

6H

ADDITIONAL ITEM



BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

PLACEMENT: PUBLIC HEARINGS

PRESET: 2:00 PM

TITLE: PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE REGARDING AN ELECTRIC UTILITY FRANCHISE FEE FOR UNINCORPORATED MARTIN COUNTY

AGENDA ITEM DATES:

MEETING DATE: 11/24/2015	COUNTY ATTORNEY: 11/2/2015
COMPLETED DATE: 11/12/2015	ASSISTANT COUNTY ADMINISTRATOR: 11/9/2015

REQUESTED BY:	DEPARTMENT:	PREPARED BY:
Name: Martin County Board of County Commissioners	Engineering	Don Donaldson, P.E.
Name:		Engineering Director/County Engineer

Procedures: None

EXECUTIVE SUMMARY:

Pursuant to the Board's discussion and direction on August 18 and November 10, 2015, the Board is asked to consider adoption of an ordinance granting Florida Power and Light an electric franchise non-compete agreement.

APPROVAL:

LEG
ACA
CA

BACKGROUND/RELATED STRATEGIC GOAL:

On August 18, 2015, the Board of County Commissioners (BOCC) reviewed multiple revenue enhancement options for future consideration. One of those included a utility franchise with Florida Power and Light (FPL) that would result in the development of an enabling Ordinance and a Franchise Agreement between the Board of County Commissioners and FPL. Pursuant to BOCC direction, Schef Wright Esq., Special Utility Counsel for Martin County negotiated a draft ordinance with FPL which was presented for BOCC discussion at the November 10, 2015 meeting.

The draft ordinance provides the following:

- The County would provide FPL access to its “rights-of-way” as defined in the Franchise Agreement, for FPL to use for the purpose of providing electric service in the geographic area subject to the Franchise. FPL is responsible for costs of relocation of its facilities within the right-of-way if necessary to accommodate the extension of expansion of a roadway.
- The County agrees not to compete with FPL in the provision of retail electric services during the 30-year term of the Franchise.
- FPL would collect and remit the franchise fees to the County on a monthly basis, generally within 60 days after the end of the month for which the fees were collected. The ordinance provides for a franchise fee of 6.0 percent.
- The County has the option of changing the franchise fee on an annual basis to any rate between 0.05 and 6.0 percent.
- If FPL enters into a franchise agreement with any other municipality in Martin, Palm Beach or St. Lucie Counties in which the terms are more favorable than Martin County’s franchise agreement, the County has the right to enter into a new agreement with FPL with similar more favorable terms.

- 1. Agreement/Ordinance prepared by:** Florida Power & Light, Schef Wright, special counsel to Martin County, and County Attorney’s Office.
- 2. Parties to the Agreements:** Florida Power & Light and Martin County.
- 3. Purpose of the Agreement:** Full discussion in Background above.
- 4. New/Revised Document:** New Agreement.
- 5. Duration:** 30 years.
- 6. Benefits to Martin County:** Approximately \$9.1 million annually.
- 7. Cost to Martin County:** Minimal monitoring cost.

During the November 10 meeting the BOCC directed staff to correct a scrivener’s error in Part 1, subparagraph 2 (e) the second line (changing a reference to subparagraph 2 (c) to 2 (b)) as well as to include a sentence at the end of Part 1, Section 3 to provide for the survival of FPL’s indemnification

after termination of the Agreement subject to applicable statutes of limitation. In addition, the Board discussed developing a draft ordinance provision providing for the uses for the franchise fee revenues and a requirement for an affirmative vote of a majority plus one of the Board (a super majority) to amend such uses.

A copy of the draft ordinance, the legal advertisement and affidavit of publication is attached.

