

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 06/02/09 [] Consent [X] Regular
[] Workshop [] Public Hearing

Department: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for Public Hearing on June 16, 2009 at 9:30 a.m.: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE IN THE UNINCORPORATED AREAS OF PALM BEACH COUNTY, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO PALM BEACH COUNTY, AND PROVIDING FOR AN EFFECTIVE DATE.

Summary: This Ordinance provides for a new Franchise Fee agreement with Florida Power & Light (FPL) for unincorporated Palm Beach County decreasing the maximum rate from 6% to 5.9% and changing the method of calculating the Franchise Fee by eliminating the consideration given for taxes FPL pays to the County and certain other taxing authorities. Under the current agreement, after the off-set for taxes paid, FPL pays an effective rate of 4.2%. As significant new property taxes will be due from the completion of the new plant at 20 Mile Bend and rehabilitation of the Riviera Beach plant, the off-set for taxes paid will increase resulting in less Franchise Fee revenue to the County. By eliminating the consideration for taxes paid by FPL from the calculation and lowering the maximum rate to 5.9%, the effective rate will increase from 4.2% to 5.9% and result in an \$11 million increase in Franchise Fee revenue to the County. This additional revenue is included in the proposed FY 2010 budget. FPL passes this rate onto its customers in the unincorporated area - the average residential FPL bill will increase \$2.80 per month. If no change is made to the existing agreement; 1) except for increases or decreases in electric usage, Franchise Fee revenue will decline as the amount of property taxes FPL pays increases; and 2) \$11 million will need to be cut from the proposed FY 2010 budget. Unincorporated Palm Beach County (RPB)

Background and Justification: The Franchise Fee Ordinance 85-39 adopted by the Board of County Commissioners (BCC) on December 11, 1985, granted to FPL an electric franchise for the right to use public rights-of-way and to provide electric service in the unincorporated areas of Palm Beach County, and provided for a one-time option to adjust the fee paid to the County from 4% to an amount not to exceed 6%. On September 11, 1990, the BCC adopted Ordinance 90-29 that executed that one-time option and increased the fee to 6%. However, the 6% rate is adjusted downward for taxes FPL pays to the County and certain other taxing authorities, which total approximately \$11 million. (Continued on Page 3)

Attachments:

- 1. Ordinance
- 2. Ordinance (R1985-39 as amended by R1990-29)

Recommended by: _____

Department Director

Date

Approved By: _____

County Administrator

Date

[Handwritten Signature] 6/1/09

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	(\$11 M)	(\$11 M)	(\$11 M)	(\$11 M)
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	(\$11 M)	(\$11 M)	(\$11 M)	(\$11 M)

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.:
 General Fund - ___ Dept _____ Unit _____ Object _____


B. Recommended Sources of Funds/Summary of Fiscal Impact:

Annual Franchise Fee revenue will increase by \$11 million (from \$24 million to \$35 million), and is included in the County Administrator's proposed budget.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

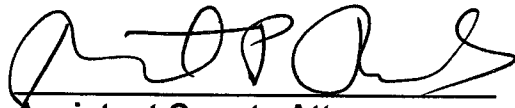
A. OFMB Budget and/or Contract Development and Control Comments:



 OFMB/Budget



 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

This downward adjustment reduces their Franchise Fee to \$24 million, and results in an effective rate of 4.2%. This new agreement will reduce the stated rate to 5.9% and eliminate the adjustment for taxes paid by FPL - the net effect will be an annual increase of approximately \$11 million in Franchise Fees paid by FPL beginning September 2009. FPL has the right to pass this rate on to the unincorporated area users of the electric power supplied by FPL as they do now with the current fee.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE IN THE UNINCORPORATED AREAS OF PALM BEACH COUNTY, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO PALM BEACH COUNTY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida recognizes that the citizens of Palm Beach County 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 Palm Beach County 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, there is currently in effect a franchise agreement between Palm Beach County and FPL, the terms of which are set for in Palm Beach County Ordinance No. 85-39, done and adopted December 10, 1985, and FPL's written acceptance thereof dated December 27, 1985 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"), and Palm Beach County Ordinance No. 90-29, done and adopted on September 11, 1990, modifying the provisions of Section 5 of the franchise grant contained in Ordinance No. 85-39; and

WHEREAS, FPL and Palm Beach County desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to Palm Beach County in exchange for the nonexclusive right and privilege of supplying electricity and other services within the unincorporated areas of Palm Beach County free of competition from Palm Beach County, pursuant to certain terms and conditions; and

