

TOWN COUNCIL

STAFF REPORT FINANCE Department



MEETING DATE:	7/13/2021
PROJECT:	Electric Service Rights Agreement
PROJECT MANAGER:	Chris Forster, Director of Finance & Administration, MPA, CPFO, CGFM

RECOMMENDATION: Staff recommends execution of a new three-party Electric Service Rights Agreement between the Town, Palmetto Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc.

BACKGROUND/DISCUSSION: The Town executed simultaneous franchise agreements with Palmetto Electric Cooperative, Inc. and South Carolina Electric & Gas Company, predecessor in interest to Dominion Energy South Carolina, Inc., on August 28, 2001. These identical agreements outlined the rights and responsibilities of the parties including payment of a quarterly franchise fee not to exceed five percent (5%) of gross sales revenue from the preceding calendar quarter. The period of performance of these initial agreements was for twenty (20) years with expiration dates of August 27, 2021. Over the years, however, there were territory disputes and even lawsuits between the two service providers over territory. This Electric Service Rights Agreement reflects a detailed negotiation between the service providers on rights and obligations of every parcel in Bluffton. It is designed to avoid disputes and allow for greater efficiency in planning. It will become incorporated by reference into the franchise agreement renewals for each service provider.

SUMMARY: The agreement currently before Town Council is a three-party agreement to include both service providers. It reflects a detailed exercise conducted by the service providers to define jurisdiction over new or updated development within the Town of Bluffton which will then become a part of the franchise agreement renewals for each.

NEXT STEPS: By Resolution, authorize the Town Manager to sign the attached Electric Service Rights Agreement between Palmetto Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc.

ATTACHMENTS:

1. Agreement Concerning Electric Service Rights Between Palmetto Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc.
2. Signed letter from Palmetto Electric Cooperative, Inc. in support of the Electric Service Rights Agreement.
3. Signed letter from Dominion Energy South Carolina, Inc. in support of the Electric Service Rights Agreement.
4. Resolution authorizing the execution of the Electric Service Rights Agreement.

**AGREEMENT CONCERNING ELECTRIC SERVICE RIGHTS BETWEEN
PALMETTO ELECTRIC COOPERATIVE, INC. AND DOMINION ENERGY SOUTH
CAROLINA, INC.**

This Electric Service Rights Agreement is entered into this ____ day of _____, 2021, by and among Dominion Energy South Carolina, Inc. (“DESC”), Palmetto Electric Cooperative, Inc. (“Palmetto Electric”), and the Town of Bluffton (“Town”) (collectively, “Parties”).

WHEREAS, DESC has an electric franchise agreement with the Town, which became effective on August 28, 2001; and

WHEREAS, Palmetto Electric has an electric franchise agreement with the Town; which became effective on August 28, 2001; and

WHEREAS, the Town desires to avoid electric service rights disputes between Palmetto Electric and DESC within the Town limits; and

WHEREAS, Palmetto Electric and DESC have engaged in a detailed infrastructure and parcel mapping exercise within the Town in an effort to allow both companies to have more certainty in planning to provide electric service and to allow both companies to provide electric service more efficiently and effectively; and

WHEREAS, as agreed to by the Parties, the attached Exhibit A is a map of the Town of Bluffton with the parcels for which Palmetto Electric is to have electric service rights shaded in green and the parcels for which DESC is to have electric service rights shaded in red;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Palmetto Electric and DESC shall enter into Franchise Agreements with the Town on October 31, 2021, or earlier if the Parties so agree, provided that both Franchise Agreements will be signed on the same day. The Franchise Agreements shall each have the same effective date, shall each be for a specified term of at least twenty (20) years, shall each expire on the same date certain, and shall each omit any provisions allowing for amendment of the term of the Franchise Agreement. Five (5) business days prior to execution of the Franchise Agreements, each Party shall be provided with the final versions of the Franchise Agreements for the purpose of determining compliance with the terms of this Electric Service Rights Agreement. If any Party determines that either Franchise Agreement does not comply with the terms of this Electric Service Rights Agreement, that Party may terminate this

Electric Service Rights Agreement at any time prior to execution of the Franchise Agreements.

