

ORDINANCE No. 221

AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE GRANTING TO GULF POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTING SYSTEM IN THE TOWN OF CINCO BAYOU AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF SAID TOWN; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT; PROVIDING FOR GRANT OF FRANCHISE PRIVILEGE, PROVIDING FOR RIGHT TO OPERATE; PROVIDING FOR TERM OF FRANCHISE; PROVIDING FOR FRANCHISE CONSIDERATION; PROVIDING FOR TRANSFERABILITY; PROVIDING FOR FORFEITURE OF FRANCHISE; PROVIDING FOR TERMINATION OF GRANT BY INSOLVENCY OR BANKRUPTCY; PROVIDING FOR SEVERABILITY; PROVIDING HOLD HARMLESS AGREEMENT; PROVIDING FOR RATES, RULES AND REGULATIONS; PROVIDING FOR REVIEW AND REVISION OF FRANCHISE PROVISIONS; PROVIDING FOR OTHER FRANCHISES; PROVIDING FOR SUCCESSORS AND ASSIGNS; PROVIDING FOR PROPER OPERATION; PROVIDING FOR INTERRUPTION OF SERVICE; PROVIDING FOR METERING OF SERVICE; PROVIDING FOR EXCAVATION, MAINTENANCE AND RESTORATION; PROVIDING FOR SURRENDER OF RIGHTS; PROVIDING FOR WRITTEN ACCEPTANCE BY GRANTEE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN OF CINCO BAYOU, FLORIDA:

SECTION 1. Grant of Franchise Privilege: In consideration of the benefits that will accrue to the Town of Cinco Bayou and the inhabitants thereof, Gulf Power Company, a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee, is hereby given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said Town of Cinco Bayou a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 2. Right to Operate: The said Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said Town of Cinco Bayou 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 whatsoever, in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places in said Town of Cinco Bayou, as they now exist or as they may hereafter be laid out or extended within the present and future limits of said Town, 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 within, unto, through, over and beyond said Town of Cinco Bayou and to the furnishing, supplying and distributing to said Town and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of said Town. Grantor retains the right to purchase or generate electric power for its own use but not for sale. The electric system, facilities, and associated equipment and vehicles shall be located or relocated, erected or operated so as to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges and public places and with reasonable egress and ingress to abutting and adjoining property.



SECTION 3. Term of Franchise: The franchise granted, by this Ordinance shall exist and continue for a period of thirty (30) years only. The franchise granted by this Ordinance is also subject to the terms and conditions of all applicable provisions of the Code of Ordinances of the Town of Cinco Bayou.

SECTION 4. Franchise Consideration: As a further consideration for the granting of the rights, privileges and franchises hereby granted, the Grantee, its successors and assigns, shall pay to the Town 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 Town collected during the preceding month. The percentage of such revenue to be a franchise fee may be changed by the Town of Cinco Bayou as a franchise fee may be changed by the Town of Cinco Bayou from time to time by Ordinance at intervals of no less than three years, provided that the percentage shall in no event exceed that permitted by law. The Town of Cinco Bayou may grant such exemptions from payment of the fee as provide by Ordinance from time to time, at intervals of no less than three years, within the limits allowed by law.

SECTION 5. Transferability: The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this franchise to another without Grantor's prior approval. No such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. The Grantor will not unreasonably withhold its consent to the transfer of this franchise.

SECTION 6. Forfeiture of This Franchise: Failure by the 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 the Grantee has failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. Both the Grantor and Grantee reserve the right of appeal of such court findings. The Grantee shall have six (6) months after the final determination of the questions to make restitution or make good the default or failure before forfeiture shall result. The Grantor, at its discretion, may grant additional time to the Grantee for restitution and compliance as the necessities of the case may require.

SECTION 7. Termination of grant by insolvency or bankruptcy of Grantee: In the event of a final adjudication of bankruptcy of the Grantee, the Grantor shall have full power and authority to terminate, revoke and cancel any and all rights granted under the provisions of this Ordinance.

SECTION 8. 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; except that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the Grantor, an essential part of this ordinance.

SECTION 9. Hold Harmless: The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation or maintenance by the Grantee of said poles, towers, conduits, wires, cables and other appliances, equipment and vehicles subject to the terms and conditions of this franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage or any expense connected therewith including a reasonable attorney's fee incurred in the defense of any type of court action related hereto, which may accrue to the Grantor by reason of negligence, default or other



misconduct of the Grantee in its construction, location, relocation operation or maintenance of the facilities, vehicles or equipment of the electric system subject to this franchise.

SECTION 10. Rates, Rules and Regulations:

(a) All rates for electrical service and the rules and regulations governing the receipt of said service within the Grantor limits, established by the Grantee from time to time, shall be reasonable and shall be at all times subject to such public regulations as may be provided by law. The Grantee recognizes its obligation to provide electric energy and power service within the Town on reasonable terms and conditions as just, reasonable and nondiscriminatory rates to all who request said service during the term of this franchise and thereafter, as required by law or by duly constituted public regulatory body.

(b) The Grantee agrees by its acceptance of this franchise to file with the Town Clerk or his successor by the first anniversary date of this franchise, a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided within the Town and to file in writing annually any revisions of rules, regulations and rates that have been adopted since the previous annual filing. Grantee shall also furnish the Town Clerk a copy of each of its annual reports to its stockholders.