ISSUES:

The County's Resurfacing & Drainage, Striping & Guardrail, and Bridges total backlog continues to exceed \$65M. This backlog represents a significant health and safety issue and will remain as such until a funding program is initiated to reduce the backlog in a timely manner. The annual Deferred Maintenance appropriation of \$5.4M allows the County to nearly maintain the annual Resurfacing & Drainage obligations. The additional FPL Franchise Fee funds will allow the County to maintain the annual Resurfacing & Drainage, Striping & Guardrail, and Bridges obligations as well as annually cut the overall backlog deficit.

The draft ordinance contains a new Part Two: Uses of Franchise Fee Revenues by the County (page 13) which provides:

Section 1. Uses: The revenues received by the County pursuant to this Ordinance shall be used solely to plan for, maintain, repair and reconstruct existing Roads, Drainage and Bridges to meet required codes and standards Countywide which are contained in the County's adopted Capital Improvement Plan.

Section 2. Amendment of the Uses of the Franchise Fee Revenues: Amendment of Part Two, Section 1 of this ordinance may only be made by an ordinance enacted by an affirmative vote of a majority plus one additional member of the Board of County Commissioners (not less than four County Commissioners).

The language in Section 1 is the same language contained in the November 4, 2014 Sales Tax Referendum Ordinance (Section 6 (1) A of Ordinance No. 952). The language in Section 2 requires a super majority approval of any change to Section 1.

These provisions were added for Board consideration per Board discussion on November 10, 2015.

LEGAL SUFFICIENCY REVIEW:

This is both an executive and a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety and welfare of the public to be valid. Given this broad discretion, only decisions that are arbitrary and capricious or illegal are subject to serious legal challenge. As to the executive

and contractual issues, this item has been reviewed for legal sufficiency to determine whether it is consistent with applicable law, has identified and addressed legal risks, and has developed strategies for legal defensibility.

RECOMMENDED ACTION:

RECOMMENDATION

Move that the Board adopt the Ordinance as presented implementing a Franchise Agreement with FPL.

ALTERNATIVE RECOMMENDATIONS

Move that the Board adopt the Ordinance with modifications, as required by the BOCC, implementing a Franchise Agreement with FPL.

FISCAL IMPACT:

RECOMMENDATION

Estimated annual revenue of \$9.1 million.

Funding Source	County Funds	Non-County Funds	Authorization
Subtotal			

Project Total	
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ALTERNATIVE RECOMMENDATIONS

DOCUMENT(S) REQUIRING ACTION:

<input type="checkbox"/> Budget Transfer / Amendment	<input type="checkbox"/> Chair Letter	<input type="checkbox"/> Contract / Agreement
<input type="checkbox"/> Grant / Application	<input type="checkbox"/> Notice	<input checked="" type="checkbox"/> Ordinance
<input type="checkbox"/> Other:	<input type="checkbox"/> Resolution	

ROUTING:

_ ADM	_ BLD	_ CDD	_ COM	_ ENG	_ FRD	_ GMD
_ GSD	_ ITS	_ LIB	_ MCA	_ MPO	_ PRD	_ USD
X CA	X ACA	X LEG				

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER XX

AN ORDINANCE OF MARTIN COUNTY, FLORIDA RELATING TO THE PROVISION OF ELECTRIC SERVICE; GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE NON-COMPETE AGREEMENT; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO MARTIN COUNTY; PROVIDING FOR THE USES OF FRANCHISE FEE REVENUES BY THE COUNTY AND REQUIRING AN AFFIRMATIVE VOTE PLUS ONE ADDITIONAL BOARD MEMBER TO AMEND THE REVENUE USES; PROVIDING FOR CONFLICTING PROVISIONS, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Martin County (“County”) recognizes that the citizens of the County need and desire the benefits of electric service; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and

WHEREAS, the County does not desire to undertake to provide such services at this time; and

WHEREAS, Florida Power & Light Company (“FPL”) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, FPL and the County desire to enter into an electric franchise non-compete agreement (hereinafter the “Agreement”) providing for the payment of fees to the County in exchange for the nonexclusive right and privilege of supplying retail electricity service throughout the County free of competition from the County, and using public rights-of-way under the County’s

control in the provision of such service, and pursuant to certain terms and conditions set forth herein; and

