

ORDINANCE 21-204 GRANTING A FRANCHISE TO  
DUKE ENERGY PROGRESS, LLC

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN  
OF FAIRMONT, as follows:

I. DEFINITIONS

- 1.1 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

“Duke Energy” shall mean Duke Energy Progress, LLC ; is a North Carolina limited liability company organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any assignee of or successor in interest to Duke Energy Progress, LLC under this franchise Ordinance.

“Town” shall mean the Town of Fairmont, a municipal corporation located in Robeson County, North Carolina; the area within the territorial Town limits of the Town of Fairmont and within the extraterritorial area surrounding the Town to the extent it may be lawfully included as presently or hereafter fixed by law or ordinance; or the Board of Commissioners or any officer or agent duly authorized in acting on behalf of the Town as a municipal corporation, as indicated by the context by which the term is used.

“Board of Commissioners” shall mean the governing body of the Town of Fairmont.

“Board” shall mean the governing body of the Town of Fairmont.

II. FRANCHISE GRANTED

- 2.1 Duke Energy is hereby granted the right to construct, operate and maintain an electrical utilities system, including such communications infrastructure as is necessary and convenient for the electrical utility’s purpose, within the Town of Fairmont and within the extraterritorial area surrounding the Town, to the extent the Town may lawfully do so, for the generation, transmission, distribution and sale of electricity to consumers and users within the Town and to the Town and any and all agencies and departments thereof. Duke Energy is also given permission to do all acts necessary or helpful for the purposes enumerated hereinabove or hereinafter; and assent, and permission is hereby given and granted to Duke Energy, its successors and assigns, to exercise all powers, right and privileges which Duke Energy under and by the terms of its charter, or otherwise is authorized, empowered

or permitted to conduct, carry on, exercise, do or transact including, without limitation, the power, right and privilege to use, lease, sell, convey and transmit power by electricity for manufacturing, lighting, heating, motive power or other purpose or purposes and for the doing of an electrical business generally.

- 2.2 Duke Energy is hereby granted the right, authority, and privilege to construct and install, operate, maintain, renew, replace and repair electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services thereto, in, through, across, along and under streets, avenues, roads, public alleys, lanes, parks, squares, and other public places and ways in the Town for the generation, transmission, distribution and sale of electricity, its communications purposes and for any and all other approved purposes, subject to the terms and conditions hereinafter set forth in this Ordinance; provided, however, that nothing in this Ordinance without further approval of the Town shall authorize or permit the construction of a cellular tower or similar facility within the public areas described herein.
- 2.3 If the Town determines that it is necessary to expand, widen, or improve a road or other public way, the Town may require Duke Energy to relocate its facilities that are in conflict with such expansion, widening or improvement. If the Town requests such a relocation, it will provide an acceptable alternate location for Duke Energy's facilities at no cost to Duke Energy. If Duke Energy's facilities are, or were originally, located on private property, the Town shall pay for the cost of relocation. If, however, Duke Energy's facilities were originally located within the existing public right-of-way which is being, expanded, widened or improved, Duke Energy shall bear the expense of relocating its facilities. If any street improvement project is to be funded in whole or in part by the State of North Carolina or the federal government, or an agency thereof, the Town will cooperate with Duke Energy in obtaining reimbursement for its relocation cost to the extent allowable under state and federal law. Such reimbursement, when received, shall be an offset against the cost of relocation to be paid by the Town. The relocation cost and reimbursement for relocation costs for facilities installed to provide electric service to the Town, including street and area lighting and traffic signals wherever located, shall be determined and paid by the Town in accordance with the Applicable Rate Schedules and Service Regulations of Duke Energy on file with the North Carolina Utilities Commission, as the same now exist or as they or any of them may be hereafter amended, modified, changed or annulled in accordance with the laws and regulations pertaining thereto.
- 2.4 Whenever Duke Energy shall cause any opening, excavation or alteration to be made in any street, lane or public place within the Town in the construction, operation or maintenance of any of its electrical and communications facilities including but not limited to lines, cables, towers,

poles, conduits, transformers, connections and services owned or used by it, Duke Energy shall cause such portions of said street, lane or public place to be restored to the same condition in which it found them as nearly as practicable. Additionally, if Duke Energy shall fail to restore the area to its approximate former condition within a reasonable period of time, but no less than thirty working days after notification by the Town, the Town shall proceed to restore such streets, lanes and public places as nearly as practicable to their original condition and the Town shall submit a statement of the costs for this restoration to Duke Energy. Duke Energy agrees to pay the Town for these costs within thirty days.

