ORDINANCE NO.: 2013-017

Amending Section 9 of the Franchise Agreement between
South Carolina Electric & Gas Company ("SCE&G") and the City of Columbia
dated February 20, 2002 and amended February 15, 2011

WHEREAS, by Ordinance 2010-160 enacted on February 15, 2011, the Mayor and City Council of the City of Columbia amended Section 9 of the Franchise Agreement between South Carolina Electric & Gas Company ("SCE&G") and the City of Columbia to increase the franchise fee from three (3%) percent to five (5%) percent; and,

WHEREAS, City Council restricted, on an annual basis, all of the revenue generated by the two (2%) percent franchise fee increase for public transportation; and,

WHEREAS, Richland County Council voted to place a penny sales tax referendum on the November 6, 2012 ballot from which a portion of the funds would be used to fund the Central Midlands Transit Authority ("CMRTA"); and,

WHEREAS, the Mayor and City Council, by voice resolution on September 18, 2012, voted to reduce the franchise fee from five (5%) to three (3%) if the Richland County penny sales tax referendum passed on November 6, 2012; and,

WHEREAS, the Richland County penny sales tax referendum passed on November 6, 2012; and,

WHEREAS, the Mayor and City Council desire to amend Section 9 of the Franchise Agreement to reduce the franchise fee from five (5%) percent to three (3%) percent; and,

WHEREAS, on June 30, 2012, SCE&G paid to the City the franchise fee of five (5%) in advance for calendar year 2013; and,

WHEREAS, the City of Columbia has obligated the additional two (2%) percent franchise fee to the Central Midlands Transit Authority for the City of Columbia’s fiscal year 2012-2013; and,

WHEREAS, SCE&G will collect the advanced franchise fee of five (5%) from City of Columbia customers franchise fee during calendar year 2013 to reimburse SCE&G for the advance of five (5%) percent franchise fee funds to the City of Columbia; and,

WHEREAS, on June 30, 2013, SCE&G will pay to the City a franchise fee of three (3%) in advance for calendar year 2014; NOW THEREFORE,
BE IT ORDAINED by the Mayor and City Council this ___ day of __________, 2013, that Section 9 of the Franchise Agreement between South Carolina Electric & Gas Company ("SCE&G") and the City of Columbia is hereby amended to reduce the franchise fee from five (5%) percent to three (3%) percent; with the franchise fee funds to be unrestricted and utilized for the General Fund expenditures as may be authorized by Columbia City Council.

This ordinance shall be effective upon second reading.

Requested by:
Mayor and City Council

Approved by:

______________________________
City Manager

Approved as to form:

______________________________
City Attorney

Introduced: Final Reading:

______________________________
Mayor

ATTEST:

______________________________
City Clerk

Last revised: 7/14/2010
13010021
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Section 1
Wherever the word "Company" appears in this Ordinance, it shall designate and refer to the South Carolina Electric & Gas Company, a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, and its successors and assigns and other subsidiaries of SCANA Corporation.

Section 2
The non-exclusive right, power and authority is hereby granted and vested in the Company to erect and to install, maintain and operate in, over, under, and upon the streets, alleys, bridges, rights-of-way and other public places of the City lines, poles, wires, guys, push braces, transformers, conduits, pipes, gas pipes, gas mains and services, and other appurtenant facilities, and communication lines and facilities used in connection with and for the purpose of managing electric and gas services, with any necessary right of access thereto; and to use those facilities to conduct an electric and gas utility business using the streets and public ways within the incorporated limits of the City and any other business or businesses, approved by the City, which may be lawfully conducted using the permitted facilities as approved by the City.

Section 3
No street, alley, bridge, right-of-way or other public place used by the Company will be obstructed longer than necessary during its work of construction or repair, and will 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 City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, will be injured. However, should any such damage occur due to Company's failure to use due care, the Company will repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company will save the City harmless from all liability or damage (including judgment, decrees, attorney fees 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.
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Section 4
A. The Company will construct, maintain and extend its electric system within the present City limits; construct, maintain and extend its electric system within annexed areas of the City where such areas were territories assigned to the Company or left unassigned by the South Carolina Public Service Commission (“SCPSC”), exclusive of any electric cooperative, and retain first right of refusal to extend its electric system within annexed areas where such areas were territories assigned to an electric cooperative by the SCPSC; and supply standard electric service at standard voltages under rates and general terms and conditions as authorized by law. The Company will also construct, maintain and extend its gas system within the limits of the City and furnish gas, if adequate gas piping is installed, to the City and residents thereof upon request, provided that the Company determines that the amount of gas to be furnished has an adequate and reasonable return on the investment necessary to provide gas service.

