

DATE 6-18-12
REVIEWED BY
PREPARED BY
CITY ATTORNEYS OFFICE

DOCU-
MENT

ATTACH-
MENTS
12
10

AN ORDINANCE TO PROVIDE FOR THE DISPOSITION OF RIGHT OF WAY
EASEMENT LOCATED ALONG CHARLOTTE AVENUE BY THE CITY OF ROCK HILL
TO DUKE ENERGY CAROLINAS, LLC

BE IT ORDAINED by the Governing Body of the City of Rock Hill,
in Council assembled:

SECTION 1. That this Ordinance is being adopted in order to effect proper compliance with the provisions of the Home Rule Act of 1975, now South Carolina Code of Laws for 1976, Section 5-7-30, Section 5-7-40 and Section 5-7-260, and Section 2-48 and Section 2-96 of the Code of the City of Rock Hill.

SECTION 2. That the City of Rock Hill, South Carolina, is the owner of a tract of land along Charlotte Avenue, identified as tax parcel number 629-25-02-017, that Duke Energy Carolinas, LLC has requested that the City grant it a right of way upon and across such land as the City may own, in whole or in part, for and in consideration of the sum of Ten (\$10.00) Dollar, among other things.

SECTION 3. That grant of the abovementioned right of way to Duke Energy Carolinas, LLC, their successors and assigns, for the consideration set forth above, all as is more fully set forth in the attached Exhibit I, which is attached hereto and incorporated herein, is hereby approved, authorized, directed, ratified and confirmed in all respects.

SECTION 4. That the City Manager is hereby empowered to negotiate the final details of such right of way and execute the same as recordable documents, so long as such right of way does not conflict with the terms of this Ordinance.

SECTION 5. That all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6. That this Ordinance shall be and become finally binding immediately after same shall have received first and second readings, given in the manner required by law.

DONE AND RATIFIED in Council assembled on this the ____ day of _____, 2012.

A. Douglas Echols, Jr., Mayor

John A. Black, III, Mayor Pro Tempore

Susie B. Hinton, Councilmember

Kathy S. Pender, Councilmember

James C. Reno, Jr., Councilmember

Osbey Roddey, Councilmember

Kevin H. Sutton, Councilmember

ATTEST:

Anne P. Harty
Municipal Clerk

Exhibit "I"

PREPARED BY: Karol P. Mack, Associate General Counsel, Duke Energy Corporation

Mail To: Duke Energy Carolinas, LLC
Records Management ST30C
P.O. Box 1007
Charlotte, N.C. 28201

Site 104206
Land Unit 1180005
Project No 104206-386192

STATE OF SOUTH CAROLINA)
:
COUNTY OF YORK)

RIGHT OF WAY AGREEMENT

THIS INDENTURE, made and entered into this ___ day of _____, 20___, by and between the **CITY OF ROCK HILL**, having a mailing address of _____ (hereinafter, the "Grantor"), and **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company, having a mailing address of P.O. Box 1007, Charlotte, North Carolina 28201-1007 (hereinafter, the "Grantee");

WITNESSETH:

That Grantor, in consideration of Ten Dollars (\$10.00) and other valuable considerations paid by Grantee, the receipt of which is hereby acknowledged, does grant and convey unto Grantee, its successors and assigns, a perpetual easement and right of way, for the purposes and subject to the terms and conditions herein below set out, over and across the land of Grantor (hereinafter "Premises") lying in the State and County aforesaid, acquired by Grantor by the following:

Deed recorded in Deed Book 68 at Page 37 in the Office of the Register of Deeds for York County.

