

**TOWN OF SEABROOK ISLAND**

**ORDINANCE NO. 2023-02**

**ADOPTED \_\_\_\_\_**

**AN ORDINANCE (“FRANCHISE ORDINANCE” OR “AGREEMENT”) TO GRANT TO DOMINION ENERGY SOUTH CAROLINA, INC., ITS SUCCESSORS AND ASSIGNS, THE LIMITED NON-EXCLUSIVE RIGHT, POWER AND AUTHORITY TO ERECT AND TO INSTALL, MAINTAIN, AND OPERATE ON, ALONG, ACROSS, IN, OVER, ABOVE, UPON AND UNDER THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE TOWN: (1) ELECTRIC LINES, WIRES, GUYS, PUSH BRACES, TRANSFORMERS AND APPURTENANT FACILITIES AND (2) COMMUNICATION LINES AND FACILITIES FOR USE BY THE COMPANY OR ANY DESIGNEE UNDER THE TERMS SET FORTH IN THIS AGREEMENT, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME IS NEEDED BY THE COMPANY TO RENDER SERVICE TO ITS CUSTOMERS IN THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA FROM THOSE FACILITIES; TO SET THE AMOUNT OF FRANCHISE FEE TO BE PAID BY DOMINION ENERGY SOUTH CAROLINA, INC. TO THE TOWN; IF SO REQUIRED, TO LEVY FRANCHISE FEES ON THIRD PARTIES SELLING ELECTRICITY USING THE COMPANY’S ELECTRIC SYSTEMS; TO ALLOW FOR THE ESTABLISHMENT OF A FUND AND UNDERGROUND UTILITY DISTRICTS FOR ELECTRIC NON-STANDARD SERVICE**

**WHEREAS**, the Town of Seabrook Island and Dominion Energy South Carolina, Inc., have negotiated a Franchise Agreement whereby said Dominion Energy South Carolina, Inc., shall be granted the limited non-exclusive right to use the public rights-of-way within the Town for the purpose of erecting, constructing, maintaining, and operating its facilities; and

**WHEREAS**, the said Franchise Agreement sets forth the method by which the Town shall be compensated for the rights and privileges granted to Dominion Energy South Carolina, Inc.; and

**WHEREAS**, the Mayor and Council of the Town of Seabrook Island believe that adoption of the amended Franchise Agreement is in the best interest of its citizens and property owners; and

**WHEREAS**, the payments made to the Town under the terms and conditions of the amended Franchise Agreement shall be in lieu of business license fees; and

**WHEREAS**, the Mayor and Council advertised and held a public hearing on this ordinance during a duly called meeting on \_\_\_\_\_;

**NOW, THEREFORE**, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, **BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND, S.C.:**

**SECTION 1**

Wherever the word "Company" appears in this Franchise Ordinance, it is hereby to designate, and shall be held to refer to Dominion Energy South Carolina, Inc., a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, its successors and assigns.

## **SECTION 2**

The limited non-exclusive right, power and authority is hereby granted and vested in the Company to erect and to install, maintain and operate on, along, across, in, upon and under the streets, alleys, bridges, rights-of-way and other public places of the Town: (1) electric lines, wires, guys, push braces, transformers and other appurtenant facilities and to use those facilities to conduct an electric business, and any other business or businesses which may be lawfully conducted using the permitted facilities.

## **SECTION 3**

Any street, alley, bridge, right-of-way or other public place used by the Company shall not be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the Town, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be injured. However, should any such damage occur due to Company's failure to use due care, the Company shall repair the same as promptly as possible after notice from the Town, and, in default thereof, the Town may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall save the Town harmless from all liability or damage (including judgment, decrees, and legal court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

## **SECTION 4**

Upon approval of this Franchise Agreement and the franchise agreement between Berkeley Electric Cooperative, Inc. ("Berkeley Electric") and the Town in accordance with the terms of the Agreement Concerning Electric Service Rights Between Berkeley Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc., dated [REDACTED] ("Electric Service Rights Agreement"), the Company shall have electric service rights to the parcels shaded in red on Exhibit A, and Berkeley Electric shall have electric service rights to the parcels shaded in green on Exhibit A as specifically set forth in Electric Service Rights Agreement, provided, however, that:

