

ACCEPTANCE OF CITY OF CAPE CORAL
ELECTRIC FRANCHISE ORDINANCE NO. 36-71
AND AMENDMENT THERETO BY ORDINANCE 63 - 86

dyt 30 years
1986-2016
Cape Coral

Dated: 10/6/86

City of Cape Coral
Cape Coral, Florida

The Lee County Electric Cooperative, Inc., by and through its undersigned president does hereby accept Ordinance No. 36-71 and the Amendment and Supplemental Ordinance thereto, Ordinance No. 63-86, a copy being attached to this Acceptance and incorporated herein by reference as composite Exhibit "A", and the Lee County Electric Cooperative, Inc., is hereby bound by the terms and conditions therein.

LEE COUNTY ELECTRIC COOPERATIVE

By *Fred H. Smith*
President

ATTEST:

Shore Straley
Secretary

(CORPORATE SEAL)

The City of Cape Coral, through its Clerk, Eula R. Jorgensen, hereby acknowledges receipt of the above Acceptance by the Lee County Electric Cooperative, Inc. of Ordinance 36-71 and supplements and amendments thereto by Ordinance No. 63-86, and has certified that this instrument shall be kept in the public records of the City of Cape Coral as an official record of the City of Cape Coral, Florida, this 8th day of October, 1986.

Eula R. Jorgensen
EULA R. JORGENSEN
Clerk of the City of Cape Coral
(CORPORATE SEAL)

19921-160001

ORDINANCE 63 - 86

AN ORDINANCE AMENDING CITY OF CAPE CORAL ORDINANCE 36-71, AN ORDINANCE GRANTING TO LEE COUNTY ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, OR THE ADMINISTRATOR OF THE RURAL ELECTRIFICATION ADMINISTRATION, THE RIGHT, PRIVILEGE AND FRANCHISE TO OPERATE AN ELECTRIC UTILITY WITHIN THE BOUNDARIES OF THE CITY OF CAPE CORAL BY PROVIDING THAT SAID GRANTEE CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC UTILITY UNDER AND ACROSS OR OVER CITY CANALS; THAT THE GRANTEE AND GRANTOR SHALL BE GOVERNED UNDER THE LAW AT THE TIME OF ACCEPTANCE OF THESE AMENDMENTS TO SAID AGREEMENT INCLUDING CHAPTER 166, SECTION 166.042, FLORIDA STATUTES; PROVIDING THAT WITHIN THIRTY (30) DAYS AFTER THE ACCEPTANCE OF THIS AMENDMENT TO THE GRANT TO LEE COUNTY ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, OR THE ADMINISTRATOR OF THE RURAL ELECTRIFICATION ADMINISTRATION, AND EACH SUCCEEDING THIRTY (30) DAY PERIOD THEREAFTER FROM THE DATE OF ACCEPTANCE OF THIS AMENDMENT TO THE GRANT, THE GRANTEE, ITS SUCCESSORS AND ASSIGNS SHALL PAY THE GRANTOR THE AMOUNT DUE UNDER THE FRANCHISE EQUAL TO THREE (3%) PERCENT OF GRANTEE'S REVENUE FROM THE SALE OF ELECTRIC ENERGY TO CAPE CORAL CONSUMERS FOR THAT THIRTY (30) DAY PERIOD; PROVIDING FOR THE PAYMENT OF THREE (3%) PERCENT OF GRANTEE'S REVENUE TO GRANTOR FROM THE SALE OF ELECTRIC ENERGY TO CAPE CORAL CONSUMERS FOR THE YEAR OF 1986; PROVIDING FOR A REVIEW OF REVENUES RECEIVED FROM GRANTEE EVERY TEN (10) YEARS AND FOR NEGOTIATING NEW FEES BY GRANTOR; PROVIDING SEPARABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO CHAPTER 70.623, LAWS OF FLORIDA, AND OTHER APPLICABLE STATE LAW, AND PURSUANT TO GENERAL POWERS TO PROTECT THE PUBLIC SAFETY, HEALTH AND WELFARE, THIS ORDINANCE:

Sec. 1. That there is hereby granted to Lee County Electric Cooperative, Inc., a corporation organized and existing under the laws of Florida, its successors and assigns, or the Administrator of the Rural Electrification Administration (hereinafter called "Grantee"), the right, privilege and franchise (non-exclusive) for a period of thirty (30) years, from and after ~~January 1, 1977~~ October 1, 1986, to construct, maintain and operate an electric utility in, over, upon, under and across present and future streets, alleys, avenues, easement for public utilities, highways, bridges, canals, and other public places of the City of Cape Coral, Florida (hereinafter referred to as "Grantor") and its successors, in accordance with established practice with respect to electrical construction and maintenance, electric light and power facilities (including conduits, poles, wires and transmission lines, and, for its own use, telephone and telegraph lines) for the purpose of supplying electricity to Grantor, and its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof.

Sec. 2. This Grant is made in consideration of the construction, maintenance and operation of such facilities, as outlined in Section 1 by the Grantee as now and heretofore existing as herein provided for, and for the benefits and conveniences of the Grantor as a result hereof.