The easement and right of way herein granted by Grantor to Grantee, its successors and assigns, over the Premises above described consist of the following:

- (a) Grantee's Use of Right of Way Strip. Grantor grants to Grantee, for itself and its successors and assigns, a perpetual easement within the Right of Way Strip (as defined herein) to enter and construct, reconstruct, replace, rebuild, enlarge, modify, remove, inspect, repair, maintain, operate and use multiple lines (either overhead or underground, or both) for the purpose of transporting electricity and for communications use. As used herein, the "Right of Way Strip" shall refer to those areas or parcels of land containing 0.185 acres, all as shown on a plat of survey entitled "Right of Way to be Acquired from City of Rock Hill," dated April 4, 2012,

marked Map: 104206-386220, said Plat attached hereto as **Exhibit A** and incorporated herein by reference. A "line" may consist of overhead and/or underground wires, conductors, cables, conduits and other necessary apparatus, fixtures, hardware and appliances deemed necessary by Grantee for the transportation of electrical energy and/or for the communications purposes of Grantee or its successors or assigns, including, without limitation, conduits, static wires, guy wires, anchors, grounds, footings, foundations, crossarms, insulators, electronic equipment and other associated equipment. Overhead lines or cables may be supported by single or multiple rows of towers, poles or other structures (without limitation as to number) placed at necessary and proper intervals upon the Right of Way Strip. In connection with Grantee's rights within the Right of Way Strip, Grantee shall have the right (i) to clear and keep the Right of Way Strip free of trees and other vegetation (except as provided in (b) hereinbelow), structures, and other objects of any nature including, without limitation, satellite signal receiver systems, billboards, signs, buildings, manufactured homes, mobile homes and trailers, graves, wells, swimming pools and any associated decking, septic systems or storage tanks and systems (whether above ground or below ground), flammable materials, building materials, wrecked or disabled vehicles or equipment, refuse of any type and all other objects (whether above ground or below ground) which may, in Grantee's opinion, interfere in any way with or endanger Grantee's lines or the maintenance and operation of Grantee's lines, (ii) to install and maintain fences, gates and roads within the Right of Way Strip to afford Grantee access to the Right of Way Strip and (iii) to plant and maintain shrubs and ornamental trees within the Right of Way Strip at locations selected by Grantee and remove the same.

- (b) Grantor's Reserved Use. Grantor shall be entitled to use the Right of Way Strip for all purposes not inconsistent with the rights and easements herein granted to Grantee, including (i) the right to cultivate crops, plants, shrubs and trees of a species that will not exceed fifteen (15) feet in height at maturity, provided that any such vegetation does not impede Grantee's use of and access to the Right of Way Strip, (ii) the right to pave, improve and use the Right of Way Strip for temporary vehicular parking, provided Grantor installs protective barriers satisfactory to Grantee for Grantee's structures, (iii) the right to use the Right of Way Strip for recreation, provided no structures or objects (above or below ground) are erected or placed without the prior written approval of Grantee, (iv) the right to retain existing roads and drives and sewer, water and other utility lines within the Right of Way Strip at their existing locations as of the date of this instrument, (v) the right to use, construct and maintain new paved or unpaved roads, streets and driveways and new water, sewer, drainage and other utility lines or pipes crossing the Right of Way Strip, provided such facilities conform to the following requirements: (A) such facilities cross the Right of Way Strip from one side of the Right of Way Strip to the other side at an angle of not less than thirty (30) degrees between the center line of said facilities and the center line of the Right of Way Strip, provided that no road, street or driveway intersects entirely or partially within the Right of Way Strip with any other road, street or driveway, (B) no portion of such facilities is located within twenty-five (25) feet of any of Grantee's supporting poles, towers, or structures, and (C) such facilities are constructed in strict compliance with all clearance requirements of Grantee and all other regulations and ordinances then applicable to electrical conductors, (vi) the right to maintain existing fences and the right to build new fences on the Right of Way Strip with the prior written approval of Grantee, provided any such new fences conform to the following requirements: (A) such fences shall not be attached to poles, towers or structures, (B) such fences shall be installed at least twenty-five (25) feet from poles, towers or

structures, (C) such fences shall not exceed 10 feet in height, (D) such fences shall cross the Right of Way Strip from one side of the Right of Way Strip to the other side at an angle of not less than 30 degrees between the centerline of said facilities and the center line of the Right of Way Strip, and (E) if a fence crosses the Right of Way Strip, a gate shall be installed by Grantor per Grantee's specifications to allow free access required by Grantee's vehicles and equipment and (vii) the right to excavate, grade and fill, provided Grantor receives Grantee's prior written approval.

