by personal delivery, or by facsimile, and addressed as provided above, or to such other address as a party may specify by duly given notice.

Notices, demands and requests when given in the manner aforesaid through the mail will be deemed sufficiently served, given, or received for all purposes hereunder three (3) days after the date such notice, demand or request is properly deposited with the United States Postal Service, or if sent by overnight courier service, on the first business day after same is deposited with the overnight courier service

with instructions to deliver the next business day, or if delivered in person or sent by facsimile, on the date of personal delivery or date of facsimile. Each party shall notify the other of any change in address.

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

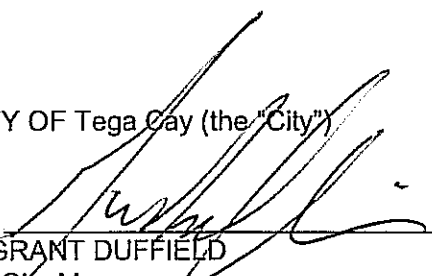
DUKE ENERGY CAROLINAS, LLC

By: _____
Vice President

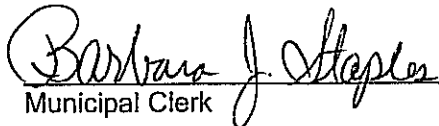
ATTEST:

Assistant Secretary

CITY OF Tega Cay (the "City")

By: 
GRANT DUFFIELD
Its: City Manager

ATTEST:


Municipal Clerk