WHEREAS, the Board of County Commissioners deems it to be in the best interests of the County and its citizens to enter into the Agreement created by this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:

PART ONE: ELECTRIC FRANCHISE NON-COMPETE AGREEMENT

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (herein called the "Grantee"), for the period of 30 years from the effective date hereof, the non-exclusive right, privilege, and franchise to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, and rights-of-way (herein called "public rights-of-way") throughout all of the unincorporated areas, as such unincorporated areas may be constituted from time to time, of Martin County, Florida, and its successors (herein called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other electricity-related services incidental thereto (which other electricity-related services are defined as FPL's facility to facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which do not include any services that are sold to others) to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2.(a) The facilities of the Grantee shall be so located, relocated, installed, constructed and so erected so as to not unreasonably interfere with the convenient, safe,

continuous use or the maintenance, improvement, extension or expansion of any public “road” as defined under the Florida Transportation Code, nor unreasonably interfere with reasonable egress from and ingress to abutting property.

(b) To minimize such conflicts with the standards set forth in subsection (a) above, the location, relocation, installation, construction, or erection of all facilities shall be made as representatives of the Grantor may prescribe in accordance with all applicable federal, state, and local statutes, laws, ordinances, rules, and regulations and pursuant to the Grantor's reasonable rules and regulations with respect to utilities' use of public rights-of-way relative to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations:

- (i) shall be for a valid municipal purpose,
- (ii) shall not prohibit the exercise of Grantee's rights to use said public rights-of-way for reasons other than conflict with the standards set forth above,
- (iii) shall not unreasonably interfere with Grantee's ability to furnish reasonably sufficient, adequate, and efficient electric service to all its customers while not conflicting with the standards set forth above, or
- (iv) shall not require relocation of any of the Grantee's facilities installed before or after the effective date hereof in any public right-of-way unless or until the facilities unreasonably interfere with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any such public “road”.

(c) Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should, unless otherwise permitted, be installed near the outer boundaries of the public rights-of-way to the extent possible, and such installation shall be consistent with the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways.

(d) When any portion of a public right-of-way is excavated, damaged, or impaired by the Grantee or any of its agents, contractors, or subcontractors in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated, damaged, or impaired shall, within

a reasonable time and as early as practicable after such excavation, be restored by the Grantee at its expense and in as good condition as it was at the time of such excavation.

(e) The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (b) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. The 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, including Grantor's reasonable attorneys' fees and costs incurred in defending itself against any claims for such liabilities, losses, costs, damages, or expenses asserted against Grantor by others, which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder. The Grantee's agreement to indemnify the Grantor as set forth in this section shall apply with respect to all claims arising due to errors or omissions of Grantee, its agents, contractors, or subcontractors, or any combination thereof, without regard to whether such claims arose prior to termination of this Agreement or after termination of this Agreement, subject to applicable statutes of limitations.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5.(a) As a consideration for this Agreement, the Grantee shall pay to the Grantor, commencing sixty (60) days after the effective date hereof, and each month thereafter for the remainder of the term of this Agreement, an amount which added to the amount of all licenses,

excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal six percent (6.0%) of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial, and industrial customers (as such customers are defined by FPL's tariff) within the unincorporated areas of the Grantor for the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed six percent (6.0%) of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; or (h) other service charges.

With each monthly payment remitted to Grantor, Grantee shall include a detailed calculation showing how the amount remitted was determined. Each such detailed calculation shall show: (i) the amount of Grantee's revenues subject to the franchise fee, (ii) the actual calculation of 6.0 percent (or such other percentage as may be applicable pursuant to the provisions of subsections (b) and (c) of this Section 5) of that amount, (iii) the resulting franchise fee amount before offsets and write-offs, (iv) the amount of actual write-offs deducted

by Grantee, and (v) the resulting amount of the franchise fee payment being remitted to Grantor. Itemized information regarding any write-offs or deductions from the franchise fee shall be made available to the Grantor upon request to the Grantee.

