

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO 3306

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR ESTIMATED MONTHLY PAYMENTS TO CITY OF CORAL GABLES, PROVIDING FOR AN EFFECTIVE DATE, AND REPEALING ORDINANCE NO 1601 AND ORDINANCE NO 3270

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES

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 incorporated areas, as such incorporated areas may be constituted from time to time, of the City of Coral Gables, 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 utility related services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof. This franchise shall not constitute permission for the Grantee or any other person to use the public rights-of-way as a telecommunications or cable television company. Nothing herein, however, shall prevent the Grantee from allowing the use of the Grantee's facilities by a company or person providing telecommunications or cable television services, or prevent the Grantor from requiring permits, franchises or other agreements for the use of the public rights-of-way by any telecommunications or cable television provider.

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 in public rights-of-way before or after the effective date hereof 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. 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 under existing circumstances 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 5 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 taxes, licenses, excises, fees, charges and other impositions of any kind whatsoever 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 6 0% of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers within the incorporated areas of the Grantor (excluding revenues from customers within any annexed areas in which Miami-Dade county has reserved the right to retain franchise fees pursuant to Section 20-8 1 of the code of Miami-Dade County and other county and municipal ordinances) 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 6 0% of such revenues for any monthly billing period of the Grantee. It is understood, agreed and affirmed that the foregoing provisions neither directly nor indirectly exempt the Grantee from its obligations to pay taxes, and are not intended to affect in any way any obligations of the Grantee with respect to the payment of taxes, which obligations have been and shall continue to be met in full.

SECTION 6 If during the term of this franchise the Grantee enters into a franchise agreement with Miami-Dade county or any other municipality located in Miami-Dade county, Florida, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6% of the Grantee's residential, commercial and industrial revenues, under the same terms and conditions as specified in Section 5 hereof, the Grantee shall notify the Grantor in writing. The Grantee, upon written request of the Grantor, shall then negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under section 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to Miami-Dade County or the other Miami-Dade County municipality, as the case may be, provided, however, that such new franchise agreement shall include benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with Miami-Dade County or the other Miami-Dade County municipality, as the case may be. Subject to all limitations, terms and conditions specified above in this section 6, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly

payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement

SECTION 7(a) AS a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees (i) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or 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, (ii) 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 energy from any person to any other retail customer's facility(ies), and (iii) not to seek to have the Grantee transmit and/or distribute electric capacity and/or energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s) 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

(b) Nothing herein shall prohibit the Grantor, if permitted by law, d) from purchasing electric capacity and/or energy from any other person, or (n) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or energy purchased by the Grantor from any other person, provided, however, that before the Grantor elects to purchase electric capacity and/or 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 other person's offer and, if the Grantee offers to the Grantor rates, terms and conditions for such purchase that are as or more financially advantageous to the Grantor as or than those of the other person's offer, the Grantor shall be obligated to continue to purchase electric capacity and/or energy from the Grantee to serve the Grantor identified facilities for a term no shorter than that offered by the other person, and per the new rates, terms and conditions as proposed by the grantee

SECTION 8 If, during the term of this franchise, 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 incorporated 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 9 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 incorporated 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 incorporated 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 10 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 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 6 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 11 Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including (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. The Grantor recognizes and agrees that nothing in this franchise 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 12 The Grantor may, upon 30 days 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 for conducting such audit is contingent on findings of the audit

SECTION 13. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect

SECTION 14 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 15. Ordinance NO 1601 and Ordinance NO 3270 are hereby repealed and all other ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict

SECTION 16 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

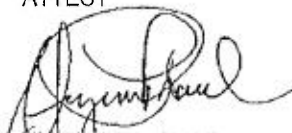
SECTION 17 Passed on first reading December 16, 1997

PASSED AND ADOPTED THIS SIXTH DAY OF JANUARY, A D , 1998

(Barker/Kerdyk(5)

RAUL J VALDES-FAULI
MAYOR

ATTEST


VIRGINIA L PAUL
CITY CLERK

ACCEPTANCE OF ELECTRIC FRANCHISE
ORDINANCE NO. 3306
BY FLORIDA POWER & LIGHT COMPANY

City of Coral Gables, Florida

As of January 25, 1998

Florida Power & Light Company does hereby accept the terms of
Ordinance No. 3306, of the City of Coral Gables, Florida, being:

"AN ORDINANCE GRANTING TO FLORIDA POWER &
LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN
ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND
CONDITIONS RELATING THERETO, PROVIDING FOR
ESTIMATED MONTHLY PAYMENTS TO CITY OF CORAL
GABLES, PROVIDING FOR AN EFFECTIVE DATE; AND
REPEALING ORDINANCE NO. 1601 AND ORDINANCE
NO. 3270."

which was passed and adopted on January 8, 1998.

This instrument is filed with the City Clerk of the City of Coral Gables,
Florida, in accordance with Section 16 of said Ordinance.


FLORIDA POWER & LIGHT COMPANY

By 
Vice President

ATTEST:


Assistant Secretary

I HEREBY ACKNOWLEDGE receipt of the above Acceptance of
Ordinance No. 3306 by Florida Power & Light Company, and certify that I have filed
the same for record in the permanent files and records of the City of Coral Gables,
Florida on this 28th day of January, 1998.


City Clerk of the City of
Coral Gables, Florida