WHEREAS, the Board of County Commissioners of Palm Beach County deems it to be in the best interest of Palm Beach County and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement;

- Original agreement 1985, 4% for 30 years
- 1990 increased gradually from 4% to 6% over six years
 - 1991/1992 no increase
 - 1993-1996 ½% increase per year
- Offset for taxes paid has been in effect since 1985
- Municipalities that have amended their agreement; 2008 – Lantana, No. Palm Beach, Mangonia Park, 2007 – Loxahatchee Groves, Jupiter, Delray, 2006 – Greenacres, Gulfstream, Boca Raton.
- Municipalities currently under consideration, Riviera Beach
- Average residential customer will increase 2% or \$2.80/month
- West County to be on books in 2010
- Riviera Beach rehab to be on books in 2015
- -

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA:

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 (herein 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 (herein called "public rights-of-way") throughout all of the unincorporated areas, as such unincorporated areas may be constituted from time to time, of Palm Beach 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 electric-related 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. Grantee acknowledges that the Palm Beach County Right of Way Construction Permitting Ordinance remains in effect and is in no way amended, modified or abrogated by this agreement. 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 5.9 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 unincorporated 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 5.9 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, as in the existing franchise Ordinance No. 85-39, 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 person 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 locations(s) except as may be consistent with applicable law. 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.

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 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 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 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 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 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 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 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 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 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 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 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. Grantee

shall not withhold all or part of the payments provided for in Section 5 of the Agreement for the denial by the Grantor to grant a permit to Grantee provided Grantor has not engaged in unreasonable delay in making its determination. The Grantee acknowledges that it is subject to the Palm Beach County Right Of Way Construction Permitting Ordinance, and the permitting authority exercised by the County and the appeals process contained in said ordinance. 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. 85-39 and as amended by Ordinance No. 90-29 not asserted in writing within 365 days after the effective date of this Ordinance.

Section 12. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding in no way affects the validity of the remaining portions of this ordinance. Notwithstanding the foregoing, it is expressly provided that if any of the provisions of Sections 1, 2, 5, 6, 7 or 8 are found or adjudged to be invalid, void or of no effect, the 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 unincorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14. Grantor and Grantee acknowledge that this New Franchise Agreement does not inhibit or impair the rights of The Solid Waste Authority of Palm Beach County, a special taxing district created by the Florida Legislature under the Palm Beach County Solid Waste Act, Chapter 2001-331, Laws of Florida, to produce, consume, sell or otherwise dispose of electricity, subject to applicable law.

Section 15. Ordinance No. 85-39, done and adopted December 10, 1985, and as amended by Ordinance No. 90-29, done and adopted on September 11, 1990, and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith are hereby repealed.

Section 16 Savings Clause. Notwithstanding the repeal of Ordinance Ordinance No. 85-39 as amended by Ordinance 90-29 as provided for in Section 15, the Grantee continues to have obligation to pay franchise fees in accordance with the formula outlined in Ordinance No. 85-39 as amended by Ordinance 90-29 until such time as payments commence pursuant to this Ordinance No. 09-__ as more fully described in Section 5 above.

Section 17. A certified copy of this ordinance shall be filed by the Grantor with the Florida Department of State within 10 days after its adoption. 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.

DONE AND ADOPTED in regular session this _____ day of _____, 2009.

BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA

By: _____
John F. Koons, Chairman

Attested by:

Deputy Clerk

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

County Attorney

Effective Date: Filed with the Department of State, State of Florida, on the _____ day of _____, 2009.

FRANCHISE FEE - ELECTRICITY

ORDINANCE NO. 90-29

1 AN ORDINANCE OF THE BOARD OF COUNTY
 2 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA,
 3 PROVIDING FOR AMENDMENT TO THE ELECTRIC
 4 FRANCHISE AGREEMENT WITH FLORIDA POWER & LIGHT
 5 COMPANY IN THE UNINCORPORATED AREAS OF PALM
 6 BEACH COUNTY, ADJUSTING FROM FOUR PERCENT TO
 7 SIX PERCENT THE AMOUNT OF REVENUE PAID TO PALM
 8 BEACH COUNTY BY FLORIDA POWER & LIGHT COMPANY;
 9 PROVIDING FOR DELIVERY OF A CERTIFIED COPY OF
 10 THE ORDINANCE TO FLORIDA POWER & LIGHT
 11 COMPANY; PROVIDING THAT THE ORDINANCE DOES NOT
 12 OTHERWISE AMEND ORDINANCE 85-39; PROVIDING FOR
 13 CODIFICATION OF THE ORDINANCE; PROVIDING FOR
 14 SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.
 15

