

BOARD OF COUNTY COMMISSIONERS OF BRADFORD COUNTY, FLORIDA

AGENDA ITEM INFORMATION SHEET (AIIS)

DATE OF MEETING: May 2, 2023

AGENDA ITEM ^{6A.} Discussion with BoCC on Florida Power & Light Franchise Fees

DEPARTMENT: County Manager's Office.

PURPOSE: Discussion with BoCC on Florida Power & Light Franchise Fees

ASSOCIATED COSTS: N/A

FRANCHISE AGREEMENT INFORMATION

WHAT IS A FRANCHISE AGREEMENT?

Generally, a franchise is an agreement – passed in the form of an ordinance – between a local government and a utility. The key elements of an FPL electric franchise are:

1) The local government provides FPL an express (non-exclusive) right to install and maintain electric facilities within the local government's rights-of-way for the purpose of providing electric service within the local government's jurisdictional boundaries.

2) The local government agrees for the duration of the franchise (30 years) to not form a municipal electric utility to compete with FPL; and

3) FPL agrees to collect and remit franchise fees to the local government monthly based on a percentage (usually 5.9 or 6 percent) of revenues from sales to residential, commercial and industrial customers.

Because a franchise is a bargained for agreement, a local government may not unilaterally impose a franchise fee on a utility. Instead the local government and utility must agree on the franchise terms.

WHAT A FRANCHISE AGREEMENT IS NOT?

A franchise agreement is not a service agreement between a local government and a utility. In Florida, the rates and service of investor-owned utilities such as FPL are regulated exclusively by the Florida Public Service Commission (FPSC). Items such as undergrounding of electric facilities, street lights, and net metering of renewable energy are governed by FPSC approved tariffs which may not be modified or amended in a franchise agreement. Likewise, a utility's reliability is governed by the FPSC. Pursuant to Florida Statute section 366.04(1) the jurisdiction conferred upon the FPSC with respect to a public utility's rates and service "shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages or counties..."

HOW MANY FRANCHISE AGREEMENTS DOES FPL HAVE?

FPL currently has over 190 franchise agreements with municipalities and counties within its service territory. Nearly 90% of FPL's customers pay franchise fees, most at either 5.9 or 6.0 percent. FPL franchises are for a term of thirty (30) years.

WHAT IS THE HIGHEST RATE TO WHICH FPL WILL AGREE?

Six percent (6%). FPL will agree to a lower rate if so desired by the local government.

FPL will also agree to allow the local government to periodically raise or lower the rate, provided the rate falls between 1 and 6 percent.

WOULD THE FRANCHISE AGREEMENT PREVENT OR CONSTRAIN CUSTOMERS FROM INSTALLING RENEWABLE ENERGY DEVICES AT THEIR HOMES OR BUSINESSES?

No. An FPL franchise would not prohibit customer-installed generation equipment, such as solar panels, or other distributive generation technologies. If the local government desired to install renewable or other generation technologies to serve its own facilities, the franchise would not prevent that. An FPL franchise would not affect or impair in any way the local government's (or a customer's) right to sell renewable energy back to FPL under its FPSC approved net metering program.

DOES FPL RETAIN ANY PORTION OF THE FRANCHISE FEE REVENUE IT COLLECTS?

No. FPL remits 100% of the franchise fees it collects to the local government. FPL does not retain any portion. There is no "float" of the franchise revenues, and FPL does not earn interest on franchise revenues before remitting same to the local government.

DO ALL CUSTOMERS OF THE LOCAL GOVERNMENT PAY FRANCHISE FEES?

Yes. Pursuant to FPSC requirements, all FPL customers within the local government, regardless of tax status, must pay franchise fees.

FPL's Franchise Fee Payment Calculation (Estimate)
New Franchise Agreement - Uninc Bradford County

New Contract Terms ¹:

Franchise Fee + Permits/Fees = 6% of specified revenue (less uncollectibles)

Current franchise fee rate is 0%

\$		418,589
	▼	
		418,589

Example:

Revenue Type	Current Franchise Agreement Rate is	New Agreement
Residential	\$ -	5,642,509
Commercial	-	979,386
Industrial	-	354,594
Total Revenue ²	\$ -	6,976,489
Less: Uncollectibles(-	-
Net Revenue	\$ -	6,976,489
0% / 6% of net revenue	x 0 %	x 6%
	\$ -	418,589
Other payments by FPL:		
Permits/Fees	\$ -	\$ -
Property Taxes	-	-
Franchise Fees	\$ -	\$ 418,589

This is the increased amount that would be passed on to the city's franchise customers.

• Under the current Franchise agreement² - a typical residential bill for 1,000 kWh is \$129.59; \$0.00 of that is for franchise fees and \$0.00 is for municipal taxes.

• Under the new Franchise agreement³ - a typical residential bill for 1,000 kWh would be \$137.37; \$7.78 of that is for franchise fees and \$0.00 is for municipal taxes.