- A. The Company may continue to provide electric service to any building or structure to which it is already providing electric service as of the effective date of the Franchise Agreements until such building or structure is removed, torn down, razed to the ground, or demolished, even if Exhibit A provides electric service rights for the parcel on which the building or structure is located to Berkeley Electric; and Berkeley Electric may continue to provide electric service to any building or structure to which it is already providing electric service as of the effective date of the Franchise Agreements until such building or structure is removed, torn down, razed to the ground, or demolished, even if Exhibit A provides electric service rights for the parcel on which the building or structure is located to the Company. After any building or structure that is being served by Berkeley Electric or the Company pursuant to the terms of this Subsection 4(A) is removed, torn down, razed to the ground, or demolished, the service rights designation in Exhibit A shall

be the sole determining factor as to whether Berkeley Electric or the Company has the right to provide electric service to any future replacement building or structure within that parcel.

- B. Where any new building or structure is constructed so that part of the building or structure resides on a red parcel in Exhibit A and part of the building or structure resides on a green parcel of Exhibit A, the customer, in its sole discretion, may choose whether the Company or Berkeley Electric provides electric service to such new building or structure.
- C. Upon any future annexation by the Town, the Company shall have electric service rights to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation, and Berkeley Electric shall have electric service rights to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation.
- D. If the Town Council does not approve this Franchise Agreement and the franchise agreement with Berkeley Electric pursuant to the terms of the Electric Service Rights Agreement, the Electric Service Rights Agreement shall be considered terminated, null, and void.
- E. The rights granted to Company by this Agreement are limited by the terms and conditions of the Electric Service Rights Agreement. If Company is not providing electrical services to any customer within the Town limits in accordance with the Electric Service Rights Agreement, this Agreement provides no authority to erect, install, maintain, or operate an electrical system of any type on any right of way or public place(s) within the Town.

## **SECTION 5**

The Company shall:

- A. Construct and extend its electric system within the present and/or extended Town limits and have the right to connect new services in the parcels shaded in red on Exhibit A and in newly annexed parcels assigned to the Company by the Public Service Commission of South Carolina prior to the annexation, and supply standard electric service at standard voltages under rates and general terms and conditions as authorized by law.
- B. Install underground electric distribution and service lines in the Town under terms and conditions customarily applicable with respect to aid to construction.
- C. When called upon, expand and maintain all of the electric street lighting system (to include both lighting fixtures and poles) and service along the streets, highways, alleys and public places of the Town, as said system may be hereafter installed and/or changed by order of the Town, in accordance with the terms and provisions of this franchise. All materials furnished shall be of standard quality and kind, and shall meet the requirements of good street lighting practice.

- D. Make changes in the location of the street lighting system covered by this franchise upon written request of the Town.
- E. Render to the Town a bill each month for the street lighting service furnished hereunder during the preceding month, in accordance with the provisions of this Franchise Ordinance.
- F. Maintain at its own expense a system for repairing the street lighting system in use. The Company, upon receiving official notice that there is a defective standard fixture or pole, shall within five (5) days repair or replace the same.

## SECTION 6

The Town shall:

- A. Take electric street lighting and other Town electric services from the Company during the period covered by this Franchise Ordinance in all areas of the Town served by Company or in which Company is authorized by law to serve consistent with the terms of Agreement.
- B. Pay monthly, within twenty-five (25) days after receipt, a proper bill from the Company for the preceding month's service in accordance with the amounts provided for in approved tariffs.
- C. Pay the Company for street lighting service provided by the Company at the municipal rate schedule approved by the Public Service Commission of South Carolina applicable to that lighting fixture and pole, including underground rates. If no applicable municipal rate is available for any fixture and pole at the time of billing, then the Town shall pay the full and applicable non-municipal rate for such fixture(s) and pole(s).
- D. Notify the Company in writing of areas annexed into the Town, including with the notification: (1) accurate maps, (2) tax map numbers, and (3) street addresses of all locations in the annexed areas so that newly annexed customers may be subject to franchise fees. Such notification is a precondition to franchise fee payments by the Company on those accounts. In addition, the Town shall promptly update its municipal boundary maps with its County Geographical Information Systems (GIS) Office.
- E. Upon annexation, pay to the Company for street lighting service to customers subject to the annexation at the municipal rate schedule approved by the Public Service Commission of South Carolina applicable to that lighting fixture and pole, including underground rates. If no applicable municipal rate is available for any fixture and pole at the time of billing, then the Town shall pay the full and applicable non-municipal rate for such fixture(s) and pole(s).