16 WHEREAS, Palm Beach County entered into its current
 17 electric franchise agreement with Florida Power & Light Company in
 18 Ordinance 85-39 which was adopted by the Board of County
 19 Commissioners of Palm Beach County on December 10, 1985 and filed
 20 with the Secretary of State December 11, 1985; and

21 WHEREAS, Florida Power & Light company filed an
 22 acceptance of the electric franchise on December 27, 1985 and the
 23 franchise went into effect upon that date; and

24 WHEREAS, Ordinance 85-39 provides that Palm Beach County
 25 shall have the option to adjust the amounts paid to the County
 26 under the agreement from four percent to an amount not to exceed
 27 six percent for the sixth and subsequent years of the grant; and

28 WHEREAS, Ordinance 85-39 provides such option shall be
 29 exercised by delivering a certified copy of an ordinance exercising
 30 the option to Florida Power & Light Company no later than ninety
 31 (90) days before the fifth anniversary of the grant, therefore

1 necessitating delivery of an ordinance to Florida Power & Light
2 Company on or before September 28, 1990; and

3 WHEREAS, Palm Beach County has determined that it is in
4 the interest of the County to exercise the option provided in the
5 current franchise agreement and to raise the total amount paid by
6 Florida Power & Light Company to Palm Beach County to six percent.

7 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
8 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

9 SECTION 1. AMENDMENT TO FRANCHISE AGREEMENT

10 Palm Beach County hereby exercises the option provided in
11 Section 5 of Ordinance 85-39 to raise the franchise fee with
12 Florida Power & Light Company for electricity in the unincorporated
13 areas of Palm Beach County as follows:

14 No later than sixty (60) days after the sixth
15 anniversary date of this grant and no later
16 than sixty (60) days after each succeeding
17 anniversary date of this grant, the Grantee,
18 its successors and assigns, shall have paid to
19 the Grantor and its successors an amount which
20 added to the amount of all taxes as assessed,
21 levied or imposed (without regard to any
22 discount for early payment or any interest or
23 penalty for late payment), special
24 assessments, licenses, excises, fees, charges
25 and other impositions of any kind whatsoever
26 (except the County school tax and the taxes
27 for county school districts levied under
28 Article VII, Section 9, of the Constitution of
29 the State of Florida as constituted on the
30 date of this grant and except amounts for
31 assessments for special benefits, such as
32 sidewalks, street paving and similar

1 improvements) levied or imposed upon the
2 Grantee's electric property, business or
3 operations, and those of Grantee's electric
4 subsidiaries within Palm Beach County,
5 Florida, by the Grantor for itself or for the
6 benefit of any other general or special public
7 or other governmental body located in whole or
8 in part within the limits of Palm Beach
9 County, Florida, or so levied or imposed by or
10 under any authority other than municipalities
11 for the benefit of any general or special
12 public or other governmental body, located in
13 whole or in part within the limits of Palm
14 Beach County, Florida, including the Grantor,
15 for the preceding tax year, will equal six
16 percent (6%) of Grantee's revenues from the
17 sale of electrical energy to residential,
18 commercial and industrial customers within the
19 unincorporated areas of Palm Beach County,
20 Florida, for the twelve (12) fiscal months
21 preceding the applicable anniversary date.

22 SECTION 2. DELIVERY OF CERTIFIED COPY OF ORDINANCE TO
23 FLORIDA POWER & LIGHT COMPANY

24 As a condition precedent to the taking effect of the
25 option exercised by this ordinance, Palm Beach County shall deliver
26 to Florida Power & Light Company a certified copy of this ordinance
27 no later than ninety (90) days before the fifth anniversary date of
28 the franchise grant in Ordinance 85-39.

29 SECTION 3. EXERCISE OF OPTION DOES NOT AMEND OTHER
30 PROVISIONS OF ORDINANCE 85-39.

31 This ordinance does not amend any other provision or
32 section of the franchise agreement with Florida Power & Light

1 Company except as set forth in Section 1 of this ordinance.

2 SECTION 4. THE PROVISIONS OF THIS ORDINANCE SHALL BE
3 MADE A PART OF THE CODE OF LAWS AND ORDINANCES OF PALM BEACH COUNTY

4 The sections of the ordinance may be renumbered or
5 relettered to accomplish such, and the word "ordinance" may be
6 changed to "section," "article," and any other appropriate word.

