

ORDINANCE NO. 2017-003

AN ORDINANCE OF THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA; GRANTING TO DUKE ENERGY FLORIDA, LLC, A FLORIDA LIMITED LIABILITY COMPANY D/B/A DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE TOWN OF HOWEY IN THE HILLS, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA:

Section 1. Findings

The Town deems it necessary, desirable and in the interest of its citizens to establish by ordinance a franchise (sometimes referred to herein as the “Franchise”) granting the Company permission to occupy the Rights-of-Way in the Town of Howey-In-The-Hills, Florida, for the purpose of providing electric services.

Section 2. Short Title

This ordinance shall be known and may be cited as the “Duke Energy Electric Franchise.”

Section 3. Definitions

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely permissive.

(A) “Adversely Affected” – For the Company, a loss of one percent (1%) of Base Revenues within the corporate Town limits due to Retail Wheeling. For the Town, a loss of one percent (1%) of franchise fees due to Retail Wheeling.

(B) “Base Revenues” – All Company’s revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and Town sponsored street lighting all within the corporate limits of the Town.

(C) “Company” – Duke Energy Florida, LLC, d/b/a Duke Energy, its successors and assigns.

(D) “Town” – The Town of Howey-In-The-Hills, Florida.

(E) “Electric Energy Provider” – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including Town herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company’s distribution or other facilities. Without limitation or the foregoing, “Electric Energy Provider” shall also include every Electric Utility, electric power marketer or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.

(F) “Electric Utility” -- Shall have the meaning set out in Section 366.02(2), *Florida Statutes*, and shall also include every electric “Public Utility” as defined in Section 366.02(1), *Florida Statutes*. “Electric Utility” shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or County.

(G) “Electric Utility System” – An electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not to limited to electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(H) “Franchise Area” – That area for which Company provides electric utility service within the corporate Town limits of the Town.

(I) “Facilities” – The meaning as set forth in Section 4.

(J) “Person” – Any person, firm, partnership, association, corporation, company or organization of any kind.

(K) “Public Service Commission” – The Florida Public Service Commission.

(L) “Rights-of-Way” – All of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the Town, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the Town, or in such territory as may hereafter be added to, consolidated or annexed to the Town.

(M) “Retail Wheeling” – A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

Section 4. Grant of Authority

(A) This grant of authority is limited to the provision by Company to have, maintain, or place its Facilities within the Rights-of-Way for its electric utility services. Accordingly, the

Town hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights-of-Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the Town, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the “Facilities”), provided that all portions of the same shall conform to accepted industry standards, including but not limited, to the National Electrical Safety Code. Nothing in this Ordinance shall require Company to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside “Rights-of-Way” as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights-of-Way, the Town expressly acknowledges and agrees that Company shall not be required to apply for or pay for permits to place its Facilities or perform any work maintenance activities on or related to its Facilities within the Rights-of-Way. In the event the Company desires to use its existing facilities, or construct new facilities, in order to provide public communications, leased fiber optic capacity, or video services to existing or potential consumers, Company must obtain additional and separate permission from the Town for such activities.

(B) Annexation or Contraction. Town and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Town approves any Franchise Area expansion or reduction by annexation or contraction, Town shall provide written notice to Company’s Annexation Coordinator, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas. Additionally, within sixty (60) days of any such annexation or contraction, Town shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Duke Energy
Annexation Coordinator – Billing Team
P. O. Box 33199
St. Petersburg, FL 33733-8199
Or by email to: TaxTeam@duke-energy.com

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from Town, but no later than sixty (60) days after receipt of notice and the list. Town understands and

affirmatively acknowledges that the Company will exclusively rely upon the Town to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the Town that are impacted by such annexations or contractions. Further, Town acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive, and the Town reserves the right to grant to others the right to utilize the Rights-of-Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

Section 5. Notice of Acceptance; Term of Franchise

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the Town Council; and it is further agreed that the Company shall accept this Franchise as of the date of the passage and adoption by the Town Council and shall signify its acceptance in writing within thirty (30) days after the Town Council's approval of this ordinance by filing its written acceptance with the Town Clerk. If the Company fails to accept this franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of ten (10) years.