B. The Company will install underground electric distribution in all new commercial and residential developments of the City, under terms and conditions customarily applicable with respect to aid to construction as approved by the SCPSC. The Company will include undergrounding on public rights-of-way to such developments so far as technically practical and economically feasible under terms and conditions customarily applicable to aid to construction as provided by the SCPSC. Underground service to new customers shall not be included in the definition of Non-Standard Service.

C. The Company will annually submit its major capital expansion and construction plans of the utility system to the City Manager or the Manager’s designee. The Company will submit its annual line clearing plans to and obtain specifications from the City Horticulturist or his designee. The Company will notify the City Horticulturist of any other tree trimming needs that may arise that could impact the public right of way and obtain specifications for these trimming projects.

D. The Company will maintain updated and current maps of its electric and gas system within the City, including the street lighting system. The City’s emergency planning and public safety personnel will be given access at all reasonable times to the maps of the Company’s electric and/or gas system necessary for the City to address emergency concerns.

E. At the City’s request, the Company will provide a listing of all premises included under the franchise fee identified by street address and type service, for the purpose of auditing franchise fee payments.
F. The Company will comply with the reasonable requirements of the Columbia Code of Ordinances as they now exist or as they may from time-to-time be enacted or amended, including but not limited to the following: encroachment permit requirements, tree protection requirements, Design Review Board review and requirements, zoning and building code requirements.

The Company will treat the City equitably with regard to the extension of its electric and gas systems in comparison with other municipalities which the Company serves.

Section 5
A. All street lighting agreements, practices and contracts are superseded by this franchise. The Company will properly maintain the street lighting system and provide reliable street lighting service from dusk (one-half hour after sunset) to dawn (one-half hour before sunrise) each night during the franchise period, and for other times or occasions of darkness. The standard street lighting requirements and charges are those contained in the Company's tariffs approved by the SCPSC and that are included in Exhibit A, which is attached to this franchise and made a part hereof; these tariffs may be amended from time to time by the Company pursuant to a filing approved by the SCPSC. The Company's "Joint Ownership Lighting Option" program, contained in Exhibit B, which is attached to this franchise and made a part hereof, is also available at the City's request. Should the City choose lighting units of a different type and character than those included in Exhibits A or B, then a new lighting unit charge and specification shall be agreed upon by the Company and the City; and the new charge and specification will become a part hereof.

B. The City will have the right to purchase and own new street lighting fixtures and poles, and may install, maintain and repair such a system provided that such fixtures, poles and system are on a City owned circuit that is separately metered, or a reasonable alternative can be achieved to compensate the Company for the energy usage.

C. The Company will own and maintain the existing fixtures and poles under the tariffs contained in Exhibit A, and will install and maintain new standard fixtures, poles and circuits as requested by the City.

D. Except as otherwise provided herein, the City will have the right at any time to
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order the installation of new lamps in areas not presently served by street lighting.

E. The City will have access at all reasonable times to maps, records and rates relating to street lighting in the City.

F. The Company will make changes in the location of installed lamps and facilities covered by this franchise upon written order of the City.

G. The Company shall make repairs to the street lighting system upon notice from the City that there is a defective standard lamp.

H. The Company will provide an estimated time of repair when requested by the City.

I. The City will notify the Company concerning the installation of new unmetered traffic signals prior to their installation, and provide the Company, upon request, a listing of all such installations by location.

Section 6
The company may supply any form of gas containing approximately one thousand (1,000) BTU’s per cubic feet, and its obligation in respect thereto shall continue only so long as it is able to obtain adequate supply of such gas hereunder, provided however, that in the supply of such gas the City shall enjoy equal rights with respect to other areas served by the Company.

Section 7
A. The City and the Company agree that all facilities installed and all work performed by the Company or its contractors within the municipal limits shall be in accordance with applicable City Ordinances the National Electric Safety Code and the applicable electric and gas rules and regulations as adopted by the SCPSC or its successor to these matters.

B. None of the electric energy furnished hereunder shall be sold, disposed of, or exchanged by the City to others without the express written consent of the Company.