7 SECTION 5. SEVERABILITY

8 If any section, paragraph, sentence, clause, phrase, or
9 word of this ordinance is for any reason held by the Court to be
10 unconstitutional, inoperative or void, such holding shall not
11 affect the remainder of this ordinance.

12 SECTION 6. EFFECTIVE DATE

13 The provisions of this ordinance shall become effective
14 upon receipt of acknowledgement by the Secretary of State.

15 APPROVED AND ADOPTED by the Board of County Commissioners
16 of Palm Beach County, Florida on 11th day of September,
17 19 90.

18 PALM BEACH COUNTY, FLORIDA, BY ITS
19 BOARD OF COUNTY COMMISSIONERS

20 By [Signature]
Vice-Chair, Board of County Commissioners

21 APPROVED AS TO FORM AND
22 LEGAL SUFFICIENCY

23 [Signature]
24 County Attorney

JENNIFER DUNKLE, CLERK
Board of County Commissioners

By [Signature]
DEPUTY CLERK

25 Acknowledgement by the Department of State of the State
26 of Florida on this, the 14th day of September, 1990.

27 EFFECTIVE DATE: Acknowledgement from the Department of
28 State received on the 17th day of September, 1990, at
29 9:39 A.M. and filed in the Office of the Clerk of the Board of
30 County Commissioners of Palm Beach County, Florida.

31 (FPL1)

ORDINANCE NO. 85-39

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS,
OF PALM BEACH COUNTY, FLORIDA, GRANTING TO FLORIDA
POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS,
AN ELECTRIC FRANCHISE IN THE UNINCORPORATED AREAS
OF PALM BEACH COUNTY, FLORIDA, AND IMPOSING
PROVISIONS AND CONDITIONS RELATING THERETO

WHEREAS, Florida Power & Light Company desires to continue
providing electric service by utilizing public rights of way and other
public property within the unincorporated areas of Palm Beach County; and

WHEREAS, Palm Beach County finds that it is in the public
interest to retain control over the use of public rights of way and other
public property by providers of electric service; and

WHEREAS, Palm Beach County finds that the granting of a
non-exclusive franchise to Florida Power & Light Company is desirable to
promote the above described interests of Palm Beach County; and

WHEREAS, Palm Beach County and Florida Power & Light Company
desire to reach an understanding as to the specific terms and conditions
of such a franchise agreement; and

WHEREAS, Palm Beach County finds that all amounts paid to it by
Florida Power & Light Company pursuant to such a franchise are needed to
fund such county purposes in the unincorporated areas of the county as
are determined by the Palm Beach County Board of County Commissioners,
and are to be used only for such purposes;

NOW, THEREFORE,

BE IT ORDAINED by the Board of County Commissioners of Palm
Beach County, Florida:

Section 1. That there is hereby granted to Florida Power &
Light 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 throughout
all the unincorporated areas of Palm Beach County, Florida (herein called
the "Grantor"), and its successors, in accordance with established
practice with respect to electrical construction and maintenance, for the
period of thirty (30) years from the date of acceptance hereof, electric

1 light and power facilities (including conduits, poles, wires and
2 transmission lines, and, for its own use, telephone and telegraph lines)
3 for the purpose of supplying electricity to Grantor and its successors,
4 the inhabitants thereof, and persons and corporations beyond the limits
5 thereof.

6 Section 2. That the facilities shall be so located or
7 relocated and so erected as to interfere as little as possible with
8 traffic over said streets, alleys, bridges and public places, and with
9 reasonable egress from and ingress to abutting property. The location or
10 relocation of all facilities shall be made under the supervision and with
11 the approval of such representatives as the governing body of Grantor may
12 designate for the purpose, but not so as to unreasonably interfere with
13 the proper operation of Grantee's facilities and service. That when any
14 portion of a street is excavated by Grantee in the location or relocation
15 of any of its facilities, the portion of the street so excavated shall,
16 within a reasonable time and as early as practicable after such
17 excavation, be replaced by the Grantee at its expense, and in as good
18 condition as it was at the the time of such excavation. Provided,
19 however, that nothing herein contained shall be construed to make the
20 Grantor liable to the Grantee for any cost or expense in connection with
21 the construction, reconstruction, repair or relocation of Grantee's
22 conduits, poles, towers and appurtenances thereto in streets, highways
23 and other public places made necessary by the widening, grading, paving,
24 or otherwise improving by said Grantor, of any of the present and future
25 streets, avenues, alleys, highways, bridges, easements and other public
26 places used or occupied by the Grantee hereunder, which shall be at the
27 cost of the Grantee, except, however, Grantee shall be entitled to
28 reimbursement of its cost as may be provided by law.