Section 6. Payment to Town

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, Town shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due Town for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any franchise amounts that will be paid to the Town will be collected by the Company from Company's customers in the Franchise Area and passed through to the Town in the manner described herein. The Town expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder. Payment shall be made to Town for each month no later than the twentieth (20th) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute.

(C) The Town acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

Section 7. Favored Nations

(A) In the event Company shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, Company shall notify Town, and Town reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Company has agreed to pay to such other municipality. Company's obligation to pay such greater franchise fee to Town shall apply prospectively beginning with the next monthly franchise fee payment following Town's timely notice of its exercise of its amendment right to which Company may collect such increased fee from its customers. Company's failure to notify Town of such additional payments does not limit Town's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Town and Company that Company shall not be required to pay Town a franchise fee under Section 6 of a percentage greater than that paid to Town by any other Electric Utility or Electric Energy Provider utilizing Town's Rights-of-Way on such Electric Utility's or Electric Energy Providers revenues attributable to services that are the same or substantially the same as those performed by Company. It is further the intent and agreement of Town and Company that Company should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Company without utilizing Town's Rights-of-Way.

(C) If Town imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Company to customers within Town's municipal boundaries, whether utilizing Town's Rights-of-Way or not utilizing Town's Rights-of-Way, Company's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, Town shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of Town shall be given a competitive advantage over Company.

Section 8. Town Rights

The right is hereby reserved to the Town, in addition to the provisions herein contained and existing applicable ordinances, to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the Town relating to Company's rights to perform work in and/or occupancy of the Rights-of-Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

Section 9. Work In Rights-of-Way

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights-of-Way of the Town related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the Town an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said Town shall not be unnecessarily obstructed and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the Town for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

Section 10. Indemnification

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify Town and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that Town may incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. In no event shall Company be liable to Town for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring Town and Company with regard to all damages set forth in Section 10 (A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) Town acknowledges that Company provides its own liability insurance (self-insured).

Section 11. Records and Reports

(A) Company Rules and Regulations. The following records, reports, and documents shall be available to Town upon Town's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of Town's Rights-of-Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the Town from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information that Town or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of Town, be open for examination and audit by Town and Town's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of five (5) years.

(E) Audit. Town may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every five (5) years and then only for the preceding three (3) years. Company will reimburse Town's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to Town's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Agreement, Town shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the Town and annually thereafter a report identifying any changes to the address listing provided the previous year.

Section 12. Retail Wheeling

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between The Company and the Town. If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Lake County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

Section 13. Severability

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, 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 thereof, other than the part declared to be invalid. In the event of any such partial invalidity, Town of Howey-In-The-Hills, and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority’s decision.

Section 14. Governing Law and Venue

This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida. In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Lake County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Ocala Division.

Section 15. Merger

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set ferth or provided herein.

Section 16. Notices

Except in exigent circumstances, all notices by either Town or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. “Business Day” for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and Town and Company observed holidays accepted. All notices shall be addressed as follows:

To Town:
Town Clerk
P.O. Box 128
Howey-In-The-Hills, FL 34737
Phone: (352) 324-2290
Facsimile: (352) 324-2126

To Company:
Government & Community Relations
Duke Energy
P.O. Box 14042 – FL: 163
St. Petersburg, FL 33733-4042
Phone: (727) 820-5474
Facsimile: (727) 820-5715

Section 17. Non-Waiver Provision

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

Section 18. Repealer and Superseding Provision

This ordinance shall supersede, as to the rights, privileges and obligations between Town and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance No. 2001-301 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance and none of the provisions of such repealed Ordinance No. 2001-301 and any amendments thereto shall have any further force and effect.

Section 19. Dispute Resolution

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

PASSED AND ORDAINED on August 28, 2017, by the Town Council of the Town of Howey-in-the-Hills, Florida.

Chris Sears, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY
for use and reliance by the Town of Howey-in-the-Hills, Florida, only.