(b) The Grantor shall, as provided herein, have the right to change the percentage rate to be remitted by Grantor to any rate between 0.5 percent and 6.0 percent. The Grantor may not exercise such right more than once in any calendar year. If the Grantor changes the rate, Grantor shall give Grantee at least 60 days advance written notice prior to the effective date of the new rate, which effective date shall always be on the first day of a "billing cycle" of the Grantee, and the Grantee shall have 60 days after such new effective date to begin remitting the fee provided for herein to the Grantor.

Section 6. As a further consideration, during the term of this Agreement or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee; and (b) not to participate in any proceeding or contractual arrangement the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or energy from any person to any other retail customer's facility(ies), provided that the Grantor shall not be considered a "third party" or an "other retail customer" for purposes of this provision. Nothing specified above shall prohibit the Grantor from engaging with other persons in wholesale transactions which are subject to the provisions of the Federal Power Act, or from utilizing generators and/or other electricity or energy-generating equipment during emergency situations.

If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Martin, Palm Beach, or St. Lucie County, Florida, where the number

of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical customers within the unincorporated area of the Grantor, the terms of which provide for benefits which are more favorable than those provided to the Grantor herein, then the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor containing similar more favorable terms, provided, however, that such new franchise agreement shall include additional benefits to Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with such other municipal corporation located in Martin, Palm Beach, or St. Lucie County. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine those more favorable benefits to which it would be entitled, and the Grantee shall have the sole discretion to determine those additional benefits to which it would be entitled, under any such new franchise agreement.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or energy from any other person for consumption in any facility(ies) being served by the Grantee before such election, the Grantor shall notify the Grantee in writing. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the other person's offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the Grantor's identified facilities for a term no shorter than

that offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, then Grantor may purchase such electric capacity and/or electric energy from such other person and all of the remaining terms and conditions of this Agreement shall remain in effect.

Section 7. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the unincorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this Agreement if such terms and conditions are not remedied, or if the dispute between Grantee and Grantor is not resolved, as provided hereafter. The Grantee shall give the Grantor at least 180 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable and the objective basis or bases of the claimed competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee, and the Grantor and Grantee agree to negotiate in good faith toward a mutually acceptable resolution of Grantee's claims during this 90-day period. If the Grantee reasonably determines that such terms or conditions are not remedied by the Grantor within said time period, and if no mutually acceptable resolution is reached by Grantee and Grantor through negotiation, the Grantee may terminate this Agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination leading to termination under this Section.

Section 8. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the unincorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the unincorporated areas of the Grantor in which the Grantee may lawfully serve, and such person is authorized, whether by federal or state law or regulations, or by the Grantor, to provide electric service without paying a franchise fee equal to that paid by the Grantee hereunder (such unequal application of franchise fees being hereafter referred to as the “competitive disadvantage” resulting from the legislative, regulatory, or other governmental action), and the Grantee determines that its obligations hereunder, or otherwise resulting from this Agreement in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this Agreement if such competitive disadvantage is not remedied as provided hereafter. Such competitive disadvantage can be remedied by either of the following methods: (i) If the Grantor either cannot legally, or does not, charge a franchise fee to other electricity supplier(s), then the Grantor can remedy the disadvantage by reducing the Grantee’s franchise fee rate to zero; or (ii) if the Grantor is able to charge, and does charge, such other electricity supplier(s) a franchise fee at a rate less than the 6.0% rate calculated as provided in Section 5 of this Agreement, then the Grantor can remedy the disadvantage by reducing the Grantee’s franchise fee rate to the same rate, with the same applicability and calculation methodology, as applies to such other electricity suppliers. If the Grantor does not implement either of the foregoing solutions, the Grantee may terminate the Agreement, in accordance with the following process: The Grantee shall give the Grantor at least 180 days advance written notice