- 2.5 Pursuant to N.C.G.S. 160A-319(a) this franchise is granted for a term of sixty (60) years beginning Dec. 21, 2021, and ending at midnight Dec. 20, 2081, and thereafter it shall renew and continue in force on a year to year basis unless terminated by either party upon ninety days written notification to the other. Notwithstanding the foregoing, in the event that the electric industry in North Carolina is deregulated or restructured by state or federal legislation or regulation, or state or federal judicial action which affects retail distribution to the extent that the inhabitants of the Town may choose their electric supplier, then upon the date when such legislative, regulatory or judicial action has the force and effect of law, this franchise may be at any time thereafter terminated by either party upon ninety days written notification to the other. This franchise supersedes any and all former rights or franchises of Duke Energy to operate an electrical utilities system in the Town with respect to all acts and things done or admitted to be done, on or after Dec. 21, 2021.
- 2.6 Duke Energy is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges hereunder and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to approval by the North Carolina Utilities Commission or other government agency whose approval is required by law. Duke Energy may not assign or transfer its rights under this franchise agreement without the express consent of the Board of Commissioners and such consent shall not be unreasonably withheld, provided, however, that this provision shall not require Duke Energy to obtain permission from the Board of Commissioners prior to assigning its rights hereunder to any new entity created in any corporate reorganization or merger in which Duke Energy is a party.
- 2.7 Duke Energy shall save the Town, Mayor, Board of Commissioners, and the Town's officers, agents, servants and employees, harmless from all loss against any and all claims, suits, actions, liability, and judgments for damages (including but not limited to costs and expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in

connection therewith) sustained by the Town or the Mayor or the Board of Commissioners, or the Town's officers, agents, servants or employees, on account of any suit, judgment, execution, claim, or demand whatsoever, resulting or in any manner arising from sole negligence on the part of Duke Energy, its officers, agents, servants and employees in the construction, erection, operation and maintenance of its electric distribution system or the conduct of its business, such negligence having been determined by final order of a court of competent jurisdiction, not subject to appeal.

### III. ACCEPTANCE OF FRANCHISE

This Ordinance shall take effect from the day of its passage, but only after it has been accepted in all its terms and revisions by Duke Energy, in writing, within sixty days after its passage otherwise, the same shall be null and void and of no effect.

This Ordinance was passed by a majority vote of the Board of Commissioners of the Town of Fairmont, at the regular meeting of the Board of Commissioners held in the Town of Fairmont, North Carolina on the 16th day of November, 2021.

ATTEST:

TOWN OF FAIRMONT

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

BY: \_\_\_\_\_  
Bobby Charles Townsend, Mayor

(S E A L)

NORTH CAROLINA

ROBESON COUNTY

This is to certify that on the 16th day of November, 2021, personally came before me Jennifer H. Larson, Clerk of the Town, who, being by me duly sworn, says that she knows the common seal of the Town of Fairmont and she is acquainted with Bobby Charles Townsend, Mayor, and that she saw the Mayor sign the foregoing instrument, and that she affixed the Town's seal to the instrument and she signed her name in attestation of the execution of this instrument in the presence of the Mayor.

Witness my hand and official seal, this the 16th day of November, 2021.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

The conditions and stipulations of the above Ordinance are hereby accepted by Duke Energy.

ATTEST:

DUKE ENERGY PROGRESS, LLC

\_\_\_\_\_  
Assistant Secretary

BY: \_\_\_\_\_  
President

(S E A L)

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged and she/he is \_\_\_\_\_ of Duke Energy \_\_\_\_\_, \_\_\_\_\_, and that by authority duly given and as the act of the company the foregoing instrument was signed in its name by its \_\_\_\_\_, sealed with its corporate seal, and attested by her/himself as its \_\_\_\_\_.

Witness my hand and official seal, this the \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_