2. The Parties agree that Exhibit A is a reasonable assignment of the electric service rights to the parcels located within the Town limits and resolves any current and future disputes regarding electric service rights to the parcels. As such, the Franchise Agreements entered into pursuant to Paragraph 1 shall each reference and include as an attachment Exhibit A attached hereto. The Franchise Agreement between DESC and the Town shall provide that DESC has electric service rights to the parcels shaded in red on the attached Exhibit A. The Franchise Agreement between Palmetto Electric and the Town shall provide that Palmetto Electric has electric service rights to the parcels shaded in green on the attached Exhibit A. The Franchise Agreements entered into pursuant to Paragraph 1 need not and shall not include any language indicating the possibility of electric service rights disputes.
3. Upon acceptance by Town Council of both the Franchise Agreement between Palmetto Electric and the Town and the Franchise Agreement between DESC and the Town, DESC shall have electric service rights to the parcels shaded in red on the attached Exhibit A, and Palmetto Electric shall have electric service rights to the parcels shaded in green on the attached Exhibit A. Except as specifically provided in Paragraphs 4, 5, and 6 herein, the service rights designation in the attached Exhibit A shall be the sole determining factor as to whether Palmetto Electric or DESC has the right to serve a building or structure within a particular parcel.
4. The Parties further agree that Palmetto 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 DESC; and DESC 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 Palmetto Electric. After any building or structure that is being served by Palmetto Electric or DESC pursuant to the terms of this Paragraph 4 is removed, torn down, razed to the ground, or demolished, the service rights designation in the attached Exhibit A shall be the sole determining factor as to whether Palmetto Electric or DESC has the right to provide electric service to any future replacement building or structure within that parcel. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.

5. The Parties further agree that, where any new building or structure is constructed so that part of the building or structure resides on a green parcel of the attached Exhibit A and part of the building or structure resides on a red parcel of the attached Exhibit A, the customer, in its sole discretion, may choose whether Palmetto Electric or DESC provides electric service to such new building or structure. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.
6. The Parties further agree that, upon any future annexation by the Town, Palmetto Electric shall continue to provide electric service to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation, and DESC shall continue to provide electric service to those annexed parcels assigned to it by the Public Service Commission of South Carolina prior to the annexation. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.
7. The electric service rights delineated in Exhibit A are in compliance with applicable state law.
8. This Electric Service Rights Agreement will not be amended without the express written consent of all Parties.
9. If the Town Council does not approve both Franchise Agreements entered into pursuant to Paragraph 1, this Electric Service Rights Agreement shall be considered terminated, null and void. Each Franchise Agreement entered into pursuant to Paragraph 1 shall contain a provision stating as such.
10. The Parties agree that the Franchise Agreement that DESC enters into pursuant to Paragraph 1 will be a combination electric and gas Franchise Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Electric Service Rights Agreement to be executed on the date first written above.

[SIGNATURE PAGE FOLLOWING]

TOWN OF BLUFFTON

Lisa Sulka, Mayor

Date

DOMINION ENERGY SOUTH CAROLINA, INC.

W. Keller Kissam, President-Electric Operations

Date

PALMETTO ELECTRIC COOPERATIVE, INC.

Berl Davis, President and Chief Executive Officer

Date



One Cooperative Way

Hardeeville, SC 29927-5123

843-208-5551

June 23, 2021

The Honorable Lisa Sulka
Town of Bluffton
P.O. Box 386
Bluffton, SC 29910

Re: Electric Service Rights Agreement and Franchise Agreements

Dear Mayor Sulka:

Over the years, municipalities and counties in South Carolina have bear witness to electric service territory rights disagreements, even lawsuits, between electric utility companies to determine which utility has the right to serve particular parcels. In an effort to keep future disagreements from occurring, Palmetto Electric Cooperative, Inc. (Palmetto Electric) has worked closely with Dominion Energy South Carolina, Inc (DESC) in recent months to settle all outstanding electric service territory issues throughout Beaufort County. This effort included all parcels within the Town of Bluffton.

Palmetto Electric has reached an agreement with DESC that assigns electric service territory rights down to the parcel level. Each parcel has been either assigned to Palmetto Electric or DESC based on a number of factors, including current infrastructure locations, planned future infrastructure, and current service distribution. We believe the agreement will aid future planning for electric utilities and will reduce uncertainty for property owners and developers.

We are coming to you jointly with DESC to ask that you adopt the municipal electric service territory map for the Town of Bluffton through official action by Council.

We have established a two-step process that has already been successfully implemented in dozens of municipalities elsewhere in South Carolina:

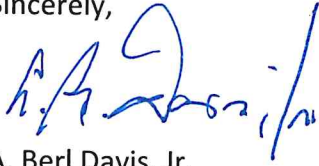
1. The first step involves the adoption of an Electric Service Rights Agreement (ESRA). Palmetto Electric, DESC and the Town of Bluffton will all be parties to the ESRA. If approved by Council, the ESRA will adopt the new municipal electric service territory map and provide a timeline for the adoption of new franchise agreements with both Palmetto Electric and DESC.



