

PROPOSED
ORDINANCE NO. 61-79

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AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE GRANTING TO GULF POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF PENSACOLA AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF SAID CITY; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT, SEVERABILITY CLAUSE, REPEALING CLAUSE AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the City of Pensacola and the inhabitants thereof, Gulf Power Company, a corporation under the laws of the State of Maine, its successors and assigns, hereinafter sometimes referred to as the Grantee, is hereby given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Pensacola a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 2. Rights to Operate. The said Grantee, its successors and assigns, is hereby further given, granted and vested with the exclusive right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Pensacola a system of poles, towers, conduits, cables, conductors, transforming stations, fittings, appliances and appurtenances necessary or desirable to the transmission, distribution or sale of electric energy for all purposes whatsoever in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places in said City of Pensacola, as they now exist or as they may hereafter be laid out or extended within the present and future limits of said City, together with 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, over and beyond said City of Pensacola and to the furnishing, supplying and distributing to said City and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of said City. Grantor retains the right to purchase or generate electric power for its own use but not for sale. The electric system, facilities and associated equipment and vehicles shall be located or re-located, erected or operated so as to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges, and public places and with reasonable egress and ingress to abutting and adjoining property.

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SECTION 3. Franchise Fee. As a further consideration for the granting of the rights, privileges and franchises hereby granted, the Grantee, its successors and assigns, shall pay to the City within thirty (30) days after the first day of each month a franchise fee determined from time to time by ordinance of the City based upon a percentage of Grantee's revenue from the furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City as a franchise fee may be changed by the City from time to time by ordinance at intervals of no less than three (3) years, provided that the percentage shall in no event exceed that permitted by law. The City may grant such exemptions from payment of the fee as it may provide by ordinance from time to time, at intervals of no less than three (3) years, within the limits allowed by law.

SECTION 4. Proper Operation. 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 City and shall be maintained in reasonably good condition and repair. The Grantee and the Grantor mutually agree to participate for the term of this franchise in the regular and called activities of the Escambia-Santa Rosa Utilities Coordinating Committee or its successors to facilitate to their mutual benefit the location and relocation of equipment used in the provision of electric service within the Grantor's limits.

SECTION 5. 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 of the City 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 condition as it was before the opening or alteration was so made and will promptly remove any debris.

SECTION 6. 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 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 hereto, which may accrue to the Grantor by reason of negligence, default or other misconduct of the Grantee in its construction, location, re-location, operation or maintenance of the facilities, vehicles, or equipment of the electric system subject to this franchise.

SECTION 7. Rates, Rules and Regulations.

(a) All rates for electrical service and the rules and regulations governing the receipt of said service within the Grantor's limits, established by the Grantee from time to time, shall be reasonable and shall at all times be subject to such public regulation as may be provided by law. The Grantee recognizes its obligations to provide electric energy and power service within the City on reasonable terms and conditions at just, reasonable and nondiscriminatory rates to all who request said service during the term of this franchise and thereafter, as required by law or by duly constituted public regulatory body.

(b) The Grantee agrees by its acceptance of this franchise to file with the City Clerk or City Manager or his successor by the first anniversary date of this franchise, a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided within the City and to file in writing annually any revisions of rules, regulations and rates that have been adopted since the previous annual filing. Grantee shall also furnish the City Manager a copy of each of its annual reports to its stockholders.

(c) 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. 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 8. Interruption of Service. In the event the supply of electric energy should be interrupted or fail by reason of accident or any cause beyond the control of the Grantee, the Grantee shall, at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this franchise nor shall the Grantee be liable for any loss or damages by reason of such interruption or failure.

SECTION 9. Metering of Service. The Grantee shall install and maintain, free of charge, meters for measuring current, and shall have free access to the premises of the consumer, from time to time, for the purpose of reading, repairing, testing and maintaining the meters and appurtenances. Such meters shall remain the property of the Grantee.

SECTION 10. Term of Franchise - Right to Purchase. The franchise granted by this ordinance shall exist and continue for a period of thirty years only, and as a condition precedent to the taking effect of this grant, the City of Pensacola does hereby reserve and the Grantee gives and grants to the said municipality, the right, at the expiration of fifteen (15) years and at the expiration of thirty (30) years, to purchase the electric plant and other property within the corporate limits of the City of Pensacola necessarily used under or in connection with the franchise hereby granted or such part of such property as the municipality may desire to purchase at a valuation to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (1977). Grantee is hereby given the right to demand that the City purchase the electric plant and other property within the corporate limits of the City necessarily used under or in connection with the franchise hereby granted at the expiration of fifteen (15) years or at the expiration of thirty (30) years at a valuation to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (1977). The option to purchase or to demand purchase shall be exercised by giving notice in writing to the other party not less than sixty (60) days prior to the expiration of fifteen (15) years or thirty (30) years from the effective date of this ordinance. The franchise granted by this ordinance is also subject to the terms and conditions of all applicable provisions of the Code of the City of Pensacola.

SECTION 11. Forfeiture of This Franchise. Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance,

shall be grounds for forfeiture of this franchise, but no such forfeiture shall take effect if the reasonableness and propriety thereof is timely protested and satisfactorily addressed or until a court of competent jurisdiction shall have found that the Grantee has failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. 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 12. Review and Revision of Franchise Provisions. With the exception of the provisions of Section 10 concerning the term of this franchise and options to purchase or require purchase at specified intervals during the term, and of Section 3 concerning periodic revision of the franchise fee, the City and Grantee may from time to time at the request of either party review any or all of the other provisions of this Ordinance and by mutual agreement revise any such provision, or add any additional provisions that may be appropriate. During the 120 days immediately preceding each fifth anniversary date of this ordinance during the term that this franchise is in effect, representatives of the City and Grantee shall meet to decide whether any such revisions or additions are necessary.

SECTION 13. Other Franchises. Grantee shall furnish City a copy of all other municipal franchises that it is granted from time to time during the life of this franchise.

SECTION 14. Exclusivity of Ordinance Sections. 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 any part hereof, other than the part declared to be invalid.

SECTION 15. Successors and Assigns. Whenever in this Ordinance either the City of Pensacola 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 said Grantor or of the Grantee.

SECTION 16. 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 17. 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 City of Pensacola or the State of Florida for any of the purposes stated in Section 1 and 2 of this Ordinance and now enjoyed by Grantee in the City of Pensacola; 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 18. Written Acceptance by Grantee. The Grantee, its successors or assigns, shall, within thirty (30) days after this Ordinance shall take effect, file a written acceptance of the Ordinance with the City Clerk of the City.

SECTION 19. Effective Date. This Ordinance shall take effect December 26, 1979 and shall be published as required by law.


Passed: December 20, 1979

Approved: 
MAYOR

Attest:


City Clerk

Legal in form and valid if enacted:


City Attorney