## APPENDIX C FRANCHISES [[1]](#BK_3191F38F5411295DE5C786EF68F488BA)

ORDINANCE NO. 89-81

ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; ESTABLISHING A FRANCHISE FEE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

*Section 1.* 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 of the unincorporated and incorporated areas of Dade 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 effective date hereof, 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 the Grantor, its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof, subject to all franchises in existence on the effective date hereof which have been granted to the Grantee by municipalities within the limits of Dade County, Florida, including any renewals or extensions of such municipal franchises, and subject to any franchises which may be granted to the Grantee by any municipality which was incorporated within Dade County prior to the effective date hereof.

*Section 2.* The facilities of the Grantee 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 the Grantor may designate for the purpose, but not so as to unreasonably interfere with the proper operation of the Grantee's facilities and service. When any portion of a street is excavated by the 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 condition as good as it was at the time of such excavation. Provided, however, that nothing in this Section shall be construed to make the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction, repair or relocation of the Grantee's conduits, poles, towers and appurtenances thereto in streets, highways, alleys, bridges, and other public places of the Grantor made necessary by widening, grading, paving, or otherwise improving by said Grantor, of any of the present and future streets, avenues, alleys, highways, bridges, easements and other public places used or occupied by the Grantee hereunder, which shall be at the cost of the Grantee, except, however, Grantee shall be entitled to reimbursement of its costs 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 at all times be reasonable and the Grantee's rates for electricity shall at all times be subject to such regulation as may be provided by law.

*Section 5.* On July 1, 1990 and on each July 1 thereafter during the term of this franchise, the Grantee, its successors and assigns, shall pay to the Grantor and its successors an amount which added to all taxes, special assessments, licenses, excises, fees, charges and other impositions of any kind whatsoever (except the taxes for County school districts levied under Article XII of the Constitution of the State of Florida as constituted on the date of this grant, and the County school tax, and except amounts for assessments for special benefits, such as sidewalks, street paving and similar improvements) levied or imposed upon the Grantee's electric property, business or operations, and those of the Grantee's electric subsidiaries within Dade County, Florida, by the Grantor for itself, or for the benefit of any other general or special public or other governmental body located in whole or in part within the limits of Dade County, Florida, or so levied or imposed and collected by or under any authority whatsoever (other than municipalities with whom the Grantee has an electric franchise) for the benefit of any general or public or other governmental body, located in whole or in part within the limits of Dade County, Florida, including the Grantor and any taxing districts created by the Grantor, during the preceding calendar year will equal the sum of:

(a) Six percent (6%) of Grantee's revenues from the sale of electrical energy to residential, commercial and industrial customers for the preceding calendar year (1) within the unincorporated areas of Dade County, (2) within the limits of any municipality in Dade County with whom the Grantee has no electric franchise, and (3) within any of the present unincorporated areas of Dade County, Florida, which may in the future be annexed by or incorporated into a municipality pursuant to the provisions of Sections [5.04](../level2/PTICOAMCH_ART5ADORPR.docx#PTICOAMCH_ART5ADORPR_S5.04ASCOTA) or [5.05](../level2/PTICOAMCH_ART5ADORPR.docx#PTICOAMCH_ART5ADORPR_S5.05DEPE) of the Dade County Home Rule Charter, and which annexation or incorporation is effected pursuant to [Section 20-8.1](../level3/PTIIICOOR_CH20MU_ARTIBOCHPR.docx#PTIIICOOR_CH20MU_ARTIBOCHPR_S20-8.1REELFRRE) of the Code of Metropolitan Dade County and other County and municipal ordinances which reserve the right of Dade County to retain franchise fees or revenues accruing within such annexed or incorporated areas, and

(b) Six percent (6%) of Grantee's revenues from the sale of electrical energy to industrial customers for the preceding calendar year within the limits of any municipality in Dade County whose franchise with the Grantee does not provide for the inclusion of industrial revenues in the calculation of municipal franchise fees, and

(c) Six percent (6%) of the Grantee's receipts from pole attachment agreements with third parties other than those with whom the Grantee has entered such agreements prior to the effective date hereof, but which may be entered into with additional third parties after the effective date hereof and with whom the Grantor is unauthorized by law to enter into a separate franchise or license agreement or against whom Grantor may not otherwise legally impose fees for the use of Grantor's property.

Nothing herein shall be construed to be a limitation on the assessment and collection of valid taxes, special assessments, licenses, fees, charges and other impositions by the Grantor or other public or governmental body on and from the Grantee in excess of such six percent (6%) amount.

*Section 6.* As further consideration of this franchise the Grantor agrees not to engage in the business of distributing and selling electricity in the incorporated or unincorporated areas of Dade County during the term of this franchise or any extension thereof in competition with the Grantee, its successors or assigns; provided, however, nothing in this Section 6 shall limit the rights of the Grantor under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as the same may be amended or as replaced by successor legislation, and federal and State regulations implementing PURPA, to own and/or operate qualifying cogeneration and small power production facilities and to itself distribute the electrical power generated therefrom to other Dade County facilities for its own use.

*Section 7.* Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until a court of competent jurisdiction (with right of appeal in either party) shall have found 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 (6) months after the final determination of the question 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. Provided, however, that the provisions of this Section shall not be construed as impairing any alternative right or rights which the Grantor may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida or the Charter of the Grantor.

*Section 8.* Should any Dade County municipality assert a claim against the Grantee based upon its franchise agreement with the Grantee and seek therein the recovery of moneys paid by the Grantee to the Grantor, the Grantor agrees to indemnify and hold the Grantee harmless for and against any liability, loss, cost, damage and expense resulting from such claim. Any such amount which the Grantor may thereby become obligated to pay to the Grantee under the terms of this franchise shall be deducted from successive payments otherwise payable by the Grantee to the Grantor until fully repaid.

*Section 9.* If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of the ordinance shall not be affected by such invalidity.

*Section 10.* It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention and the word "ordinance" may be changed to "section" "article," or other appropriate word.

[*Section 11*](../level2/PTIIICOOR_CH11CO.docx#PTIIICOOR_CH11CO)The effective date of this ordinance shall be May 25, 1990, provided, however, that as conditions precedent to the taking effect of this grant, Grantee shall have filed its acceptance hereof with the Grantor's clerk within three (3) days after final adoption, and the approval process is completed by May 15, 1990 as a result of (i) a referendum conducted by Dade County pursuant to Section 1.01A(a) of the Charter or (ii) an amendment to Section 1.01A14(a) of the Charter deleting the referendum requirement.

PASSED AND ADOPTED: September 5, 1989.

FOOTNOTE(S):

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**Editor's note—** Appendix C contains Ord. No. 89-81, §§ 1—11, adopted Sept. 5, 1989, which granted Florida Power and Light Company a nonexclusive electric franchise. Formerly, App. C contained the electric franchise regulations as enacted by Ord. No. 60-16, §§ 1—9, adopted May 3, 1960. Amendatory legislation will be indicated in history notation following a particular amended section. [(Back)](#BK_A622249A71A5F12AA3C7F2B66EE16F55)