

ORDINANCE NO. 9

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; PROVIDING FOR THE TERM THEREOF; PROVIDING FOR REASONABLE RULES AND REGULATIONS AND RATES FOR ELECTRIC SERVICE; PROVIDING FOR THE REPAIR OF STREETS, ALLEYS, AND PUBLIC WAYS DAMAGED IN THE CONSTRUCTION, MAINTENANCE AND OPERATION UNDER THIS FRANCHISE; PROVIDING STANDARDS OF CONSTRUCTION AND MAINTENANCE; PROVIDING FOR PAYMENT ANNUALLY OF FRANCHISE TAX ON THE GROSS REVENUES OF THE GRANTEE COLLECTED UNDER THIS FRANCHISE; PROVIDING FOR THE FORFEITURE OF THIS FRANCHISE BY THE GRANTEE IN THE EVENT IT FAILS TO COMPLY WITH THE PROVISIONS HEREOF; PROVIDING THAT THE GRANTEE SHALL HOLD THE GRANTOR HARMLESS FOR DAMAGES OR INJURY ON ACCOUNT OF GRANTEE'S NEGLIGENCE IN OPERATION UNDER THIS FRANCHISE; PROVIDING THAT THE GRANTOR SHALL NOT COMPETE WITH THE GRANTEE IN THE ELECTRIC BUSINESS; PROVIDING FOR STREET LIGHTS ON THE STREETS AND PUBLIC WAYS OF THE GRANTOR; PROVIDING FOR THE ACQUISITION OF THE GRANTEE'S PROPERTY USED UNDER THIS FRANCHISE UPON THE TERMINATION OR EXPIRATION HEREOF; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS FRANCHISE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENWOOD, FLORIDA:

SECTION 1. There is hereby granted to Florida Public Utilities Company, hereinafter called the Grantee, its successors and assigns, the non-exclusive right, privilege, or franchise to construct, maintain and operate such equipment and works as are necessary for the manufacture, generation, purchase, transmission, distribution, supply and sale of electric energy, including the right without payment by the grantee of any tax, assessment or charge therefor, except ad valorem taxes, to construct, operate and maintain in, under, over, upon or across, the present and any future streets, bridges, alleys, easements, or other public places in the Town of Greenwood and its successors, such poles, lines, wires, conduits, cables, conductors, and appurtenances thereto used or useful, for the purpose of transmitting electric energy for distribution, supply and sale of electric energy to the grantor, and its successors and to persons, firms or corporations beyond the corporate limits of the grantor, pursuant to Chapter 180.14, Florida Statutes.

SECTION 2. This franchise shall be for a term of 20 years from the date of acceptance by the grantee, which date shall be no more than 30 days after the effective date of this ordinance.

SECTION 3. In the erection, location, relocation, and construction of its facilities, the grantee shall so locate the same so as to interfere as little as possible with traffic over

the streets, alleys, bridges, and public places and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the grantor may designate for that purpose, but not so as to unreasonably interfere with the proper operation of the grantee's facilities and service. When any portion of a street is excavated by the grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within 30 days and earlier if practicable, be replaced by the grantee at its expense and in a condition as good as it was at the time of such excavation.

SECTION 4. At all times during the term of this franchise the grantee shall promptly and without discrimination, furnish an adequate supply of electric energy at standard voltage within approved limits to the grantor, its successors and to persons, firms, or corporation, and inhabitants thereof who request the same and agree to abide by the grantee's reasonable rules and regulations and the grantee shall promptly make such extensions to existing facilities as may be required by one or more customers or prospective customers provided that if the revenues to be derived from any extension shall not afford a fair and reasonable return on the cost of providing and rendering the required service, grantee is hereby permitted and authorized, as a condition precedent to making such extension, to exact from such customer or customers to be served thereby, such cash advance, minimum guarantees, service guarantees or other arrangements, as shall enable the grantee to earn a fair and reasonable return on the cost of providing and rendering the required service. The grantee shall not be liable for any interruption of service or failure of supply of electric energy due to accident unconnected with negligence on the part of the grantee, its agents or assigns, or causes beyond the reasonable control of the grantee and such interruption shall not constitute a breach of this franchise, provided the grantee shall use due

diligence to restore service within a reasonable time.

SECTION 5. The grantee shall at all times be entitled to charge for electric energy furnished by it, rates that are just and reasonable and sufficient to yield a reasonable and fair return upon the fair value of the property of the grantee used and useful in rendering such service; provided, however, the grantee shall not be entitled to claim any value on account of this franchise, and provided further that any change of rates shall be made in accordance with Chapter 366.06, Florida Statutes 1983, relating to the procedure for fixing and changing rates.

SECTION 6. The grantee shall install and maintain, free of charge, meters for measuring current, and shall have the right of ingress and egress to the premises of each consumer, free of charge, from time to time, for the purpose of reading, repairing, testing, and maintaining grantee's meters and appurtenances. Such meters and appurtenances shall at all times remain the property of the grantee and shall be removable at any time.