(c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, examine the records of operations and accounting files, books and records to the extent that such records relate directly to the calculation of the franchise fee payment to the Grantor, as provided herein and to proper performance of other terms of this franchise. 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 the Grantee and at the corporate offices of the Grantee.

(d) Should, during the term of this franchise, the scheme of public regulation existing as of the date of this franchise be changed substantially or such that the Grantee is no longer subject to regulation or that the Grantor obtains the jurisdiction and authority to regulate the rule and rates of the Grantee, the parties hereto agree to meet, within sixty (60) days following the change in regulation, in order to negotiate a mutually satisfactory arrangement relating to regulation of the rules and rates to be imposed on the customers located within the franchise area; provided however, that the rules and rates in effect as of the date of change in the method of regulation shall remain in effect until such time as a mutually satisfactory arrangements can be developed and agreed upon.

SECTION 11. Review and Revisions of Franchise Provisions: With the exception of the provisions of Section 3 concerning the term of this franchise and of Section 4 concerning periodic revision of the franchise fee, the Town and Grantee may from time to time request of either party review any or all of the other provisions of this Ordinance and by mutual agreement revise any such provision, or add any additional provisions that may be appropriate. During the 120 days immediately preceding each third anniversary date of this Ordinance during the term that this franchise is in effect, representatives of the Town of Cinco Bayou and Grantee may meet at the written request of the Grantor to decide whether any such revisions or additions are necessary.

SECTION 12. Other Franchises: Grantee shall furnish Town a copy of all other municipal franchises that it is granted from time to time during the life of this franchise.

SECTION 13. Successors and Assigns: Whenever in this Ordinance either the Town of Cinco Bayou or the Grantee is named or referred to, it shall be deemed to include the respective successor,



successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors or assigns of said Grantor or of the Grantee.

SECTION 14. 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 so as not to unreasonably interfere with the proper use of the streets, avenues, alleys, ways, bridges, and public places in the Town and shall be maintained in reasonably good condition and repair. Failure to restore service within a reasonable time shall be material breach of this franchise. Any substantial outage caused by the neglect or willful act of Grantee shall be a material breach of this franchise. The Grantee and Grantor mutually agree that the location, appearance and aesthetic qualities of such facilities is an important consideration and agree to participate during the term of this franchise in a cooperative effort in the location, relocation and construction of such facilities to achieve the most feasible and desirable result compatible with sound economic considerations of the Grantee.

SECTION 15. Interruption of Service: In the event the supply of electric energy should be interrupted or fail by reason of accident or any cause beyond the control of the Grantee, the Grantee shall, at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this franchise nor shall the Grantee be liable for any loss or damage by reason of such interruption or failure.

SECTION 16. Metering of Service: The Grantee shall install, and maintain free of charge, meters for measuring current and shall have free access to the premises of the consumer, from time to time, for the purpose of reading, repairing, testing and maintaining the meters and appurtenances. Such meters shall remain the property of the Grantee.

SECTION 17. Excavation, Maintenance and Restoration: Whenever the 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 the purpose of installing, maintaining, operating or repairing any poles, towers, conduits, cables or other appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portion of the streets, avenues, alleys, ways or other public places to as good condition as it was before the opening or alteration was so made and will promptly remove any debris. Upon failure of Grantee to comply after written notice from Grantor then Grantor shall accomplish such repair and restoration at the expense of Grantee.

SECTION 18. Surrender of Rights: As a further consideration for the granting of the rights, privileges and franchises granted hereby, the Grantee surrenders all rights, privileges and franchises heretofore granted by the Town of Cinco Bayou or the State of Florida for any of the purposes stated in Section 1 and 2 of this Ordinance and now enjoyed by Grantee in the Town of Cinco Bayou, provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

SECTION 19. Written Acceptance by Grantee: The Grantee, its successors or assigns, shall, within thirty (30) days after this Ordinance shall take effect; file a written acceptance of the Ordinance with the Town Clerk.

SECTION 20. Repealing Clause: All ordinances or parts of ordinances in conflict herewith are and the same are hereby repealed to the extent of such conflict.

SECTION 21. Effective Date: This Ordinance and the Contract and Agreements embodied herein shall be effective on the 12th day of May 2011.

PASSED and ADOPTED by the Town Council of the Town of Cinco Bayou, Florida on the 12th day of May 2011.



TOWN OF CINCO BAYOU, FLORIDA

BY: Theresa Farley  
Theresa Farley, Mayor

ATTEST:

Nell Dykes  
Nell Dykes, Town Manager/Clerk

ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS that Gulf Power Company, a Florida Corporation, hereby accepts the franchise agreement offered by the Town of Cinco Bayou to its Ordinance No. 221.

IN TESTIMONY WHEREOF, Gulf Power Company has caused its duly authorized officers to execute this instrument for it and as its act and deed on this \_\_\_\_ day of \_\_\_\_ 2011

GULF POWER COMPANY

By: Samuel  
President

ATTEST:

Terry A. Davis  
**TERRY A. DAVIS**  
**ASST. SECRETARY**