

ORDINANCE NO. 2407

AN ORDINANCE GRANTING GULF COAST ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, THE NONEXCLUSIVE RIGHT TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF PANAMA CITY (THE "CITY") AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF THE CITY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH GRANT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY:

Section 1. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the City herein "Grantor" and the inhabitants thereof, the City grants to GULF COAST ELECTRIC COOPERATIVE, INC., its successors and assigns, herein "Grantee" a nonexclusive right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct within the City a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes.

Section 2. Rights to Operate. Grantee, its successors and assigns shall have the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct within the City 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 in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places within the said City, as they now exist or as they may hereafter exist or extended within the present and future limits of the 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 of electricity to and beyond the City and the inhabitants within and beyond the City limits for all purposes. Grantor retains the right to purchase or generate electric power for its own use but not for sale. The electric system and its facilities, equipment and vehicles shall be located or relocated, erected or operated in a manner that will not unreasonably interfere with vehicular and pedestrian traffic over, along and across public rights-of-way, streets, alleys, bridges, public places and egress and ingress to abutting or adjoining property.

Section 3. Definitions. The following definitions shall apply to this Ordinance:

A. Electric Systems. The term electric system or electrical system or like expressions or similar word shall include all include any electric generating plant or plants and facility or facilities and appurtenances, accessories and other accommodations deemed convenient or necessary thereto; all poles, towers, conduits, cables, wires, conductors, transforming stations, lifting and other associated accessories deemed necessary and desirable to the receipt and distribution of electricity within and beyond the City limits and all equipment, motor vehicles, watercraft, aircraft and other appliances deemed necessary are desirable to the maintenance, repair, replacement or relocation, removal, upgrades or expansion of any component of the electrical system.

B. Nonexclusive Franchise. The franchise granted hereby shall be nonexclusive.

Section 4. Franchise Fee. As a further consideration for the granting of the rights, privileges and franchises hereby granted, Grantee, its successors and assigns, shall pay to Grantor within thirty (30) days after the first day of each month a franchise fee of six percent (6%) 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 Grantor as a franchise fee may be changed by Grantor 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. Grantor may grant such exemptions from payment of the fee by ordinance, at intervals of not less than three (3) years, as permitted by law.

Section 5. 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 in a manner that will not unreasonably interfere with the proper use and appearances of the streets, avenues, alleys, ways, bridges, and public places in the City. The distribution system and all of its components shall be maintained in reasonably good condition and repair.

Section 6. Excavation, Maintenance and Restoration. Whenever 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 installing, maintaining, operating or repairing its electrical system, the work shall be completed at Grantee's expense within a reasonable time and upon the completion of such work, Grantee shall restore such portion of the streets, avenues, alleys, ways or public places to as good of a condition as it was in before the opening or alteration was made and free of any debris.

Section 7. Hold Harmless. Grantor shall not be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation or maintenance by Grantee of said electrical system or any component thereof subject to the terms and conditions of this franchise. Grantee agrees to indemnify Grantor and to hold it harmless from any and all liability, loss, cost, damage or any expense connected with the above activities, including a reasonable attorney's fee incurred in and about the investigation of any claim, the defense and settlement thereof and the satisfying of any resulting judgment arising from or out of said activity, because of Grantee's negligence, default or otherwise.

Section 8. Rates, Rules and Regulations.

- (a) All rates for electric services and the rules and regulations governing the delivery and receipt of said service within Grantor's limits established by Grantee from time to time, shall be subject to any public regulation, if applicable. Grantee recognizes its obligations to provide electric energy and power service within the City limits on reasonable terms and conditions that are just, reasonable and nondiscriminatory, as required by law or by duly constituted public regulatory body.
- (b) Grantee agrees to file with the City Clerk or his or her designee upon the request of Grantor a complete set of its governing rules, regulations and tariffs or rate schedules under which electric service is provided to inhabitants within the City, any revisions of its rules, regulations and rates that have been adopted since the last filing with the City, and its latest annual report to its stockholders/members.
- (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 Grantor. 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 Grantee and at its corporate offices.

Section 9. Interruption of Service. In the event the supply of electric energy should be interrupted for any cause beyond the control of Grantee, Grantee shall, at its expense, restore the service within a reasonable period of time. The interruption of service shall not constitute a breach of this agreement nor shall the Grantee be liable for any loss or damage by reason of such interruption or failure.

Section 10. Metering of Service. Grantee shall install and maintain meters for measuring the electrical use of a customer, Grantee shall have free access to the premises of the consumer, in accordance with applicable law, for the purpose of reading, repairing, testing and maintaining the meters and related appurtenances. All meters shall remain the property of Grantee.

Section 11. Term of Franchise – Right to Purchase. The franchise granted by this Ordinance shall exist and continue for a period of thirty (30) years, and as a condition precedent to the granting this franchise, Grantee grants to Grantor, the right, upon the giving of one hundred twenty (120) days written notice before the end of fifteen (15) years from the effective date of this Ordinance or franchise to renegotiate the terms and conditions of this franchise, or alternatively, upon the giving of like notice before the expiration of fifteen (15) years, and at the expiration to purchase the electric plant and other property within the corporate limits of the city necessarily used under or in connection with the franchise or such part of such property as the Grantor may desire to purchase at a valuation determined in accordance with the provisions of Section 180.16, Florida Statutes (2010). If the Grantor fails to give notice of its election to renegotiate the franchise or purchase the facility of the Grantee at the end of the fifteen (15) year period, the franchise shall automatically continue upon the same terms and conditions hereof for the remaining franchise period.