## SECTION 7

The Town and the Company agree that:

- A. All work performed within the municipal limits by the Company or its contractors shall be in accordance with the National Electric Safety Code and the applicable electric rules and regulations, as adopted by the Public Service Commission of South Carolina.
- B. The records of the Company pertaining to the electric street lighting system are to be accepted as full and final proof of the existence and configuration of the same, that system being hereinafter referred to as the "Street Lighting System."
- C. Where lighting units of a different type and character than those now included in the Street Lighting System are desired by the Town, a new unit charge and specification shall be agreed upon which will apply to such lighting units and which thereafter shall become a part hereof.
- D. Except as otherwise provided herein, the Town shall have the right at any time to order the installation of new fixtures and poles in new areas of the Town.
- E. The Town shall have access at all reasonable times to maps, records, and rates relating to the Street Lighting System in the Town.
- F. Subject to applicable rates and terms and conditions, throughout the life of the franchise the Company will supply to the Town, and the Town agrees that it will purchase from the Company, electric energy required by the Town for its own use including traffic signal lighting, street lighting, lighting and power for public buildings, pumping stations, or other installations now owned or hereafter constructed or acquired by the Town and for all other uses in all areas served by or to be served by the Company, as allowed by law. However, should the Town request to provide electric service to any of its facilities utilizing an alternative energy facility owned by the Town, the Company will consent to such a request so long as the energy from that facility is allowed by and subject to a rate schedule approved by the Public Service Commission of South Carolina. If the Town receives service from such a facility, then the Company shall have the right to change the terms and conditions under which it provides any remaining services to Town facilities.
- G. The Company shall charge and the Town shall pay to the Company monthly for all electric energy furnished by the Company for miscellaneous light and power service under this franchise in accordance with rates and tariffs and terms and conditions as established by law.
- H. None of the electric energy furnished hereunder shall be sold, disposed of, or exchanged by the Town to others without the expressed written consent of the Company.
- I. The electric energy hereunder is not guaranteed or warranted to be free from minor interruptions or from major outages or electrical surges beyond the control of the Company.

## **SECTION 8**

All work upon the streets and public places of the Town shall be done under the general supervision of the Mayor and Council (or other legally constituted governing body) of the Town, and all sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced and relayed by the Company, its successors and assigns, to the reasonable requirements of the Mayor and Council (or other legally constituted governing body) of the Town.

## **SECTION 9**

The Company shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the reasonable rules and regulations of the Public Service Commission of South Carolina or its successors, applicable to electric service in the Town.

## **SECTION 10**

- A. As payment for the right to provide electric service, and any other services as may be permitted under this Franchise Ordinance, in the succeeding calendar year, the Company shall pre-pay into the Treasury of the Town, on the first business day of July each year, beginning with the year 2023, a sum of money (the "Franchise Fee") equal to five percent (5%) of the gross sales revenue accruing to the Company during the preceding calendar year from all residential and commercial sales of electricity in the municipality and all wheeling or transportation service to such customers within the corporate limits of the Town, not including sales made under legally authorized special sales programs which allow the Company to reduce prices to meet customers' competitive energy prices. To change the percentage of the revenue on which the Franchise Fee is calculated, the Town must both (1) amend this Franchise Ordinance by means of an Amendatory Ordinance solely addressed to that purpose, and (2) provide the Company written notice including an attested copy of the Amendatory Ordinance at least ninety (90) days prior to the next Franchise Fee payment due date. So long as both conditions are met, the increase or decrease will apply to the next Franchise Fee payment due from the Company and the recovery of the higher fee will begin during the calendar year for which the Franchise Fee applies. During the term of this Franchise Ordinance, the percentage of the revenue on which the Franchise Fee is based shall not exceed the highest percentage paid by the Company to any other town or city under a franchise agreement. Any other revenue accruing to the Company in the municipality may be subject to other fees and/or business license taxes as appropriate.
- B. Subject to Section 10(A) above, the Town's right to receive franchise fees as provided for herein shall be in lieu of all occupation, license, excise and special franchise taxes and fees, and shall be in full payment of all money demands, charges, or fees of any nature whatsoever imposed by the Town, except ad valorem taxes on property. The Company may at its option pay and deduct from its franchise fee payments any amount that shall be required or exacted from the Company for the benefit of the Town other than ad valorem taxes on property.