(c) Grantee's Use of Premises Outside of the Right of Way. Grantor further grants to Grantee, for itself, its successors and assigns, the right to enter upon the Premises for the following purposes and uses:

- (1) Grantee and Grantee's successors and assigns relative to the Right of Way Strip may cut, fell and remove any and all trees on the Premises that are or may become tall enough, in Grantee's opinion, to fall on a line or other facility or structure within the Right of Way Strip.
- (2) Grantee and Grantee's successors and assigns relative to the Right of Way Strip may enter upon the Premises at any time and from time to time to gain access (for vehicles, equipment and pedestrians) to the Right of Way Strip or to cut, fell and remove trees from the Premises (pursuant to Paragraph (c)(1) herein); and an easement is hereby granted to Grantee for such purpose. Grantee's right to enter the Premises (for which an easement is hereby granted to Grantee) to access the Right of Way Strip or Premises shall be confined to streets, roads and driveways that exist when Grantee's entry is necessary, provided such existing streets, roads and driveways are adequate for Grantee's purposes and afford Grantee reasonably convenient and feasible access to the Right of Way Strip or the location on the Premises where trees are to be cut, fell or removed as provided for hereinabove. If streets, roads and driveways satisfying the requirements in the immediately preceding sentence do not exist at such time, Grantee shall be entitled to use (and an easement is hereby granted for such purpose) the most reasonably convenient and feasible access route or routes over the Premises to access the Right of Way Strip (and Grantee shall be entitled to construct and maintain a roadway or driveway for Grantee's purposes within such route or routes) or the location of the Premises where trees are to be cut, fell or removed as provided for hereinabove.

(d) Antennas and Related Equipment. Grantor grants to Grantee, for itself and its successors and assigns, the following rights:

- (1) A perpetual easement (i) to modify, enlarge and/or extend any one or more towers, poles or other support structures now or hereafter installed within the Right of Way Strip by Grantee for its electric operations and to use same for the attachment and use of antenna or other equipment or devices for wireless or other communications, and (ii) to use one or more parcels of land, having dimensions not exceeding twenty-five (25) feet by twenty-five (25) feet and located adjacent to or at the base of each such tower, pole or other support structure which is referred to in the immediately preceding clause (i) and which is hereafter used by Grantee for the attachment and use of antenna or other equipment or

devices for wireless or other communications, to construct, reconstruct, replace, rebuild, enlarge, modify, remove, inspect, maintain and use electronic equipment and other equipment necessary or desirable in connection with wireless or other communications from and to any antenna or other equipment or device installed upon such tower, pole or other support structure. If and to the extent such communications equipment areas referenced in clause (ii) in the immediately preceding sentence are hereafter required by Grantee, Grantee shall be entitled to designate the location of such areas, and such areas shall be located entirely within the Right of Way Strip. In the event Grantee shall relocate within the Right of Way Strip any tower, pole or other support structure used for communications purposes, then in such event Grantee may relocate its antenna and other communications equipment to the relocated site of such tower, pole or other support structure and may designate an appropriate twenty-five (25) foot by twenty-five (25) foot area (as contemplated above) at such new location.

