

## ORDINANCE 4315

### **AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT WITH DUKE ENERGY PROGRESS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SEWER USE AGREEMENT WITH DUKE ENERGY PROGRESS; AND OTHER MATTERS RELATING THERETO.**

The City Council of the City of Hartsville (the “*Council*”), the governing body of the City of Hartsville, South Carolina (the “*City*”), has made the following findings of fact:

**WHEREAS**, the City is a municipal corporation of the State of South Carolina (the “*State*”) located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State to such public entities;

**WHEREAS**, Duke Energy Progress, LLC, (the “*DEP*”), a North Carolina limited liability company authorized to do business in the State, has approached the City about accepting and treating industrial leachate generated by DEP from its coal-ash remediation efforts (the “*DEP Flow*”) in and around the H.B. Robinson Nuclear Generating Station;

**WHEREAS**, the City needs to upgrade its existing Pine Ridge pump station and construct a new force main sewer (collectively, the “*Project*”) to properly process, treat and dispose of the DEP Flow;

**WHEREAS**, to accommodate the Project, the parties have negotiated a “*Purchase and Sale Agreement*”, the form of which is attached hereto as Exhibit A, regarding the sale and conveyance of certain real property and easements necessary to serve the Project;

**WHEREAS**, to further accommodate the Project, the parties have negotiated a “*Sewer Use Agreement*”, the form of which is attached hereto as Exhibit B, regarding the agreement between the parties for the construction of the Project, the allocation of the costs therefor, the release of certain existing property rights, the permitting and acceptance of the DEP Flow and the rates to be charged to DEP; and

**WHEREAS**, on the basis of the foregoing, the Council hereby finds and determines that the Purchase and Sale Agreement and the Sewer Use Agreement shall be authorized, approved, executed and delivered in accordance with the provisions of this Ordinance.

**NOW THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the City of Hartsville, South Carolina, in a meeting duly assembled, as follows:

#### Section 1      Recitals

Each finding or statement of fact set forth in the recitals hereto has been carefully examined and has been found to be in all respects true and correct.

## Section 2      Approval of the Purchase and Sale Agreement

A.      The Council has reviewed existing drafts of the Purchase and Sale Agreement and authorizes the City Manager and the City's legal counsel to finalize negotiations of the Purchase and Sale Agreement.

B.      The Purchase and Sale Agreement shall be executed and delivered on behalf of the City by the City Manager. Upon such execution, the Council shall be timely informed of the execution of the Purchase and Sale Agreement and informed as to any material deviation of terms in the current draft. The consummation of the transactions and undertakings described in the Purchase and Sale Agreement, and such additional transactions and undertakings as may be determined by the City Manager in consultation with the Council to be necessary or advisable in connection therewith, are hereby approved.

## Section 3      Approval of the Sewer Use Agreement

A.      The Council has reviewed existing drafts of the Sewer Use Agreement and authorizes the City Manager and the City's legal counsel to finalize negotiations of the Sewer Use Agreement.

B.      The Sewer Use Agreement shall be executed and delivered on behalf of the City by the City Manager. Upon such execution, the Council shall be timely informed of the execution of the Sewer Use Agreement and informed as to any material deviation of terms in the current draft. The consummation of the transactions and undertakings described in the Sewer Use Agreement, and such additional transactions and undertakings as may be determined by the City Manager in consultation with the Council to be necessary or advisable in connection therewith, are hereby approved.

## Section 4      Other Documents; Ratification of Prior Actions

In connection with the execution and delivery of the Purchase and Sale Agreement and Sewer Use Agreement, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as she shall deem necessary or advisable. Any actions previously undertaken by the City Manager, Council or City staff in connection with the execution and delivery of the Purchase and Sale Agreement and/or the Sewer Use Agreement prior to the enactment of this Ordinance are ratified and confirmed.

## Section 5      Severability

If any one or more of the provisions this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

## Section 6      Repealer

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in

any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or Ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 7      Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 8      Effect

This Ordinance shall be enacted upon second reading by the Council.

DONE AND ORDAINED IN COUNCIL ASSEMBLED, this \_\_th day of \_\_\_\_\_, 2017.

CITY OF HARTSVILLE,  
SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Carl M. (Mel) Pennington IV, Mayor

Attest:

\_\_\_\_\_  
Sherron L. Skipper, City Clerk

First Reading:      November 14, 2017  
Public Hearing:      \_\_\_\_\_, 2017  
Second Reading:    \_\_\_\_\_, 2017

EXHIBIT A

FORM OF PURCHASE AND SALE AGREEMENT

EXHIBIT B

FORM OF SEWER USE AGREEMENT