Currently the Franchise Agreement rate is 0%. Under the new agreement, the average residential customer would see a monthly increase in their bill of \$7.78 per month.

Summary:

Current Contract Terms ¹:

Franchise Fee + Permits/Fees = 0% of specified revenue

-	+	-	+	-		=	-		(Total payments)
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New Contract Terms ¹:

Franchise Fee + Permits/Fees = 6% of specified revenue

418,589	+	-	=	418,589	+	-	=	418,589		(Total payments)
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¹ Current Contract Terms calls for the Permits/Fees to be deducted from the payment. This analysis assumes that the Permit & Fees will continue to be deducted under the ne

² Franchise revenues for the period of Jan 2022- Dec 2022.

³ Rate Comparisons based on Rates from FPL.com, updated February 2023

FPL's Franchise Fee Payment Calculation (Estimate)
 New Franchise Agreement - Uninc Bradford County

New Contract Terms ¹:

Franchise Fee + Permits/Fees = 5.9% of specified revenue (less uncollectibles)

Currently the franchise fee rate is 0%

\$	411,613
\$	411,613

Example:

Revenue Type	Current Franchise Agreement Rate is	New Agreement
Residential	\$ -	5,642,509
Commercial	-	979,386
Industrial	-	354,594
Total Revenue ²	\$ -	6,976,489
Less: Uncollectibles(-	-
Net Revenue	\$ -	6,976,489
0% / 5.9% of net revenue	\$ x 0 % -	x 5.9% 411,613
Other payments by FPL:		
Permits/Fees	\$ -	\$ -
Property Taxes	-	-
Franchise Fees	\$ -	\$ 411,613

This is the increased amount that would be passed on to the city's franchise customers.

- Under the current Franchise agreement³ - a typical residential bill for 1,000 kWh is \$129.59; \$0.00 of that is for franchise fees and \$0.00 is for municipal taxes.
- Under the new Franchise agreement³ - a typical residential bill for 1,000 kWh would be \$137.24; \$7.65 of that is for franchise fees and \$0.00 is for municipal taxes.

Currently the Franchise Agreement rate is 0%. Under the new agreement, the average residential customer would see a monthly increase in their bill of \$7.65 per month.

Summary:

Current Contract Terms ¹:

Franchise Fee + Permits/Fees = 0% of specified revenue
 - + - + - = - (Total payments)

New Contract Terms ¹:

Franchise Fee + Permits/Fees = 5.9% of specified revenue
 411,613 + - = 411,613 + - = 411,613 (Total payments)

¹ Current Contract Terms calls for the Permits/Fees to be deducted from the payment. This analysis assumes that the Permit & Fees will continue to be deducted under the ne

² Franchise revenues for the period of Jan 2022- Dec 2022.

³ Rate Comparisons based on Rates from FPL.com, updated February 2023

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF PENSACOLA, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Pensacola, Florida recognizes that the City of Pensacola and its citizens need and desire the continued 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 the City of Pensacola does not desire to undertake to provide such services; and

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

WHEREAS, Gulf Power and the City of Pensacola are parties to an existing franchise agreement, the terms of which are set forth in City of Pensacola Ordinance No. 61-79, passed and adopted December 20, 1979, and as further amended, and Gulf Power's written acceptance thereof dated December 21, 1979 granting to Gulf Power, its successors and assigns, an electric franchise ("Current Franchise Agreement"); and

WHEREAS, FPL and the of City of Pensacola desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to the City of Pensacola in exchange for the nonexclusive right and privilege of supplying electricity and other services

within the City of Pensacola free of competition from the City of Pensacola pursuant to certain terms and conditions, and

WHEREAS, the City Council of the City of Pensacola deems it to be in the best interest of the City of Pensacola and its citizens to enter into the New Franchise Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the City of Pensacola Florida, and its successors (hereinafter 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 (hereinafter called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or

relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. 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 (c) 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 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.

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. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, 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 6% percent 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 incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 6% percent 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; (h) other service charges.

Section 6. As a further consideration, during the term of this franchise 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 electric 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, (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 electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

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 electric energy from any other person, the Grantor shall notify the Grantee. 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 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 previously-identified facilities of the Grantor 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, all of the terms and conditions of this franchise 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 incorporated 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 franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 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. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the

Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

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 incorporated 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 incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise 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 franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 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 competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise 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 franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of 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 ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (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 franchise 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 in the matter. The Grantor recognizes and agrees that nothing in this franchise 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.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise 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 right to examine 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.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. No. 61-79

Section 12. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

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

Section 14. Ordinance No. __61-79, passed and adopted December 20, 1979 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 15. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption

of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this _____ day of _____, 2023.

PASSED AND ADOPTED on second reading this _____ day of _____, 2023.

CITY OF PENSACOLA, FLORIDA

By: _____

ATTEST:

By: _____
(City) Clerk of the _____, Florida

(SEAL)

APPROVED AS TO FORM AND LEGALITY

(City) Attorney, _____, Florida