

ORDINANCE NO. 211

AN ORDINANCE GRANTING TO WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION INC., ITS SUCCESSORS AND ASSIGNS THE RIGHT AND FRANCHISE TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN PORTIONS OF THE CITY OF BONIFAY AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF PORTIONS OF SAID CITY; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT SEVERABILITY CLAUSE, REPEALING CLAUSE AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF BONIFAY, FLORIDA:

SECTION 1. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the City of Bonifay and the inhabitants thereof, WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC., its successors and assigns, hereinafter sometimes referred to as the Grantee, is hereby given, granted and vested with the right, privilege, and franchise to operate and maintain those distribution facilities owned and operated by the Grantee in the City of Bonifay as of the date of this franchise for the purpose of supplying electricity to those inhabitants and places of business within the geographic area of that portion of the City of Bonifay annexed on September 26, 1983, by Ordinance No. 201, and in any future annexed area which WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC., IS serving at the time of said future annexation.

SECTION 2. Rights 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, renew, repair, maintain, operate and conduct in said City of Bonifay its existing 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 those purposes herein enumerated, in, over, under, along, upon and across all streets, avenues, alley-ways, bridges, and public places in those portions of the City of Bonifay where Grantee's system now exists, and to the City in which the Grantee is currently providing electric service and to those inhabitants and corporations currently receiving said service, and extensions thereof as provided in Section 1 above, within the limits thereof, of electric energy for lighting, heating power and all other purposes for which electric energy may be used now or hereafter. 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 re-located, erected or operated so as to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-ways, streets, alleys, bridges, and public places and with reasonable egress and ingress to abutting and adjoining property.

SECTION 3. Franchise Fee. 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 City within thirty (30) days after the first day of each month a franchise fee of three percent (3%) of Grantee's revenue from the furnishing of electric service to customers served under all of its retail rate schedules within the corporate limits of the City collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City as a franchise fee may be changed by the City from time to time by ordinance at intervals of no less than three (3) years, provided that the percentage shall in no event exceed that permitted by law. The City may grant such exemptions from payment of the fee as it may provide by ordinance from time to time, at intervals of no less than three (3) years, within the limits allowed by law.

SECTION 4. Proper Operation. The poles, towers, conduits, cables, conducting, transforming 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 and appearance of the streets, avenues, alley-ways, bridges, and public places in the City and shall be maintained in reasonably good condition and repair.

SECTION 5. Excavation Maintenance and Restoration. Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alley-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, alley-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. When it becomes necessary for the City to improve, widen or relocate streets the Grantee shall relocate its facilities within sixty (60) days of a written request at no charge to Grantor.

SECTION 6. 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, re-location 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, re-location, operation or maintenance of the facilities, vehicles or equipment of the electric system subject to this franchise.

SECTION 7. Rates, Rules and Regulations.

(a) All rates for electrical service and the rules and regulations governing the receipt of said service within the Grantor's limits, established by the Grantee from time to time, shall be reasonable and shall at all times be subject to such public regulation as may be provided by law. The Grantee recognizes its obligations to provide electric energy and power service within the City on reasonable terms and conditions at 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 to file with the appropriate official of the City upon the request of the governing body of the City a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided within the City and surrounding area. Upon request from the governing body of the City, Grantee shall also furnish any revisions of rules, regulations, and rates that have been adopted since the last previous filing, and Grantee will also furnish upon request of the governing body of the City its latest annual report to its stockholders.

(c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, at any time within ninety (90) days after each anniversary date of this franchise examine the records of operations and accounting files, books, and records as such records relate to the calculation of the franchise fee payments to the Grantor, as provided herein. 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.

SECTION 8. 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 damages by reason of such interruption or failure.

SECTION 9. 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 10. Term of Franchise - Right to Purchase. The franchise granted by this ordinance shall exist and continue for a period of thirty (30) years only, and as a condition precedent to the taking effect of this grant, City does hereby reserve and the grantee gives and grants to the said municipality the right, upon the giving of one hundred twenty (120) days' written notice before the end of fifteen (15) years from the effective date of this ordinance or franchise to renegotiate the terms and conditions of this franchise, or alternatively, upon the giving of like notice before the expiration of fifteen (15) years, and at the expiration of thirty (30) years, to purchase the electric plant and other property within the corporate limits of the City necessarily used under or in connection with the franchise hereby granted or such part of such property as the municipality may desire to purchase at a valuation to be fixed in accordance with the provisions of Section 180.16 Florida Statutes (1979) or Florida Statute applicable at such time. The franchise granted by this ordinance is also subject to the terms and conditions of all applicable provisions of the comprehensive plans, codes and zoning regulations of the City of Bonifay.

SECTION 11. 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 question 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.

Ordinance 211 (cont'd)

SECTION 12. Review and Revision of Franchise Provisions. With the exception of the provisions of Section 10 concerning the term of this franchise and option to purchase or require purchase during the term, the City shall have the right to renew or revise Section 3 concerning periodic revisions of the franchise fee every three (3) years. The City and the Grantee may from time to time at the 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 one hundred twenty (120) days immediately preceding each fifth (5th) anniversary date of this ordinance during the term that this franchise is in effect, representatives of the City and Grantee shall meet to decide whether any such revisions or additions are necessary.

SECTION 13. Exclusivity of Ordinance Sections. 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.

SECTION 14. Successors and Assigns. Whenever in this ordinance either the City of Bonifay 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 the Grantor or the Grantee.

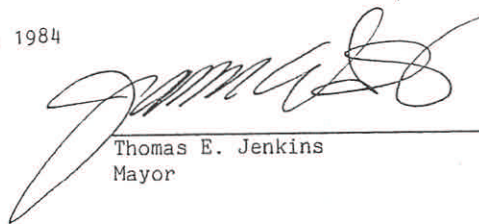
SECTION 15. Repealing Clause. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 16. 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 City of Bonifay, or the State of Florida for any of the purposes stated in Sections 1 and 2 of this ordinance and now enjoyed by Grantee in the City of Bonifay; 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 17. 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 City Clerk of the City.

SECTION 18. Effective Date. This ordinance shall take effective immediately upon its passage.

ADOPTED in regular session this 14 day of May, 1984


Thomas E. Jenkins
Mayor

John W. McDonald
Council President

Ricky D. Callahan
Council Vice President

Joseph C. Middlebrooks, Jr.
Councilman

Roger H. Brooks
Councilman

Jake Faulk
Councilman

ATTEST:


R. A. Boswell
City Clerk