

ORDINANCE NO. 2005-01

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF GREENWOOD, FLORIDA, GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, IT'S SUCCESSORS AND ASSIGNS AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF GREENWOOD, PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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

Section 1. There is hereby granted to Florida Public Utilities Company (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege or franchise to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the Town of Greenwood, Florida (Herein called the "Grantor") and its successors, in accordance with established practice with respect to electrical construction and maintenance, for the period of 20 years from the date of acceptance hereof, electric light and power facilities (including conduits, poles, wires and transmission lines, and, for its own use, telephone and telegraph lines) for the purpose of supplying electricity to the Grantor and its successors, and inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. As a condition precedent to the taking effect of this grant, the Grantee shall have its acceptance hereof with the Grantor's Clerk within 30 days hereof.

Section 3. The facilities of the Grantee shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The reasonable relocation of such facilities as may be requested by the Grantor shall be at no cost to the Grantor. 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 the 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 a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense and in a condition as good as it was at the time of such excavation.

Nothing in this Section shall be construed to make the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction or relocation of the Grantee's facilities in streets, alleys, bridges, and public places of the Grantor made necessary by widening, paving, or otherwise improving such streets, alleys, bridges and public places, except that the Grantee shall be entitled to reimbursement of such costs and expenses from funds available from sources other than the Grantor as

may be provided by law or when such costs and expenses are incurred by Grantee to benefit an unrelated person or corporation complying with the zoning, building, growth, impact or other requirements or regulations of the Grantor.

Section 4. Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor solely by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. Grantee shall have the right to adopt and enforce rules and regulations with respect to the extension, initiation and rendering of electric service, including rules providing for the discontinuance of service to any customer for non-payment of bills when due, or for failure to comply with Grantee's other rules and regulations. All rates for electric service and rules and regulations established by Grantee from time to time shall be those prescribed and approved by the Florida Public Service Commission. Grantee shall not be entitled to claim any value on account of this franchise.

Section 6. At all times during the term of this franchise Grantee shall make promptly such extensions to existing facilities as may be required by one or more customers, or for the prospective customers, in accordance with Grantee's rules and regulations on file and approved by Florida Public Service Commission. Grantee shall not be liable for any interruption of service or failure of supply of electric energy due to accidents unconnected with negligence on the part of Grantee, its agents or assigns, or to causes beyond the reasonable control of Grantee and such interruptions shall not constitute a breach of this franchise, provided Grantee shall use diligence to restore service within a reasonable time.

Section 7. No later than 60 days after the first anniversary date of this grant, and no later than 60 days after each succeeding anniversary date of this grant, 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 as 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 6 percent of the Grantee's revenues from the sale of electrical energy to residential, commercial and industrial customers within the corporate limits of the Grantor for the 12 fiscal months preceding the applicable anniversary date.

Section 8. Payment of the amount 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 grant. Each estimated monthly installment shall be calculated on the basis of 90% of the Grantee's revenues (as defined in Section 7) for the monthly billing period ending 60 days prior to each scheduled monthly payment. It is also understood that for purposes of calculating each monthly installment, all taxes, licenses, and other impositions shall be estimated on the basis of the latest data available for all such amounts imposed by the Grantee, before being prorated monthly. The final installment for each fiscal year of this grant shall be adjusted to reflect any underpayment or overpayment resulting from estimated monthly installments made for said fiscal year.

Section 9. Grantor may, at its option, upon reasonable notice to Grantee, at any time during the ninety days after the close of each fiscal year of the grant, at the sole expense of the Grantor, examine the books of Grantee as such books relate to the calculation of the franchise payment to the Grantor. Such examination of books and records of Grantee by Grantor shall be made during the regular business hours of the Grantee at the General Office of the Grantee.

Section 10. As a further consideration of this franchise, the Grantor agrees not to engage in the business of distributing and selling electricity during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Section 11. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until a court of competent jurisdiction (with right of appeal in either party) shall have found that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after the final determination of the question to make good the default before a forfeiture shall result with the right in the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 12. Grantor reserves the right, upon the expiration of the franchise term herein provided, to purchase the property of the Grantee used under this grant, for an amount equal to the then existing cost of reproduction of such property, less depreciation to date of such purchase, together with going concern value and any damages to the remainder of Grantee's property caused by such purchase. All closing costs of such purchase shall be borne by Grantor. Nothing herein contained shall require Grantor to acquire Grantee's property, or renew the franchise herein granted.

Section 13. Should any section or provision of this ordinance or any portion hereof 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 14. All ordinances and parts of ordinances in conflict herewith are the same are

hereby repealed.

Section 15. This ordinance shall take effect on the date upon which the Grantee files its acceptance.

First reading this 14th day of June, 2005.

Second, Final Reading and Passage this 12th day of July, 2005.

Approved: Charles Sanders
Charles Sanders - Mayor

Attest:

Suzanne M. NeSmith, CMC
Suzanne M. NeSmith, CMC – Town Clerk