29 Section 3. The Grantor shall in no way be liable or
30 responsible for any accident or damage that may occur in the
31 construction, operation or maintenance by Grantee of its facilities
32 hereunder, and the acceptance of this ordinance shall be deemed an
33 agreement on the part of Grantee to indemnify Grantor and hold it
34 harmless against any and all liability, loss, cost, damage or expense
35 which may accrue to Grantor by reason of the neglect, default or

1 misconduct of Grantee in the construction, operation or maintenance of
2 its facilities hereunder.

3 Section 4. That all rates and rules and regulations
4 established by Grantee from time to time shall be at all times reasonable
5 and Grantee's rates for electricity shall at all times be subject to such
6 regulation as may be provided by law.

7 Section 5. As a further consideration of this franchise, that
8 no later than sixty (60) days after the first anniversary date of this
9 grant and no later than sixty (60) days after each succeeding anniversary
10 date of this grant, the Grantee, its successors and assigns, shall have
11 paid to the Grantor and its successors an amount which added to the
12 amount of 'all taxes as assessed, levied or imposed (without regard to any
13 discount for early payment or any interest or penalty for late payment),
14 special assessments, licenses, excises, fees, charges and other
15 impositions of any kind whatsoever (except the County school tax and the
16 taxes for County school districts levied under Article VII, Section 9, of
17 the Constitution of the State of Florida as constituted on the date of
18 this grant and except amounts for assessments for special benefits, such
19 as sidewalks, street paving and similar improvements) levied or imposed
20 upon the Grantee's electric property, business or operations, and those
21 of Grantee's electric subsidiaries within Palm Beach County, Florida, by
22 the Grantor for itself or for the benefit of any other general or special
23 public or other governmental body located in whole or in part within the
24 limits of Palm Beach County, Florida, or so levied or imposed by or
25 under any authority other than municipalities for the benefit of any
26 general or special public or other governmental body, located in
27 whole or in part within the limits of Palm Beach County, Florida,
28 including the Grantor, for the preceding tax year, will equal four per
29 cent (4%) of Grantee's revenues from the sale of electrical energy to
30 residential, commercial and industrial customers within the
31 unincorporated areas of Palm Beach County, Florida, for the twelve (12)
32 fiscal months preceding the applicable anniversary date. In calculating
33 the amount which Grantee shall have paid Grantor no later than sixty (60)
34 days after the first anniversary date of this Grant, revenues from the
35 sale of electrical energy to residential, commercial and industrial

1 customers during the first fiscal month after the effective date of this
2 Grant shall be excluded. Nothing herein shall be construed to be a
3 limitation on the assessment and collection of valid taxes, special
4 assessments, licenses, fees, charges and other impositions by the Grantor
5 or other public or governmental body on or from the Grantee in excess of
6 such four per cent (4%) amount or such amount as adjusted by Grantor in
7 the event of the exercise of the option by Grantor as provided
8 hereafter in this Section.

9 It is further provided that the Grantor shall have the
10 option to adjust the amount to be paid by the Grantee in consideration
11 of this franchise for the sixth and subsequent years of this grant, the
12 option to adjust such amount to be exercised by the adoption of an
13 ordinance, a certified copy of which must be delivered to the Grantee
14 no later than 90 days before the fifth anniversary date of this
15 grant. Such ordinance shall provide that no later than sixty (60)
16 days after the sixth anniversary date of this grant and no later
17 than sixty (60) days after each succeeding anniversary date of this
18 grant, the Grantee, its successors and assigns, shall have paid to
19 the Grantor and its successors an amount which added to the amount
20 of all taxes as assessed, levied or imposed (without regard to any
21 discount for early payment or any interest or penalty for late
22 payment), special assessments, licenses, excises, fees, charges and
23 other impositions of any kind whatsoever (except the County school
24 tax and the taxes for County school districts levied under Article
25 VII, Section 9, of the Constitution of the State of Florida as
26 constituted on the date of this grant and except amounts for
27 assessments for special benefits, such as sidewalks, street paving
28 and similar improvements) levied or imposed upon the Grantee's
29 electric property, business or operations, and those of Grantee's
30 electric subsidiaries within Palm Beach County, Florida, by the
31 Grantor for itself or for the benefit of any other general or special
32 public or other governmental body located in whole or in part within
33 the limits of Palm Beach County, Florida, or so levied or imposed
34 by or under any authority other than municipalities for the benefit
35 of any general or special public or other governmental body, located

