

ORDINANCE NO. 2023-47

AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE PUBLIC WAYS OF THE CITY OF BREVARD, NORTH CAROLINA, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS UTILITY SYSTEM AND ALL NECESSARY MEANS FOR TRANSMITTING AND DISTRIBUTING GAS WITHIN SAID CITY FOR A PERIOD OF 30 YEARS.

WHEREAS, Public Service Company of North Carolina, Incorporated proposes to continue to construct, operate and maintain a Gas Utility System and all necessary means for transmission and distribution of gas within the City of Brevard, North Carolina, (the "City") and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brevard, North Carolina as follows:

SECTION 1. DEFINITIONS

Whenever and wherever used in this Ordinance the following words and names shall have the following meanings:

- (a) **CITY COUNCIL** shall mean the governing body of the City of Brevard, North Carolina, as now or hereafter constituted.
- (b) **COMPANY** shall mean Public Service Company of North Carolina, Incorporated, d/b/a Dominion Energy North Carolina, its successors, and assigns.
- (c) **CITY** shall mean the City of Brevard, North Carolina, including its present and future boundaries.
- (d) **DEPARTMENT OF TRANSPORTATION** shall mean the North Carolina Department of Transportation or its successor.
- (e) **GAS** shall mean natural gas, mixed gas and substitute fuels carried over the Company's facilities as authorized by the North Carolina Utilities Commission.
- (f) **GAS UTILITY SYSTEM** shall mean all facilities of the Company in the City used for the transmission or distribution of Gas within the City.
- (g) **FERC** shall mean any reference made to the Federal Energy Regulatory Commission or its successor.
- (h) **COMMISSION** shall mean the North Carolina Utilities Commission, or any successor body lawfully constituted.

- (i) **PUBLIC WAY OR WAYS** shall mean any public street, avenue, road, alley, lane, bridge, or other public right-of-way within the City over which the City has jurisdiction or exercises control.
- (j) **GOOD UTILITY PRACTICES** shall mean the practices, methods and acts engaged in or approved by a significant portion of the gas industry during the relevant time period or other practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, requirements of governmental agencies having jurisdiction, and at the lowest reasonable cost. The term Good Utility Practices is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods, or acts.

SECTION 2. Grant of Authority

The right, power and authority is hereby granted to and vested in the Company to construct, install, replace, repair, maintain and operate transmission mains, gas mains, pipes, equipment, service lines, communications lines, facilities and other appurtenant apparatus of the gas system, for the purpose of operating a natural gas system along, across, and under the streets, alleys, bridges, rights-of-way, and other public places of the City together with any necessary rights of access thereto; and to use that natural gas system to conduct a gas business. This granting of authority is provided that the City as of the applicable time, has jurisdiction or exercises control of the public ways. This Franchise Agreement shall also permit the Company to exercise the rights granted herein without the need for additional permit(s) from the City.

SECTION 3. Conditions on Use of Public Ways

(a) No street, alley, bridge, right-of-way, or other public place used by the Company shall be obstructed longer than reasonably 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. However, should any such damage occur due to the Company's failure to use due care, the Company shall repair the same as promptly as possible, and, in default thereof, the City, after written notice and opportunity for the Company to repair, may make such repairs and charge the reasonable cost thereof and collect the same from the

Company.

(b) All work upon the streets and public places of the City shall be done subject to reasonable inspection of the City Manager or designee (or other legally constituted governing body) of the City, all sidewalks or street pavements or street surfaces which may be displaced by reason of such work shall be properly replaced by the Company, its successors, and assigns, to the reasonable requirements of the City.

SECTION 4. Annexation Notification

The City shall mail to the Company areas annexed into the City. Said notices shall include pertinent maps and/or tax map numbers, so that newly annexed customers may be identified. Any written notice to the Company shall be sent to Public Service Company of North Carolina, GIS Services-Annexations, 800-A Gaston Road, Gastonia, NC 28056.

SECTION 5. Service

(a) The Company may supply any form of gas containing approximately one thousand (1,000) BTU's per cubic foot, and its obligation in respect thereto shall continue only so long as it is able to reasonably obtain an adequate supply of such gas hereunder, provided, however, that in the supply of such gas the customers within the City shall enjoy equal rights with respect to other similar customers served by the Company consistent with Commission rules and regulations.

(b) The Company shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the rules and regulations of the Commission, Department of Transportation, and FERC or its successors, applicable to gas service in the City.

SECTION 6. Nonexclusive Grant and Term

(a) The gas franchise granted by this Ordinance is not exclusive. The City may grant the same or similar rights and privileges to other certified persons or companies at any time, provided that any such grants shall be made under terms and conditions which do not materially impair the exercise of the rights and privileges granted to the Company under this franchise.

(b) Upon ratification and acceptance, this franchise shall constitute a contract between the City and the Company and shall be in force and effect for an initial term of 30 years and shall continue in force and effect year-to-year thereafter until properly terminated

by either party. Either party may terminate the contract at the end of its initial term or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than one (1) year before the proposed date of termination.

SECTION 7. Franchise Not Waiver of Law

This franchise is subject to the constitution and laws of the State of North Carolina and is not a waiver of any present or future law or regulation. This franchise is not a limitation of the authority of the City to enact any ordinance or policy that does not diminish, conflict, or impair the rights and authority granted to the Company in this franchise or otherwise impose additional obligations on the Company in order to exercise the rights granted herein.

