

ORDINANCE NO.: 87-52

ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE COUNTY OF NASSAU AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF SAID COUNTY; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT, SEVERABILITY CLAUSE, REPEALING CLAUSE; PROVIDING FOR A FRANCHISE FEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Nassau County finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality and reliable electric service;

WHEREAS, Nassau County finds it in the public interest to retain control over the use of public rights of way by providers of electricity to ensure against interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space, and to protect the public investment of right of way property;

WHEREAS, Nassau County finds it in the public interest to attract high-quality providers of electricity and that this can be accomplished by protecting capital investments of electric utilities;

WHEREAS, Nassau County finds that the granting of nonexclusive franchises is the best means of assuring that the above-described interests of the County of Nassau are promoted;

WHEREAS, Nassau County, pursuant to Florida Statutes Chapter 125, has the authority to enact said ordinance.

NOW THEREFORE BE IT ENACTED BY NASSAU COUNTY:

SECTION 101. Definitions. For the purpose of this Ordinance, the following terms and words shall have the meaning given herein.

A. "Grantor" shall mean the County of Nassau, Florida, its successors and assigns.

B. "Grantee" shall mean the FLORIDA PUBLIC UTILITIES COMPANY, its successors and assigns.

C. "Consumer" shall mean any person, firm, public or private corporation served by the Grantee.

SECTION 102. Grant of Franchise.

In consideration of the benefits that will accrue to the Grantor and the inhabitants thereof, grantee, a corporation under the laws of the State of Florida, its successors and assigns is hereby given, granted and vested with the non-exclusive right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct (including conduits, poles, wires, and transmission lines) within the limits of this franchise, a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 103. Limits of Franchise.

This franchise covers the geographical areas which shall be set forth by resolution of the Grantor after consultation with Grantee.

SECTION 104. Term of Franchise..

The franchise granted by this Ordinance shall exist and continue for a period of twenty-five (25) years. Grantor may grant, by resolution, renewals.

SECTION 105. Franchise Consideration.

As a further consideration for the granting of the rights, privileges and franchises hereby granted, and to defray the cost

of regulating Grantee's activities under this franchise and considering the rights of Grantee to utilize Grantor's rights of way and facilities as herein provided, the Grantee, its successors and assigns, no later than sixty (60) days after the first adoption date of this Ordinance on September 21, 1987, and each succeeding anniversary date of this grant, shall pay to the Grantor an amount not to exceed ten percent (10%) of Grantee's revenues collected from the sale of metered electrical energy billed to residential, commercial and industrial customers within the unincorporated limits of Nassau County after the effective date of this Ordinance. The amount of the Franchise Fee charged shall be established by resolution of the Board of County Commissioners and may be revised annually by resolution.

SECTION 106. Payment.

Payment of the amount owed to Grantor by Grantee under the terms of Section 105 hereof shall be made by the fifteenth (15th) of each month following the month in which the Franchise Fee is collected. The final installment for each fiscal year of this franchise shall be adjusted to reflect any underpayment or overpayment resulting from estimated monthly installments made for the fiscal year.

SECTION 107. Transferability.

The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this franchise to another without Grantor's prior approval. No such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof. The Grantor will not unreasonably withhold its consent to the transfer of this franchise.

SECTION 108. Forfeiture of This Franchise.

Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirement of this franchise, shall result in a forfeiture if after thirty (30) days' notice Grantee fails to comply. Said forfeiture shall be effective upon a finding by a Court of competent jurisdiction that Grantee has substantially breached any of the provisions, terms or requirements of this franchise. Both the Grantor and Grantee reserve the right of appeal of such Court findings. The grantee shall have six (6) months after the final determination of the question to make restitution or make good the default or failure before forfeiture shall result. The Grantor, at its discretion, may grant additional time to the grantee for restitution and compliance as the necessities of the case may require.

SECTION 109. Termination of Grant by Insolvency or Bankruptcy of Grantee.

In the event of a final adjudication of bankruptcy of the Grantee, the Grantor shall have full power and authority to terminate, revoke, and cancel any and all rights granted under the provisions of this Ordinance.

SECTION 110. Hold Harmless.

The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, re-location, operation or maintenance by the Grantee of said poles, towers, conduits, wires, cables and other appliances, equipment and vehicles subject to the terms and conditions of this franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage or any expense connected therewith including a reasonable attorney's fee incurred in the defense of any type of

Court action related thereto, which may accrue to the Grantor by reason of negligence, default, other misconduct or strict liability of the Grantee in its construction, location, relocation, operation or maintenance of the facilities, vehicles, or equipment of the electric system subject to this franchise.

SECTION 111. Severability.

Should any section or provision of this Ordinance or any portion thereof be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared to be invalid; except that, the Grantor may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the Grantor, an essential part of this Ordinance.