C. Consistent with Good Utility Practices, the Company agrees to provide electric power that is reliable and safe, provided such power hereunder is not guaranteed or warranted to be free from minor interruptions or from major outages or power
surges beyond the control of the Company. If major interruptions in electric and/or gas services occur, the Company, consistent with Good Utility Practices, will restore service in a reasonably prompt fashion, taking into account the circumstances that caused the outage, and will keep the City notified of restoration efforts on at least a daily basis. As used herein, "Good Utility Practices" means the practices, methods and acts engaged in or approved by a significant portion of the electric power and/or 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, the 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 8
A. All work upon the streets and public places of the City shall be done under the general supervision of the Mayor and Council of the City or their designee, and in compliance with applicable Ordinances and reasonable requirements of the City. Sidewalks, streets, pavements or street surfaces that may be displaced by reason of such work will be properly replaced or repaired by the Company.

B. The Company will, to the maximum extent possible, use existing utility rights-of-way and existing utility poles, conduits and facilities, where practical, and coordinate with the City regarding street construction, rebuilding, resurfacing and repair to minimize multiple disturbances of the same area. The Company will, to the extent safety clearances are maintained, allow the City to place City owned wires, cables signage for City or City sponsored events and other attachments on utility poles located in rights-of-way and public places of the City.

Section 9
A. By practice and under SCPSC orders, franchise fees are pre-payments; therefore, for the right to use the streets and public ways of the City for placement of the Company's electric and gas facilities during the next succeeding calendar year, the Company shall pay the City annually, on or before the last business day of June each year beginning with the year 2002, a franchise fee equal to three percent (3%) of the gross sales revenue accrued during the calendar year immediately proceeding the year in which the franchise fee is paid. The sales revenue on which the franchise fee is paid is based on the following: (i) sale of electricity and gas to the Company's customers within the City, excluding
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industrial customers, the Fort Jackson Military Reservation and the City's own accounts and excluding gas sales under SCPSC approved special sales programs that allow the Company to reduce prices to meet customers competitive energy prices and (ii) sale of wheeling or transportation service to such customers within the corporate limits of the City. The franchise fee percentage and/or the class of customer sales to which the percentage applies may be changed by the City Council; provided however, that prior to any such change, the City shall amend this Section 9 by a vote of the City Council following a ninety (90) day written notice to the Company as well as properly advertised notices to the public. Notwithstanding the foregoing, during the term of this agreement the percentage of gross sales revenue shall not exceed five (5%) percent. Any other products or businesses and other revenue accruing to the Company in the City will be subject to further franchise fees and/or business license taxes as may be appropriate.

B. The City's receipt of franchise fees as provided herein will be in lieu of all occupation, license, excise and special franchise fees, and shall be full payment of all money demands, charges, or fees associated with electricity and/or gas service, except ad valorem taxes on property.

C. The Company may at its option pay and deduct from its franchise fee payments any amounts due to it from the City for energy sales or services supplied to the City by the Company.

D. It is expressly understood that the franchise fee imposed hereunder shall be collected from customers of the Company within the municipal boundaries to the extent permitted by applicable orders of the SCPSC or its successor regulatory agency.

E. The City may levy, and the Company will collect and transmit to the City, a franchise fee on the same sales and percentages of electricity and gas sold by third parties to customers within the City 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 City which the Company is obligated to make on whatever basis during the life of this franchise for any similar services provided by said third parties.

F. The City will notify the Company in writing of areas annexed into City and provide pertinent maps and tax map numbers so that newly annexed customers may be subject to franchise fees, such notification being a precondition to franchise fee payments on these accounts.
G. Should the City itself at any time construct, purchase, lease, acquire, own, hold or operate an electric or gas distribution system to provide such service within the City in competition with the Company (except City owned backup or support services for its own facilities, or the Columbia Canal Hydro Plant as referenced in Section 17), then the payment of the franchise fee herein provided to be paid by the Company shall abate, cease and no longer be due.

Section 10
The electric and gas franchise granted by this ordinance, when accepted by the Company, will constitute a contract between the City and the Company, and will be in effect for an initial term of Thirty (30) years, and will continue year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial thirty (30) year term, or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination.