Sec. 3. The Grantor hereby reserves the right at and after the expiration of this grant to purchase the property of the Grantee used under this Grant, as provided by the Laws of Florida, in effect at the time of Grantee's acceptance hereof, including ~~Section 167.22~~ Chapter 166, Section 166.042, of the Florida Statutes, as amended, ~~1989~~ and as a condition precedent to the taking effect of this Grant, Grantee shall give and grant to the Grantor the right to purchase so reserved, Grantee shall be deemed to have given, and Grantor received such right of purchase by its acceptance hereof, which shall be filed with the Grantor's Clerk within thirty (30) days after this Ordinance takes effect.

Sec. 4. That the facilities shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation.

Sec. 5. Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this franchise shall be deemed to be an agreement on the part of the Grantee to hold the Grantor completely harmless and indemnify it from any and all liability, loss and damage of every nature whatsoever resulting from the Grantee's operations and facilities, which may accrue to the Grantor by reason of the neglect, default or misconduct of Grantee in the construction, operation, or maintenance of its facilities hereunder.

Sec. 6. All rates and rules and regulations established by Grantee from time to time shall, at all times, be reasonable, and Grantee's rates for electricity shall at all times be subject to such regulation as may be provided by law.

Sec. 7.

A. That sixty (60) days after the acceptance of this amendment by the Lee County Electric Cooperative, Inc., its successors and assigns, or the Administrator of the Rural Electrification Administration, and upon each succeeding thirty (30) day period thereafter, the Grantee shall pay to the Grantor and its successors an amount that will equal 3% of Grantee's total revenues from the sale of electrical energy to all customers within the corporate limits of the Grantor for the preceding thirty (30) days. That upon the initial payment after acceptance of the amendment to the franchise and each succeeding thirty (30) day period thereafter, Grantee shall review its entire preceding thirty (30) day accounts and records and shall, within thirty (30) days, add or deduct a sum of money from the next monthly payment due the City, an amount that will cause the total yearly payments to the City of Cape Coral to equal an amount, which when added to the amount of all taxes, licenses, or other impositions levied or imposed by the Grantor upon Grantee's electric property, business, or operations, and those of Grantee's electric subsidiaries for the preceding year, is equal 3% of the Grantee's total revenues from the sale of electric energy to all consumers within the corporate limits of the Grantor for the preceding twelve (12) months.

B. That within thirty (30) days of the acceptance of this amendment by the Grantee, the Grantee shall pay the Grantor an amount that will equal 3% of Grantee's total revenues from the sale of electric energy to all consumers within the corporate limits of the Grantor for the period from January, 1986 through the acceptance date of this Amendment.

Sec. 8.

A. As a further consideration of this franchise, said Grantor agrees not to engage in the business of distribution and selling of electricity during the life of this franchise, or any extension thereof in competition with the Grantee, its successors and assigns, and the Grantee agrees to pay the franchise fee as set forth in Sec. 7 herein, from ~~January 1, 1971~~ October 1, 1986, to the effective date of this Ordinance.

B. At the end of the initial ten-year period of this Grant and each succeeding ten-year period, if requested by the Grantor, the Grantor, at its cost, may review that portion of the Grantee's revenues attributable to this Agreement. After this review, the parties may agree to an increase or decrease in the percentage payment for the next ensuing ten-year period. In no event may this percentage payment be greater than the amount set forth in the applicable Florida Statutes. Said request for review must be submitted in writing by the Grantor to the Grantee no later than 180 days prior to the expiration of any ten-year period.

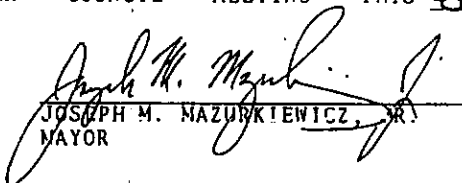
Sec. 9. That failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for a forfeiture of this Grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by Grantee until a court of competent jurisdiction (with right to appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six (6) months after the final determination of the question to make good the default before a forfeiture shall result with the right in Grantor at its discretion to grant such additional time to Grantee for compliance with such provisions as necessities in the case may be required.

Sec. 10. If any word, phrase, clause, sentence, section or provisions of this Ordinance shall be held unconstitutional, invalid, or otherwise of no effect, such unconstitutionality or invalidity shall not in any wise affect the remainder of this Ordinance not so specifically determined unconstitutional or invalid.

Sec. 11. Separability. ~~Any provision of this Ordinance which is determined to be unconstitutional or otherwise of no effect, shall not affect the validity of the remaining provisions of this Ordinance.~~ In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.


Sec. 12. This Ordinance shall become effective ~~thirty (30)~~ thirty (30) days ~~after~~ upon adoption.

ADOPTED AT A REGULAR COUNCIL MEETING THIS 8th DAY OF Sept., 1986.


JOSEPH M. MAZURKIEWICZ, JR.
MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 11th DAY OF Sept., 1986.


EULA R. JORGENSEN
CITY CLERK

APPROVED AS TO FORM:

WILLIAM M. POWELL
CITY ATTORNEY