of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the claimed competitive disadvantage and the objective basis or bases of the claimed competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage, and the Grantor and Grantee agree to negotiate in good faith toward a mutually acceptable resolution of Grantee's claimed disadvantage during this 90-day period. If such competitive disadvantage is, in the reasonable determination of Grantee, not remedied by the Grantor within said time period, the Grantee may terminate this Agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination of competitive disadvantage leading to termination under this Section.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this Agreement shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this Agreement, and the Grantee shall have six months after such final determination 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 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this Agreement, including: (a) denying the Grantee use of public rights-of-way for reasons other than as set forth in Section 2 of this Agreement; (b) imposing conditions for

use of public rights-of-way contrary to Florida law or the terms and conditions of this Agreement; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this Agreement and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination (after the expiration or exhaustion of all rights of appeal) in the matter. The Grantor recognizes and agrees that nothing in this Agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right as provided by law. The Grantee recognizes and agrees that nothing in this Agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 6 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this Agreement, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's examination of the records of the Grantee in accordance with this section

shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 12. Should any section or provision of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, or otherwise rendered invalid or unenforceable as a direct or indirect consequence of any legislative, regulatory, or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them), such decision or action shall not affect the validity of the remainder hereof as a whole or any part hereof, other than the part declared to be invalid. Grantor and Grantee further agree that, in the event that any material provision of this ordinance is thus declared to be invalid or rendered invalid or unenforceable, the Grantor and Grantee will negotiate in good faith to amend this Agreement so as to restore, to the maximum extent legally permissible, the original economic bargain embodied in this ordinance. The parties recognize that Sections 1, 2, 3, 5, and 6 are critical to the fundamental economic bargain of this Franchise Agreement, and accordingly, if any of the provisions of these sections are found or adjudged to be invalid, or rendered invalid or unenforceable, and the Grantor and Grantee are unable to agree on replacement language that restores the original economic bargain embodied in the ordinance to their mutual satisfaction, then either party may, in its sole discretion, terminate the Agreement by giving 60 days written notice to the other party.

Section 13. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an unincorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14. Notwithstanding any provision of this Ordinance, nothing herein shall prevent, prohibit or in any way restrict the Grantor's ability to take advantage of all applicable

services set forth in Grantee's tariffs as those tariffs are approved from time to time by Grantee's regulators, and nothing herein shall prevent, prohibit or in any way restrict the Grantor's ability to avail itself of all rights accruing to Grantor as a retail customer of Grantee under Florida law and the rules and regulations of the Florida Public Service Commission.

PART TWO: USES OF FRANCHISE FEE REVENUES BY THE COUNTY

Section 1. Uses: The revenues received by the County pursuant to this Ordinance shall be used solely to plan for, maintain, repair, and reconstruct existing Roads, Drainage and Bridges to meet required codes and standards Countywide which are contained in the County's adopted Capital Improvement Plan.

Section 2. Amendment of the Uses of the Franchise Fee Revenues: Amendment of Part Two, Section 1 of this ordinance may only be made by an ordinance enacted by an affirmative vote of a majority plus one additional member of the Board of County Commissioners (not less than four County Commissioners).

PART THREE: CONFLICTING PROVISIONS.

Special acts of the Florida legislature applicable only to unincorporated areas of Martin County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

PART FOUR: APPLICABILITY.

This ordinance shall be applicable throughout the unincorporated area of Martin County.

PART FIVE: FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART SIX: EFFECTIVE DATE.