Section 11
A. The City may require the Company to provide underground or other non-standard service to existing electric customers including the use of special equipment or facilities or the use of special landscaping, screening, or re-routing of facilities within the municipal limits of the City (Non-Standard Service). The cost of Non-Standard Service is defined as those costs which exceed the costs of standard service under approved tariffs.

B. Costs for Non-Standard Service projects shall be defrayed by amounts in a Non-Standard Service Fund (the NSS Fund) which shall be jointly funded by the Company and the City as provided for in Section 11 D and E below. The Company shall be required to undertake Non-Standard Service projects only to the extent that balances designated to the fund are reasonably projected to be adequate to cover the costs of the projects as they are incurred.

C. The amounts designated for the NSS Fund shall be used exclusively to defray the reasonable and necessary costs of planning, designing, permitting and constructing the electric utility projects involving Non-Standard Service.

D. Each year the Company shall designate the greater of $500,000 or the Company's gross revenue from electric services subject to the franchise fee.
multiplied by fifty basis points (0.50%) to the NSS Fund (the "Company Match"). This designation shall occur simultaneously with the payment of the franchise fee for the year in question and shall be in addition to the franchise fee. The Company Match funds shall remain on deposit with the Company and be paid out by the Company on a one-to-one basis with the City Match (as defined below) as needed to defray costs of Non-Standard Service. Unexpended amounts of the Company Match not used in a given year shall remain available to the NSS Fund. After the fifth year, the amount of the Company Match available to the NSS Fund shall never exceed the sum of the matches for the most recent five (5) years.

E. Each year the City shall designate the greater of $500,000 or the Company's gross revenue from electric services subject to the franchise fee multiplied by fifty basis points (0.50%) to the NSS Fund (the "City Match"). The City Match funds shall remain on deposit with the City and be paid out by the City on a one-to-one basis with the Company Match as needed to defray the costs of Non-Standard Service. Unexpended amounts of the City Match not used in a given year shall remain available to the NSS Fund. After the fifth year, the amount of the City Match available to the NSS Fund shall never exceed the sum of the matches for the most recent five (5) years. The City may provide funds for a NSS project in advance of when a City Match would otherwise be due pursuant to this Section 11 E. (the "Advance Funds"). In that event, the Company will pay the Company Match (in an amount not to exceed the Advanced Funds) directly to the City at the time such Company Match is due pursuant to Section 11 D. If the Company match is greater than the balance of any Advanced Funds, then the Company, after paying an amount equal to the Advanced Funds directly to the City, will designate the remainder to the NSS Fund.

F. For any Non-Standard Service project involving more than twenty-five (25) existing customers, the City may designate a special franchise fee district wherein Non-Standard Service will be provided, and at its option may conduct a referendum or petition in that district to determine whether the project should go forward. Upon approval, a special franchise fee surcharge, will be applied to the electricity accounts of all customers within the boundaries of the special franchise fee district. However, the total of such special franchise fee surcharge, the franchise fee in Section 9A and any other fee provided for in Section 9 will not exceed 7% of a customer's total bill for electricity.

G. The special franchise fee surcharge will be applied beginning with the commencement of the project for a definite time not to exceed ten (10) years. Proceeds will first be used to reimburse the Company for any funds advanced for
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the special district Non-Standard Service project, including interest at the Company's weighted average cost of capital as filed with the SCPSC. Any proceeds in excess of the amounts due to the Company to reimburse advances shall first be used to reimburse the City for any advances made for the special district Non-Standard Service project, with interest as established by the Company's approved cost of capital, and second, to reimburse the NSS Fund for any payments made for the cost of the special district Non-Standard Service project. Remaining proceeds shall be deposited in a special fund from which further costs of the special district Non-Standard Service project will be paid.

H. All Non-Standard Service projects shall conform to good utility practices as to reliability and safety and shall be mutually agreed upon by the City and the Company, such agreement to be evidenced by execution of a letter of agreement.

I. The City shall use its efforts to acquire all necessary rights-of-way, transformer sites, or other use and access rights for Non-Standard Service projects. Within three (3) months of completion of an overhead to underground conversion project, the Company shall remove overhead facilities and the City will require other utilities to remove their facilities from the Company's poles and shall require property owners to connect to underground service.