2. The second step involves the adoption of a new franchise agreement between Palmetto Electric and the Town of Bluffton, as well as the adoption of a new franchise agreement between DESC and the Town of Bluffton. Each new franchise agreement will include the municipal service territory map as an exhibit and pursue the same effective date, as well as expiration term.

As always, Palmetto Electric looks forward to working with you throughout this important process. Should you have any questions, please do not hesitate to contact me at bdavis@palmetto.coop or 843-208-5500.

Sincerely,



A. Berl Davis, Jr.
President and CEO
Palmetto Electric Cooperative, Inc.



June 24, 2021

Mayor Lisa Sulka
Town of Bluffton
20 Bridge Street
Bluffton, SC 29910

Re: Electric Service Rights Agreement

Dear Mayor Sulka,

Dominion Energy South Carolina, Inc. "DESC" is pleased to present the attached Electric Service Rights Agreement for your review and adoption in partnership with Palmetto Electric Cooperative.

Together, Dominion Energy and Palmetto Electric are asking the Town of Bluffton to adopt a new electric service rights agreement (ESRA) between the municipality, DESC and Palmetto Electric. This ESRA includes a municipal electric service territory map as an exhibit. Following adoption of the ESRA, the Town of Bluffton should adopt new franchise agreements with DESC and Palmetto Electric Co-Op. The new franchise agreements will include a municipal electric territory map as an exhibit.

In the past there have been disagreements, even lawsuits, over which electric utility has the right to serve particular parcels within municipalities. In an effort to solve these issues, we have worked closely with Palmetto Electric to settle all outstanding electric service territory issues throughout the County; this effort included all parcels within your municipality.

We have reached an agreement with the Co-Op that assigns electric service territory rights down to the parcel level; each parcel has been assigned to DESC or Palmetto Electric Co-Op based on a number of factors.

We believe the agreement will aid future planning for electric utilities and will reduce uncertainty for property owners and developers.

We are coming to you jointly, DESC and Palmetto Electric Co-Op, to ask that you adopt the municipal electric service territory map for the Town of Bluffton through official action by Council.

We have established a two-step process that has already been successfully implemented in a number of municipalities:



1. The first step will be the adoption of an Electric Service Rights Agreement (ESRA). DESC, Palmetto Electric and the Town of Bluffton will all be parties to the ESRA. The ESRA will adopt the new municipal electric service territory map and provide a timeline for the adoption of new franchise agreements with DESC and the Co-Op.
2. The second step will be the adoption of new franchise agreements between DESC and the Town of Bluffton and Palmetto Electric. Each new franchise agreement will include the municipal electric service territory map as an exhibit.

We look forward to working with you through this important process. Should you have any questions, please feel free to contact me directly at K.Kissam@DominionEnergy.com or 803-217-4459.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Keller Kissam".

W. Keller Kissam
President – Electric Operations

A RESOLUTION

RELATING TO THE TOWN OF BLUFFTON, SOUTH CAROLINA, SUPPORT OF A SERVICE RIGHTS AGREEMENT
BETWEEN THE TOWN AND PALMETTO ELECTRIC COOPERATIVE, INC. AND DOMINION ENERGY SOUTH
CAROLINA, INC.

WHEREAS: The Town of Bluffton, South Carolina ("Town") has existing franchise agreements with Palmetto Electric, Inc. and South Carolina Electric & Gas Company, predecessor in interest to Dominion Energy South Carolina, Inc., to provide electric service and electric and gas service respectively throughout the Town of Bluffton.

WHEREAS: Those agreements are scheduled to expire on August 27, 2021.

WHEREAS: Palmetto Electric, Inc. and Dominion Energy South Carolina, Inc. have jointly developed detailed infrastructure and parcel maps for all areas of Bluffton to ensure adequate future planning and to avoid disputes as documented in an Electric Service Rights Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council (the "Council"), as the government body of the Town of Bluffton, as follows:

1. The Council hereby declares that this Resolution shall constitute its declaration of consent to enter into an Electric Service Rights Agreement with Palmetto Electric Cooperative, Inc. and Dominion Energy South Carolina, Inc. to make clear the rights and obligations of all electric providers to the Town of Bluffton before renewing any franchise agreement.

Approved this 13th day of July 2021.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

ATTEST:

Kimberly Chapman, Town Clerk
Town of Bluffton, South Carolina