- (2) A perpetual easement to enter upon the Premises at any time and from time to time to gain access (for vehicles, equipment and pedestrians) to the communications equipment areas referenced in Paragraph (d)(1) herein. Grantee's right to enter the Premises to access such communications equipment areas shall be confined to streets, roads and driveways that exist when Grantee's entry is necessary, provided such existing streets, roads and driveways are adequate for Grantee's purposes and afford Grantee reasonably convenient and feasible access to such areas. If streets, roads and driveways satisfying the requirements in the immediately preceding sentence do not exist at such time, Grantee shall be entitled to use (and an easement is hereby granted for such purpose) the most reasonably convenient and feasible access route or routes over the Premises to access such communications equipment areas (and Grantee shall be entitled to construct and maintain a roadway or driveway for such purpose within such route or routes). With regard to any access route or routes that have been established over the Premises pursuant to this Paragraph (d)(2) at any given time and that are used for access to communications equipment areas, Grantor shall be entitled, at Grantor's sole cost and expense and after obtaining Grantee's prior written approval, to relocate said access route or routes (and Grantee's corresponding easement rights therein) elsewhere on the Premises to accommodate Grantor's reasonable needs for the development or use of the Premises, but in such case, Grantor also must construct and install, at Grantor's sole cost and expense and without interrupting access to the relevant communications equipment) a replacement roadway or driveway and the replacement roadway or driveway, in each instance, must be comparable to the roadway or driveway that is being replaced. Grantee's written approval of any proposal by Grantor to relocate the access route or routes pursuant to the immediately preceding sentence shall not be unreasonably withheld; provided, however, Grantee withholding or denial of such written consent shall be deemed reasonable if reasonably convenient and feasible access to and from the communications equipment areas is not afforded by the proposed replacement access route or routes.
- (3) A perpetual easement to construct, reconstruct, replace, rebuild, inspect, maintain and use underground telephone and electrical lines to serve communications equipment within the Right of Way Strip and such underground lines may be installed along and generally parallel to the access route or routes established pursuant to Paragraph (d)(2) herein.

Provided, however, with respect to any such access route or routes that are hereafter relocated by Grantor (as permitted in Paragraph (d)(2) herein), Grantor also must relocate (at Grantor's sole cost and expense and without interrupting service to communications equipment within the Right of Way Strip) all telephone and electrical lines previously installed (as contemplated above in this Paragraph (d)(3)) along or in the vicinity of the access route or routes that are being relocated by Grantor.

- (e) Grantee's Repair Obligation. Grantee shall repair damage to the Premises, including roads, driveways and fences, resulting directly from Grantee's exercise of its rights granted herein. Provided, however, for purposes of the initial clearing of all trees which Grantee is entitled to cut and remove from the Premises pursuant to Paragraphs (a) and (c) herein, said trees shall, upon such cutting, become the property of Grantee.

The failure of Grantee to exercise any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time or from time to time to exercise any and all of such rights.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements unto Grantee, its successors and assigns forever.

And Grantor, for the Grantor and for the Grantor's successors and assigns, covenants to and with Grantee, its successors and assigns, that Grantor is lawfully seized of the above described land in fee and has the right to convey the said rights and easements, that the same is free and clear from any and all encumbrances and will forever warrant and defend the title to the said rights and easements against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

[Signatures Begin on Following Page]

GRANTOR
CITY OF ROCK HILL

Witness

By: _____

Witness

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by

_____ (name of officer), as

_____ (title of officer) of the City of Rock Hill, a _____

_____, on behalf of the _____.


Witness my hand and official seal, this ____ day of _____, 20__.

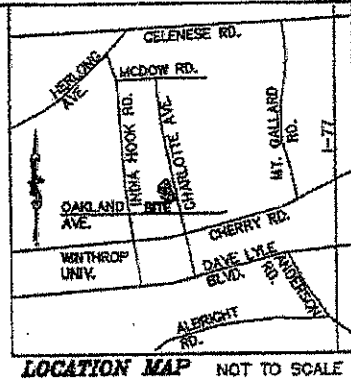
My Commission Expires _____
[NOTARIAL SEAL]