Section 12
A. The City agrees that it will purchase from the Company, electricity required by the City for its own use (excluding its own electric generation) including traffic signal lighting, street lighting, lighting and power for public buildings, pump stations, wells, or other installations now owned or hereafter constructed or acquired by the City and located in the corporate limits of the City for the term of this agreement. At any time during the term of this agreement should retail deregulation occur to allow the City the right to purchase electricity from another supplier, the City will have the right under this agreement to purchase electricity from an alternative supplier. If the City purchases electricity from a supplier other than the Company, the Columbia Canal Hydro credits referenced in Section 12 B. will no longer be available to the City. If the City elects to purchase only a portion of its electric requirements from an alternative supplier, then the Company may apply to the SCPSC for authority to change such terms and conditions as are regulated by the SCPSC at that time and under which electricity is provided to the City facilities that are not transferred to an alternative supplier.

B. The City will pay to the Company monthly, within twenty-five days of receipt
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of a bill from the Company, for all electric and gas energy furnished by the Company for light, power and gas services under this franchise in accordance with rates and tariffs and terms and conditions as established by law or by contract. If the City requests, bill statements will be consolidated, so far as practical. The Company will apply the power outputs from the Columbia Canal Hydro Plant as a credit to the City’s electric accounts pursuant to the methodology contained in the contract for the conveyance of the Columbia Canal Hydro Plant properties to the City.

C. Nothing in this franchise ordinance shall be deemed to restrict the right of the Company to apply to the SCPSC for any lawful rate relief to the costs of complying with any requirements imposed by the City of Columbia Code of Ordinances or any other applicable municipal requirements referred to in the above Sections herein that the Company claims exceed the costs of providing standard facilities or service. However, nothing in this franchise ordinance shall be construed to imply that the City agrees that the granting of any such rate relief is justified or to restrict the right of the City to intervene in any such docket in the SCPSC and to oppose the granting of such relief. Provided, however, that in the event the City and the Company agree on a case-by-case basis that any such requirement is non-standard, the City and the Company may agree to finance such requirement pursuant to the Non-Standard Service Fund established in Section 11 hereof.

D. Notwithstanding the provisions of Section 10 setting the thirty (30) year term of the franchise, the company and the City agree that at the request of either party, the franchise terms are subject to renegotiation, without repeal of the basic rights granted herein, if the following events occur:

1. If the City has commenced proceedings under applicable law to acquire the electric properties, and/or the street lighting system of the Company by passing an ordinance declaring its intention to do so and having completed hearings before the SCPSC pursuant to applicable State Law; or

2. If legislation restructuring of the electric industry is enacted by the General Assembly and retail access is available to all customers in all classes.

Section 13
All notices, including communications and statements, which are required or permitted under the terms of this franchise, will be in writing and evidenced by receipt. Service of a notice may be accomplished by personal service, registered or certified mail (postage prepaid), or reputable courier service.

For purposes of notice, the addresses of the parties will be as follows:
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(a) In the case of the City of Columbia:
City of Columbia
1737 Main Street, 2nd Floor
City Hall
Columbia, South Carolina 29201
Attn: City Manager
AND
City of Columbia
1737 Main Street, 3rd Floor
City Hall
Columbia, South Carolina 29201
Attn: City Attorney
AND

(b) In the case of SCE&G/SCANA
SCANA
Columbia, South Carolina 29218
ATTN: General Counsel
AND
SCE&G
Columbia, South Carolina 29218
ATTN: President

Any Party may change and its address for purposes hereof by notice to the other Party.
Section 14

The franchise is subject to the constitution and laws of the State of South Carolina.

Section 15

This Ordinance shall not become effective unless and until (1) it has been accepted by the Company and (2) the Closing date of the Conveyance Agreement referred to in Section 17 below has occurred.

Section 16

The rights hereunder accrue exclusively to the parties, their successors and assigns. The rights and obligations concerning natural gas and electric service are severable and may be independently assigned. This franchise will not be assignable except pursuant to Federal or State Law. It is the express intent of the parties that this agreement will not create any rights in third parties.

Section 17

As consideration for the City's granting of this franchise, City and Company have agreed to the additional agreements below, which are integral to and must be executed simultaneously with this franchise:

1. Conveyance Agreement
2. Water Contract for Lake Murray and Easement

SOUTH CAROLINA ELECTRIC & GAS
SOUTH CAROLINA, a South Carolina Corporation

BY: __________________________.
Name: __________________________
Title: __________________________

THE CITY OF COLUMBIA
a South Carolina Municipality

BY: __________________________
Name: __________________________
Title: __________________________