SECTION 8. Regulations. Safety and Customer Service

- (a) Gas utility service is not guaranteed to be free from interruptions, supply failure or outages.
- (b) The Company will restore gas utility service using Good Utility practices.
- (c) The Company shall maintain and operate its Gas Utility System in compliance with applicable State and Federal maintenance and safety regulations.
- (d) Company vehicles, responding to natural gas emergencies, may park as close to the location of the emergency as is practicable.

SECTION 9. Commission Rules and Rates

The Company may from time to time declare, make, and enforce such rules and regulations as shall have been fixed or allowed by the Commission as to the sale or distribution of Gas to any of its customers in the City. The rates to be charged for Gas at all times shall be such rates as are fixed or allowed by the Commission, including such rates as shall be negotiated by the Company with certain industrial or commercial customers pursuant to authority granted by the Commission.

SECTION 10. Plat of Gas Utility System

The Company shall maintain maps or plats of its Gas Utility System within the area covered by this franchise. Such maps or plats shall be maintained in the Company's offices, and the City may review the same during any regular business hours of the Company.

SECTION 11. Bankruptcy. Successors. Assigns

In the event the Company is adjudged bankrupt or its assets are placed in the hands of a

receiver or other court officer, either voluntarily or involuntarily, then the interest, rights and remedies of the City in respect to said properties and operations shall not be affected or prejudiced, and any receiver, assignee, trustee, purchaser or successor, whether by operation of law or otherwise, so succeeding to or representing the interest or position of the Company, shall be bound by this Ordinance and the terms and provisions hereof and shall be bound to carry out and perform the obligations and duties imposed upon the Company by this Ordinance. Likewise, if the Company reorganizes, merges, or consolidates with any other company, then the City is bound by this Ordinance.

SECTION 12. Revocation

In the event the Company fails to comply with the provisions of this Ordinance and, within thirty (30) days after receipt of written notice from the City, the Company fails to cure or remedy such default, or to have begun reasonable measures to do so, then the City may cause the Company to appear at a hearing before the City upon thirty (30) days prior written notice. Any written notice to the Company shall be sent to Dominion Energy North Carolina, DBA Public Service Company of North Carolina, PO Box 1398, Gastonia, NC 28056-6519. Attention: Economic Development & External Affairs Manager. If at such hearing the City should determine that the Company's failure or default has been substantial, repeated or flagrant, then upon such determination the City may revoke and terminate this franchise; provided, however, that the Company may file with the City within ten (10) days after such determination the Company's election to appeal to the proper North Carolina court, during the pendency of which the Ordinance shall remain in full force and effect. In that event the City and Company agree that such court shall hear and determine *de novo* whether there has been substantial, repeated, or flagrant failure or default by the Company of the terms, conditions, or obligations of this Ordinance. Failure or default which cannot be corrected by the Company shall not be grounds for revocation or termination unless such failure or default shall be determined to be material and continuing.

SECTION 13. Indemnification

The Company shall indemnify and hold harmless the City, its officers, and employees from any losses, costs, expenses, claims, judgments, suits, or demands resulting or in any manner arising from the action or inaction of the Company in constructing, operating, or maintaining a gas system, in carrying on the business of selling, transmitting or

distributing gas, or in exercising or failure to exercise any right or privilege granted by this franchise and save and except for any such losses, costs, expenses, claims, judgments, suits, or demands resulting or in any manner arising from, or contributed to, by the negligent action or inaction of the City or any of its officers, agents, or employees. Provided, however, the Company's indemnification at any time is conditioned on the City having notified the Company in writing of any such claim, demand, or suit within such time as to give the Company reasonable opportunity to resolve or defend the same on behalf of the City. In the event of such notification, the Company shall have the sole and full responsibility for the resolution and defense of any such claim, demand, or suit on behalf of the City, and the City shall cooperate fully with the Company in any such undertaking. If after proper notification, the Company fails to undertake any such responsibility, the City shall have the right to resolve or defend any such claim, demand, or suit at the expense of the Company.

SECTION 14. Severability. Third Party Rights

(a) If any provision in this contract is determined to be invalid, void, or unenforceable by any court or regulatory body having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Contract. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders, and regulations of any governmental authority having jurisdiction over the parties, their facilities, or gas supply, this Contract or transaction or any provisions thereof.

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

SECTION 15. Effective Date. Term. Adoption. and Ratification

(a) This Ordinance shall be effective from and after the 16th day of October, 2023, provided the Company shall have executed the written acceptance hereof at the end of this Ordinance, and shall exist in force for a period of 30 years hereafter, and continue in force year to year thereafter until cancelled upon written notice of either party at least one year in advance.

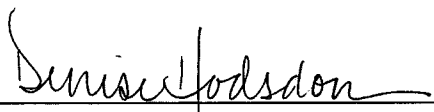
(b) All other Ordinances and clauses of Ordinances in conflict herewith are hereby repealed.

Adopted and approved by the City of Brevard this 16th day of October, 2023, and hereby ratified.

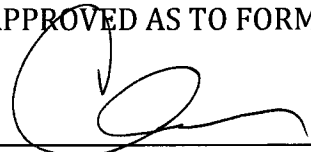



Maureen Copelof
Mayor

ATTEST:


Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:


Mack McKeller
City Attorney

ACCEPTANCE BY COMPANY

Public Service Company of North Carolina, Incorporated does hereby accept and acknowledge the foregoing Ordinance, and in consideration of the benefits and privileges granted to it does hereby agree to the terms and conditions therein provided.

This the ____ day of _____, 20__.

PUBLIC SERVICE COMPANY
OF NORTH CAROLINA, INCORPORATED

By: _____
D. Russell Harris
President and Chief Operating Officer

ATTEST:

Karen W. Doggett
(Corporate Seal) Its: Assistant Corporate Secretary