- C. It is expressly understood that all franchise fees or other payments imposed by the Town on the Company shall be collected from customers of the Company within the municipal boundaries, as is presently provided for in the orders of the Public Service Commission of South Carolina applicable to the Company. From time to time, but no more than once a year and no less than once every three years, the Company will provide the Town a list of service addresses to which franchise fees are being applied (the "List"). The Town shall have sixty (60) days from receipt to verify that all addresses included on the List are accurate and that no addresses are missing. Unless the Town notifies the Company of any error: (1) the Town shall be required to reimburse the Company for any Franchise Fee refund based on an address incorrectly included on the List; (2) the Company shall not be responsible for Franchise Fees for any service addresses not included on the List. Reimbursement shall be made to the Company within sixty (60) days of receipt of request by the Town or the Company may agree, in its sole discretion, to deduct the amounts owed under this Subsection from the next Franchise Fee payment to the Town. This information is confidential and proprietary and shall not be disclosed to any third party under the Freedom of Information Act or otherwise without a court order or the Company's prior written consent.
  
- D. The Town hereby levies, and the Company may collect and transmit to the Town, a franchise fee on electricity sold by third parties to customers within the Town using the Company lines, or facilities; said fee is to be in all respects equivalent to the franchise fees established herein plus a proportional share of all other payments to the Town, or to the Non-Standard Service Fund established hereunder, which the Company is obligated to make on whatever basis during the life of this franchise.
  
- E. Should the Town itself ever at any time construct, purchase, lease, acquire, own, hold or operate an electric distribution system to provide electric service within the Town, then the payment of percentages of gross sales revenue herein provided to be paid by the Company shall abate, cease and no longer be due and no other fee for the franchise rights shall be required.

#### **SECTION 11**

This Franchise Ordinance is subject to the constitution and laws of the State of South Carolina.

#### **SECTION 12**

This Franchise Ordinance shall not become effective until accepted in writing by the Company, which shall be within thirty (30) days from the date of its ratification by the Town and on the same date that the Franchise Ordinance for Berkeley Electric becomes effective. The terms, obligations and rights granted by this Franchise Ordinance, when accepted by the Company, shall constitute a contract between the Town and the Company, and shall be in full force and effect for a term of thirty (30) years from the effective date.

#### **SECTION 13**

The rights hereunder accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this Franchise Ordinance shall not create any rights in third parties.

**SECTION 14**

If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

**SECTION 15**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SIGNED AND SEALED** this \_\_\_\_ day of \_\_\_\_\_, 2023, having been duly adopted by the Town Council for the Town of Seabrook Island on the \_\_\_\_ day of \_\_\_\_\_, 2023.

First Reading:  
Public Hearing:  
Second Reading:

TOWN OF SEABROOK ISLAND

\_\_\_\_\_  
John Gregg, Mayor

ATTEST

\_\_\_\_\_  
Katharine E. Watkins, Town Clerk



ACCEPTANCE of the franchise granted by the within Ordinance acknowledged by DOMINION ENERGY SOUTH CAROLINA, INC., this \_\_\_\_\_ day of \_\_\_\_\_, 23\_\_.

DOMINION ENERGY SOUTH CAROLINA, INC.

\_\_\_\_\_  
W. Keller Kissam  
President

ATTEST:

\_\_\_\_\_  
Karen W. Doggett  
Assistant Corporate Secretary and Director-  
Governance

(Corporate Seal)