SECTION 112. Review and Revision of Franchise Provisions.

Except for the provisions of Section 103 concerning the term of this franchise, either party may from time to time request a review of any or all of the provisions of this franchise and the parties by mutual agreement may revise or add any provision. During the one hundred twenty (120) days immediately preceding each fifth anniversary date of this Ordinance during the term that this franchise is in effect, the Grantor and Grantee shall confer about the need of such revisions.

SECTION 113. Successors and Assigns.

Whenever in this Ordinance either the Grantor or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors or assigns of the Grantor or the Grantee.

SECTION 114. Rates, Rules and Regulations.

A. The Grantee shall provide electric energy and power service within the limits of this franchise.

B. Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, at any time within ninety (90) days after each anniversary date of this franchise examine the records of operations and accounting files, books and records as such records relate to the calculation of the franchise fee payments to the Grantor, as provided herein, and to proper performance of other terms of this franchise. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions and requirements of this franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

SECTION 115. Right to Operate.

The Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct within the limits of this franchise a power plant, a system of poles, towers, conduits, cables, conductors, transforming stations, fittings, appliances and appurtenances necessary or desirable to the generation, transmission, distribution or sale of electric energy for all purposes whatsoever. The easements herein granted apply in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places as they now exist or as they may hereafter be laid out or extended within the limits of this franchise, include the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair and maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transforming stations, generating stations, fittings and all appliances and

appurtenances necessary or desirable to the generation and transmission within, unto, through, the limits of this franchise and to the furnishing, supplying and distribution to said area and the inhabitants and electricity consumers both within the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter.

SECTION 116. Proper Operation.

(a) The poles, towers, conduits, cables, conductors, transforming stations, generating stations, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use and appearance of the streets, avenues, alleys, ways, bridges, and public places in the franchise area and shall be maintained in reasonably good condition and repair. Grantee shall use due care to construct and maintain its facilities in a manner that will not unreasonably interfere with the proper use by the public of the streets and other public places of Grantor and shall use care and caution in making any opening in any of the streets and other public places of Grantor for the purpose of erecting, repairing and/or maintaining its facilities to prevent injury to persons and property, and Grantee shall, at its expense, replace and restore all streets and other public places so opened to their former condition as nearly as practicable and within a reasonable time.

(b) Grantee shall not extend new service without the prior certification of the County Engineer or his designees of the Grantor as to compliance with the Zoning Ordinance and applicable building permitting requirements as enacted by the Grantor.

SECTION 117. Excavation Maintenance and Restoration.

Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges or public places within the franchise area for the purpose of installing, maintaining, operating or repairing any poles, towers, conduits, cables or other appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portion of the streets, avenues, alleys, ways or other public places to as good or better condition as it was before the opening or alteration was so made and will promptly remove any debris. However, should the Grantee fail to commence restoration after seven days notice provided in writing by the Grantor to Grantee, the Grantor may repair such portion of the sidewalk or street or other public place that may have been disturbed by the Grantee and the cost shall be charged to the Grantee.

SECTION 118. Street Lights

Grantee shall erect and maintain, or cause to be erected and maintained, such street lights as the Grantor shall from time to time consider necessary and proper to meet the reasonable needs of the Grantor for lighting streets and other public ways according to the established rates of the Grantee. It is expressly understood, however, that in the event the Grantor shall request the erecting or placing of any particular light and shall subsequently request the discontinuance of said light prior to the expiration of this franchise, the Grantor shall reimburse the Grantee for its expense in the erection and removing of the discontinued light. The intention is that the Grantee will make any just and reasonable extension of its electric light systems which may be requested by the Grantor commensurate with a fair and compensatory return on the fair value of the property used and useful in furnishing such extensions. If the maintenance of

said street lights becomes a financial burden of Grantee due to vandalism, Grantee shall notify Grantor in writing and both parties shall meet at a convenient time to address said vandalism.

SECTION 119. Repealing Clause.

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 120. Surrender of Rights.

As a further consideration for the granting of the rights, privileges and franchises granted hereby, the Grantee surrenders all rights, privileges and franchises heretofore granted by the Grantor for any of the purposes stated in Section 102 and 116 of this Ordinance and now enjoyed by Grantee in the franchise area; provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

SECTION 121. Rules and Regulations.

The Board of County Commissioners is authorized to adopt, modify, and repeal rules and regulations to carry out the provisions of this Ordinance.

SECTION 122. Effective Date. This franchise shall take effect as provided by law.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

By: Gene R. Blackwelder
Gene R. Blackwelder
Its: Chairman

ATTEST:

By: T. J. Greeson
T. J. Greeson
Its: Ex-Officio Clerk