

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

ORDINANCE NUMBER 1031

AN ORDINANCE OF MARTIN COUNTY, FLORIDA AMENDING PART ONE, SECTION 5 OF ORDINANCE NO. 989 PROVIDING FOR MONTHLY PAYMENTS TO MARTIN COUNTY RELATING TO GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE NON-COMPETE AGREEMENT; PROVIDING FOR CONFLICTING PROVISIONS, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Martin County ("Grantor") adopted Ordinance Number 989 ("Ordinance") on November 24, 2015 granting Florida Power & Light Company ("Grantee"), its successors and assigns an electric franchise non-compete agreement ("Agreement"); and

WHEREAS, Part One, Section 5(a) of the Ordinance provides for monthly payments from Grantee to Grantor which will equal six percent (6%) of Grantee's billed revenues, less actual write-offs as consideration for the Agreement; and

WHEREAS, Part One, Section 5(b) of the Ordinance provides the Grantor with the right to change the percentage rate to be remitted by Grantee to any rate between 0.5 percent and 6.0 percent following at least 60 days advance written notice to Grantee prior to the effective date of the new rate; and

WHEREAS, the Grantor has agreed to reduce the percentage rate to be remitted by Grantee pursuant to the terms of Part One, Section 5(a) of the Agreement from six percent (6%) to one-half percent (0.5%) if the ten year one cent local option sales tax referendum authorized by Ordinance Number 1024 is approved by the voters of Martin County at the election on August

29, 2017, for a ten year period to run current with the local option sales tax levy beginning January 1, 2018 and ending December 31, 2027.

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

PART ONE: SECTION 5 OF THE ELECTRIC FRANCHISE NON-COMPETE AGREEMENT IS HEREBY AMENDED AND ADOPTED TO READ AS FOLLOWS:

Section 5.(a) As a consideration for this Agreement, the Grantee shall pay to the Grantor, commencing sixty (60) days after the effective date hereof, and each month thereafter for the remainder of the term of this Agreement, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal ~~six~~ one-half percent (~~6-0.5~~%) of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial, and industrial customers (as such customers are defined by FPL's tariff) within the unincorporated areas of the Grantor for the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed ~~six~~ one-half percent (~~6-0.5~~%) of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c)

revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; or (h) other service charges.

With each monthly payment remitted to Grantor, Grantee shall include a detailed calculation showing how the amount remitted was determined. Each such detailed calculation shall show: (i) the amount of Grantee's revenues subject to the franchise fee, (ii) the actual calculation of ~~6-0.5~~ percent (or such other percentage as may be applicable pursuant to the provisions of subsections (b) and (c) of this Section 5) of that amount, (iii) the resulting franchise fee amount before offsets and write-offs, (iv) the amount of actual write-offs deducted by Grantee, and (v) the resulting amount of the franchise fee payment being remitted to Grantor. Itemized information regarding any write-offs or deductions from the franchise fee shall be made available to the Grantor upon request to the Grantee.

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

(c) It is the Grantor's intent that the rate shall not change from 0.5 percent for a period of ten (10) years, beginning in January 1, 2018 and running concurrent with the voter approved one cent local option infrastructure sales tax which ends December 31, 2027.

PART TWO: CONFLICTING PROVISIONS.

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

PART THREE: APPLICABILITY.

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

PART FOUR: FILING WITH DEPARTMENT OF STATE.

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

PART FIVE: EFFECTIVE DATE.

The electorate of Martin County must approve the proposed levy of the one cent local option infrastructure sales tax at the referendum being held on August 29, 2017 as a condition precedent to the effective date of this ordinance. If the referendum is approved, Grantor shall immediately notify Grantee of such approval pursuant to the written notification provided for in Section 5(b) above that the effective date of this ordinance shall be the January 1, 2018.

DULY PASSED AND ADOPTED THIS 8th DAY OF August, 2017.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA


CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER


DOUG SMITH, CHAIRMAN

APPROVED AS TO FORM & LEGAL SUFFICIENCY:


SARAH W. WOODS, COUNTY ATTORNEY