SECTION 7. Not later than 30 days after the first anniversary date of this franchise and not later than 30 days of each successive anniversary date, during the existence of this franchise, the grantee, its successors and assigns, shall have paid to the grantor and its successors an amount which added to the amount of all taxes assessed, levied or imposed (without regard to any discount for early payment or any interest or penalty for late payment) licenses, and other impositions levied or imposed by the grantor upon the grantee's electric property, business, or operations, and those of the grantee's electric subsidiaries for the preceding tax year, will equal 3% of the grantee's revenues from the sale of electrical energy to residential, commercial and industrial customers within the corporate limits of the grantor from the 12 months preceding the applicable anniversary date.

SECTION 8. Payment of any amounts to be paid to the grantor by the grantee under the terms of Section 7 hereof, shall

be made in advance by estimated monthly installments commencing 90 days after the effective date of this franchise. Each estimated monthly installment shall be calculated on the basis of 90% of the grantee's revenues (as defined in Section 7 hereof) for the monthly billing period ending 60 days prior to each scheduled monthly installment. The final installment for each fiscal year of this franchise shall be adjusted to reflect any underpayment or overpayment resulting from the estimated monthly installments made for said fiscal year.

SECTION 9. The grantee by its acceptance hereof, agrees to observe, perform, and keep all of the agreements, undertakings and conditions hereof to be observed, performed, and kept by the grantee.

SECTION 10. The grantee shall save and keep the grantor harmless from any and all liability by reason of damage or injury to any person or property whatsoever on account of negligence on the part of the grantee in the installation, maintenance, and operation of its facilities; provided, however, the grantee shall have been notified by the grantor, in writing, of any claim against the grantor on account thereof, and shall have been given ample opportunity to defend the same.

SECTION 11. In consideration of the grantee's undertaking hereunder as evidenced by its acceptance hereof, the grantor agrees not to engage in the business of distributing and selling electric energy during the term of this franchise or any extension hereof, in competition with the grantee, its successors and assigns.

SECTION 12. The grantee by the acceptance hereof further agrees to erect and maintain without cost, except for electric energy to be charged according to the published rates of the grantee such street lights as the Town Council shall from time to time consider necessary and proper to meet the reasonable needs of the Town for the lighting of streets and other public ways. It being expressly understood, however, that in the event said Town Council shall request the erecting or placing of any particu-

lar light or lights and shall subsequently request the discontinuance of said light or lights prior to the expiration of this franchise, then the grantor shall reimburse the grantee for its expense in the erection and removing of such discontinued light or lights.

SECTION 13. Failure on the part of the grantees to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this franchise within 60 days of written notice of such default or failure, but if such default or failure as pointed out by the grantor is considered by the grantee unreasonable, the grantee upon filing of suit, shall have until the Circuit Court has determined the rights of the respective parties. The grantee shall upon posting supersedious bond, have the right to appeal to the Court of Appeals, any adverse decision rendered by the Circuit Court determining whether or not the alleged default or failure is reasonable and substantial. If the Court should so determine that the grantee has failed to comply in a substantial respect with any provision of this franchise, the grantee shall have 30 days of such determination to make good the default or failure before any forfeiture shall result.

SECTION 14. All of the terms, provisions and conditions of this ordinance shall inure to and be binding upon the respective successors and assigns of the grantor and grantee; provided, however, the grantee may only assign this franchise to an established electrical distribution company which has been an operating company for not less than 10 years.

SECTION 15. All ordinances and parts of ordinances of the grantor in conflict herewith, shall be, and the same are hereby repealed.

SECTION 16. The grantee agrees by its acceptance of the franchise herein granted, that all construction of plants, lines, and other necessary or desirable appurtenances shall be in accordance with the National Electric Safety Code as promulgated by the American National Standards Institute, for the

manufacture, generation, transmission, distribution, supply, and sale of electric energy.

SECTION 17. All rights herein granted and authorized shall be subject to and governed by this ordinance, the laws of the State of Florida, and applicable regulations and rulings of the Florida Public Utilities Commission or its successors; provided, however, the Town Council expressly reserves unto itself all its police powers to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights hereby granted not inconsistent with the provisions of this ordinance.

SECTION 18. 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 as to any part other than the part declared to be invalid.

SECTION 19. The grantor reserves the right at and after the expiration or termination of this franchise, to purchase the property of the grantee used under this grant, as provided by the laws of the State of Florida in effect at the time of the grantee's acceptance hereof, including Section 180.16, Florida Statutes, 1981, and as a condition precedent to the taking effect of this franchise, the grantee shall give and grant to the grantor, and by its acceptance hereof, the grantee shall be conclusively deemed to have given and granted to the grantor, the right to purchase so reserved.

SECTION 20. This ordinance shall become effective on the 27th day of April, 1984, and shall be in full force and effect from and after its passage and its acceptance by the grantee which shall be filed with the Town Clerk of the Town of Greenwood, Florida.

PRESENTED in open council to the Town Council of the Town of Greenwood, Florida, and read in full on this the 10th day of April, 1984.

PASSED by the Town Council of the Town of Greenwood,
Florida, on this the 24th day of April, 1984.

Stanley L. Stoy
President of the Town Council of
the Town of Greenwood, Florida

Attest:

Ruby P. Davis
Town Clerk of the Town of Greenwood,
Florida.

Approved by me this 27th day
of April, 1984.

Carl O. Wainwright
MAYOR