1 in whole or in part within the limits of Palm Beach County, Florida,
 2 including the Grantor, for the preceding tax year, will equal an
 3 amount (to be specified by the Grantor in the ordinance exercising
 4 its option) not exceeding six percent (6%) of Grantee's revenues
 5 from the sale of electrical energy to residential, commercial and
 6 industrial customers within the unincorporated areas of Palm Beach
 7 County, Florida, for the twelve (12) fiscal months preceding the
 8 applicable anniversary date. Grantor's option hereunder to adjust
 9 the amount to be paid by the Grantor may be exercised one time
 10 only, and if not exercised timely and as otherwise specified above
 11 said option shall be deemed to have been waived. However, failure
 12 to exercise said option by Grantor will not affect the amount to be
 13 paid by Grantee to Grantor under the terms of the first paragraph of
 14 this Section which, in the event said option is not exercised by
 15 Grantor, shall be determinative of the amount to be paid by Grantee
 16 to Grantor for the remaining term of this grant. Grantor's option
 17 hereunder shall be limited solely to the amount to be paid by the
 18 Grantee in consideration of this franchise as specifically set
 19 forth above, and no other section or provision of this franchise
 20 agreement may be altered, amended or affected by the Grantor without the
 21 concurrence of the Grantee.

22 Section 6. Payments of the amount to be paid to Grantor by
 23 Grantee under the terms of Section 5 hereof shall be made in estimated
 24 monthly installments commencing ninety (90) days after the effective
 25 date of this grant. Each estimated monthly installment shall be
 26 calculated on the basis of ninety per cent (90%) of Grantee's revenues
 27 (as defined in Section 5 or in an ordinance exercising Grantor's option
 28 thereunder) for the monthly billing period ending sixty (60) days prior
 29 to each scheduled monthly payment. It is also understood that for
 30 purposes of calculating each monthly installment, all taxes, special
 31 assessments, licenses, excises, fees, charges and other impositions shall
 32 be estimated on the basis of the latest data available for all such
 33 amounts imposed on the Grantee, before being prorated monthly. The final
 34 monthly installment for each fiscal year of this grant shall be adjusted

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1 to reflect any underpayment or overpayment resulting from the estimated
2 monthly installments made for said fiscal year.

3 Grantor may, at its option, and upon reasonable notice to
4 Grantee, at any time within ninety (90) days after the close of each
5 fiscal year of this grant, and at the sole expense of Grantor, examine
6 the books of Grantee as such books relate to the calculation of the
7 franchise fee generated within the unincorporated area of Palm Beach
8 County. Such examination of such books and records of Grantee by Grantor
9 shall be during the regular hours of business of the Grantee and at the
10 General Office of the Grantee.

11 Section 7. As a further consideration of this franchise, the
12 Grantor agrees not to engage in the business of distributing and selling
13 electricity during the life of this franchise or any extension thereof in
14 competition with the Grantee, its successors and assigns.

15 Section 8. That failure on the part of Grantee to comply in
16 any substantial respect with any of the provisions of this ordinance
17 shall be grounds for a forfeiture of this grant, but no such forfeiture
18 shall take effect if the reasonableness or propriety thereof is protested
19 by Grantee until a court of competent jurisdiction (with right of appeal
20 in either party) shall have found that Grantee has failed to comply in a
21 substantial respect with any of the provisions of this franchise, and the
22 Grantee shall have six (6) months after the final determination of the
23 question to make good the default before a forfeiture shall result with
24 the right in Grantor, at its discretion, to grant such additional time to
25 Grantee for compliance as necessities in the case require. Provided,
26 however, that the provisions of this Section shall not be construed as
27 impairing any alternative right or rights which the Grantor may have with
28 respect to the forfeiture of franchises under the Constitution or the
29 general laws of Florida.

30 Section 9. Should any section or provisions of this ordinance
31 or any portion hereof be declared by a court of competent jurisdiction to
32 be invalid, such decision shall not affect the validity of the remainder
33 hereof as a whole or any part hereof, other than the part declared to be
34 invalid.

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