Section 12. Forfeiture of this Franchise. Failure by 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 Grantee has failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. Grantee shall have six (6) months after the final determination of the question to make restitution to correct the default or failure before forfeiture shall result. Grantor may grant additional time to Grantee for restitution and compliance.

Section 13. Other Franchises. Upon the request of Grantor, Grantee shall furnish Grantor a copy of all other municipal franchises that it is operating under or granted from time to time during the life of this franchise.

Section 14. Severability. 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 Grantor or Grantee is named or referred to, it shall be deemed to include the respective successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successors or assigns of Grantor or Grantee.

Section 16. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

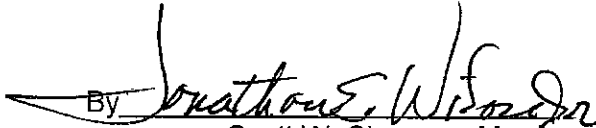
Section 17. Surrender of Right. As a further consideration for the granting of the rights, privileges and franchises granted hereby, Grantee surrenders all rights, privileges and franchises heretofore granted by Grantor or the State of Florida for any of the purposes stated in Sections 1 and 2 of this Ordinance and now enjoyed by Grantee in the City; provided, however, that such surrender shall not be effective unless and until this Ordinance is lawfully adopted and in effect.

Section 18. Written Acceptance by Grantee. Grantee, its successors or assigns, shall file a written acceptance of the Ordinance with the City Clerk of the City within thirty (30) days from the effective date of this Ordinance.

Section 19. Effective Date. This Ordinance shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED by the City Commission of the City on this 12th day of October, 2010.

CITY OF PANAMA CITY, FLORIDA

By 
~~Scott W. Clemens, Mayor~~
Jonathan E. Wilson, Sr., Mayor-
Pro Tempore

ATTEST: (SEAL)


Terri Lillard, City Clerk-Treasurer

ACCEPTANCE OF FRANCHISE PRIVILEGE

GULF COAST ELECTRIC COOPERATIVE, INC. hereby accepts the privileges and obligations of the electric utility franchise as set forth in Ordinance Number 2407 adopted by the City Commission of the City of Panama City, Florida on NOVEMBER 16, 2010.

GULF COAST ELECTRIC COOPERATIVE, INC.

By



Rupert Brown

Print Name

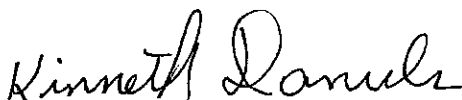
Its

President

Title

ATTEST:


By



Print Name



Gulf Coast Electric Cooperative, Inc.

A Touchstone Energy® Cooperative 
The Power of Human Connections

"Customer Satisfaction"

November 17, 2010

Sylvia Mormile
City of Panama City
P.O. Box 1880
Panama City, FL 32402-1880

RE: Franchise Agreement

Dear Ms. Mormile:

Enclosed you will find the franchise ordinance my board executed on November 16, 2010. I will increase those members that reside within your city limit's franchise fee from 3% to 6%. Should you need anything else, please feel free to contact me.

Sincerely,



Michael E. White
CEO/General Manager


Florida Freedom Newspapers, Inc.

PUBLISHERS OF THE NEWS HERALD
Panama City, Bay County, Florida
Published Daily

State of Florida County of Bay

Before the undersigned authority appeared JoAnn Greenlee, who on oath says that she is Legal Advertising Representative of The News Herald, a daily newspaper published at Panama City, in Bay County, Florida; that the attached copy of advertisement, being a Legal Advertisement # 9238 in the matter of Public Notice - Ordinance No. 2407 in the Bay County Court, was published in said newspaper in the issue of October 8, 2010.

Affiant further says that The News Herald is a direct successor of the Panama City News and that this publication, together with its direct predecessor, has been continuously published in said Bay County, Florida, each day (except that the predecessor, Panama City News, was not published on Sundays), and that this publication together with its said predecessor, has been entered as periodicals matter at the post office in Panama City, in said Bay County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or 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.



State of Florida

County of Bay

Sworn and subscribed before me this 8th day of October, A.D., 2010, by JoAnn Greenlee, Legal Advertising Representative of The News Herald, who is personally known to me or has produced N/A as identification.



Notary Public, State of Florida at Large

9238
City of Panama City

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the following entitled Ordinance will be presented to the City Commission of the City of Panama City, Florida, for a Final Reading at its regular meeting to be conducted at 5:00 P.M. on October 12, 2010, at the Panama City Commission Chambers, located on the Second Floor of City Hall, 9 Harrison Avenue.

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ALL INTERESTED PERSONS desiring to be heard on the adoption of the aforesaid ordinance are invited to be present at the meeting. The Agenda and Ordinance is available on the City's website at www.pcgov.org. The meeting may be viewed live on the City's website. Copies of the ordinance may also be obtained from the office of the City Clerk, City of Panama City, Florida, at the City Hall.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, persons needing special accommodations to participate in this meeting should contact Terri Lillard, City Clerk-Treasurer, at (850) 872-3020, no later than thirty minutes before the meeting.

Please direct any questions concerning this Public Notice to the City Clerk-Treasurer. The email address is cityclerk@pcgov.org. The phone number is 850-872-3020.
October 8, 2010