As a condition precedent to the effective date of this ordinance the Grantee shall file its written acceptance hereof with the Grantor's Clerk within 30 days of enactment of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

**DULY PASSED AND ADOPTED THIS ____ DAY OF _____,
2015.**

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

ANNE SCOTT, CHAIR

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

MICHAEL D. DURHAM, COUNTY ATTORNEY

STATE

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of County Commissioners will conduct a public hearing on November 24, 2015, to consider the adoption of an ordinance related to the provision of electric service and granting an Electric Franchise Non-Compete Agreement to Florida Power & Light Company. The hearing will be conducted beginning at 9:00 AM or as soon thereafter as the following item may be heard.

The title of the proposed ordinance is:

AN ORDINANCE OF MARTIN COUNTY, FLORIDA RELATING TO THE PROVISION OF ELECTRIC SERVICE; GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE NON-COMPETE AGREEMENT; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO MARTIN COUNTY; PROVIDING FOR THE USES OF FRANCHISE FEE REVENUES BY THE COUNTY AND REQUIRING AN AFFIRMATIVE VOTE PLUS ONE ADDITIONAL BOARD MEMBER TO AMEND THE REVENUE USES; PROVIDING FOR CONFLICTING PROVISIONS, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

All interested persons are invited to attend and be heard. The meeting will be held in the Commission Chambers on the first floor of the Martin County Administrative Center, 2401 S.E. Monterey Road, Stuart, Florida. Written comments may be sent to: County Attorney's Office, 2401 S.E. Monterey Road, Stuart, Florida 34996. Email comments may be sent to swoods@martin.fl.us. Copies of the item will be available from the County Attorney's Office. For more information, contact Sarah Woods at (772) 288-5446. The current draft ordinance provides that the franchise fee revenues be used to plan and reconstruct existing roads, drainage and bridges to meet required Codes and standards countywide, which are contained in the County's adopted Capital Improvement Plan.

Persons with disabilities who need an accommodation in order to participate in this proceeding are entitled, at no cost, to the provision of certain assistance. This does not include transportation to and from the meeting. Please contact the Office of the County Administrator at (772) 221-2360, or in writing to 2401 SE Monterey Road, Stuart, FL, 34996, no later than three days before the hearing date. Persons using a TDD device, please call 711 Florida Relay Services.

If any person decides to appeal any decision made with respect to any matter considered at the meetings or hearings of any board, committee, agency, council, or advisory group, that person will need a record of the proceedings and, for such purpose, may need to insure that a verbatim record of the proceedings is made, which record should include the testimony and evidence upon which the appeal is to be based.

TREASURE COAST NEWSPAPERS

1939 SE Federal Highway, Stuart, Florida 34994

Affidavit of Publication

TREASURE COAST NEWSPAPERS

MARTIN CO COMMISSIONERS
2401 SE MONTEREY RD
STUART FL 34996

REFERENCE: 435812
795572 fpl-wood

STATE OF FLORIDA
COUNTY OF MARTIN, ST. LUCIE and INDIAN RIVER
Before the undersigned authority personally appeared
and who on oath says that he/she is the Acct Adv
Clerk of Treasure Coast Newspapers which publishes
3 daily newspapers in Martin Cnty: The Stuart News;
St Lucie Cnty: St Lucie News Tribune: and Indian
River Cnty: The Indian River Press Journal. Affiant
further states that these newspapers are published
daily, with offices and paid circulation in said
counties, and distributed in said counties for one
year preceding the first publication of the attached
copy of advertisement; and affiant further states
that he/she has neither paid nor promised any
person, firm or corporation any discount, rebate,
commission or refund for the purpose of securing
this advertisement for publication in the said
newspaper(s). These newspapers have been entered as
second class matter at the post office of Martin, St.
Lucie and Indian River counties and have been for a
period of one year preceding the first publication of
the attached copy of advertisement.

PUBLISHED ON:
11/13/15

AD SPACE: 20.0 INCHES
FILED ON: 11/17/15

Sworn to and subscribed before me this day of Nov 17 2015, by

Monika Lepore, who is

personally known to me or
 who has produced

Notary: Sandra Colgren

My Commission Expires: 4/1/17



as identification.