Notary Public

LEGEND

- LINES SURVEYED
- - - LINES NOT SURVEYED
- - - TIE LINES
- OVHD DISTRIBUTION LINE (OVERHEAD)
- #4 REBAR(F) ● POINT IN CONCRETE
- ▲ P.L. ● POINT NOT SET
- ▲ PIPE(F) ● CONCRETE MONUMENT(F)
- (F) FOUND (S) SET C/L = CENTER LINE
- R.O.P. RATIO OF PRECISION
- { NTS } NOT TO SCALE
- CLF — CHAIN LINK FENCE
- ⊠ TRANSMISSION TOWER

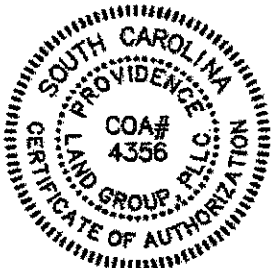
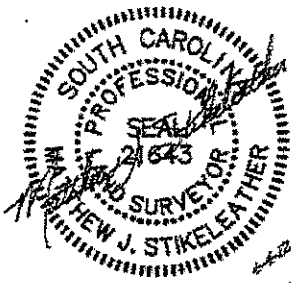

Providence
 LAND GROUP
 3716 Providence Road South
 Waxhaw, NC 28173
 704.576.3641
 SC Firm COA 4356
 www.providencelandgroup.com
 project no. S12005



I HEREBY CERTIFY THAT THIS MAP WAS PREPARED UNDER MY DIRECT SUPERVISION FOR THE PURPOSE OF RIGHT OF WAY ACQUISITION ONLY, AND IT NOT INTENDED TO BE A BOUNDARY SURVEY OF THE PROPERTY SHOWN. THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET. THIS MAP IS EXEMPT FROM REVIEW BY A REVIEW OFFICER.

I, MATTHEW J. STIKELEATHER, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- (1) TYPE OF GPS FIELD PROCEDURE: REAL-TIME KINEMATIC NETWORK
- (2) DATES OF SURVEY: 2-25-12
- (3) DATUM/EPOCH: NAD 83 (NSRS2007)
- (4) PUBLISHED/FIXED CONTROL USED: "A14339", "AJ4381", & THE SC VIRTUAL NETWORK
- (5) GEOD MODEL: GEOD 09
- (6) PROJECT COMBINED GRID FACTOR: 0.999917361
- (7) UNITS: INTERNATIONAL FEET
- (8) PROJECT COORDINATES ARE LOCALIZED ON NAIL SET AND HAVE A S.C. STATE PLANE VALUE OF
 N: 1134947.19 INT. FT.
 E: 1991806.95 INT. FT.



Line Table		
Line #	Direction	Length
L1	S23°54'15"E	66.87

Curve Table				
Curve #	Chord Direction	Chord Length	Radius	Arc Length
C1	S23°32'30"E	45.66	434.50	45.68
C2	S23°45'25"E	112.53	60.00	231.06

NOTES:

1. SURVEYED & MAPPED FOR: DUKE ENERGY CAROLINAS, LLC
2. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN U.S. FEET UNLESS OTHERWISE NOTED.
3. AREA BY COORDINATE COMPUTATION.
4. PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS & RIGHTS OF WAY OF RECORD.
5. SURVEY IS BASED ON PHYSICAL EVIDENCE AND EXISTING MONUMENTATION FOUND DURING THE SURVEY.

SITE: 104206

NO SOURCE OF TITLE FOUND

DUKE ENERGY CAROLINAS, LLC ROCK HILL DELIVERY 10 TAP	
RIGHT OF WAY TO BE ACQUIRED FROM CITY OF ROCK HILL	
CITY OF ROCK HILL YORK COUNTY, S.C.	
BOOK: 2	CREW: CJS
DATE: 04.04.12	DRAWN BY: MJS
SCALE: 1" = 50'	R.O.P. = 1:10,000+
LAND UNIT: 1180005	MAP: 104206-386220



400 S. TRYON STREET
 PO BOX 1007
 CHARLOTTE N.C. 28201-1007
 TELEPHONE NO. (704)382-8658