Dairian Burke, Interim Town Clerk

Heather M. Blom-Ramos, Town Attorney

First Public Hearing held August 7, 2017
Second Public Hearing and Adoption held August 28, 2017
Advertised August 18, 2017

Accepted by:

Harry Sideris, State President
Duke Energy Florida, LLC

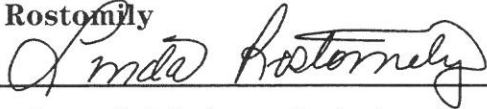
Affidavit of Publication

DAILY COMMERCIAL

Leesburg, Lake County Florida
STATE OF FLORIDA, COUNTY OF LAKE

Before the undersigned authority personally appeared

Linda Rostomily



who on oath says that she is an authorized employee of the Daily Commercial, a daily newspaper published at Leesburg, in Lake County, Florida; that the attached copy of advertisement, being a notice in the matter of

ORD 2017-003

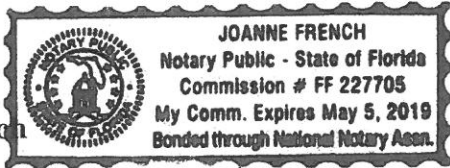
was published in said newspaper in the issues of:

AUG 18, 2017

Affiant further says that the said Daily Commercial is published at Leesburg, in said Lake County, Florida, and that the said newspaper has heretofore been continuously published in said Lake County, Florida, daily, and has been entered as second class mail matter at the post office in Leesburg, in said Lake County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 18 day of aug A.D., 2017.

Joanne French
Notary Public



Joanne French
(Print, Type or Stamp Name of Notary Public)

AD# 10067380

AN ORDINANCE OF THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA; GRANTING TO DUKE ENERGY FLORIDA, LLC, A FLORIDA LIMITED LIABILITY COMPANY D/B/A DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE TOWN OF HOWEY IN THE HILLS, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA:

Section 1. Findings

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Duke Energy
Annexation Coordinator - Billing
Team P. O. Box 33199 St. Petersburg,
FL 33733-8199
Or by email to:
TaxTeam@duke-energy.com

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from Town, but no later than sixty (60) days after receipt of notice and the list. Town understands and affirmatively acknowledges that the Company will exclusively rely upon the Town to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the Town that are impacted by such annexations or contractions. Further, Town acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

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dition or unreasonably conflict with the rights granted to Company herein.

Section 5. Notice of Acceptance; Term of Franchise

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the Town Council; and it is further agreed that the Company shall accept this Franchise as of the date of the passage and adoption by the Town Council and shall signify its acceptance in writing within thirty (30) days after the Town Council's approval of this ordinance by filing its written acceptance with the Town Clerk. If the Company fails to accept this franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of ten (10) years.

Section 6. Payment to Town

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, Town shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due Town for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any franchise amounts that will be paid to the Town will be collected by the Company from Company's customers in the Franchise Area and passed through to the Town in the manner described herein. The Town expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder. Payment shall be made to Town for each month no later than the twentieth (20th) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute.

(C) The Town acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

Section 7. Favored Nations

(A) In the event Company shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, Company shall notify Town, and Town reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Company has agreed to pay to such other municipality. Company's obligation to pay such greater franchise fee to Town shall apply prospectively beginning with the next monthly franchise fee payment following Town's timely notice of its exercise of its amendment right to which Company may collect such increased fee from its customers. Company's failure to notify Town of such additional payments does not limit Town's right to amend to require such additional franchise fees.

erate and maintain within the Town an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said Town shall not be unnecessarily obstructed and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the Town for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

Section 10. Indemnification

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify Town and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that Town may incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. In no event shall Company be liable to Town for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring Town and Company with regard to all damages set forth in Section 10 (A) in the minimum amounts of:

(i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.

(ii) \$50,000 for property damage resulting from any one accident.

(iii) \$1,000,000 for all other types of liability.

(C) Town acknowledges that Company provides its own liability insurance (self-insured).

Section 11. Records and Reports

(A) Company Rules and Regulations. The following records, reports, and documents shall be available to Town upon Town's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of Town's Rights-of-Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the Town from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

Section 16. Notices

Except in exigent circumstances, all notices by either Town or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and Town and Company observed holidays accepted. All notices shall be addressed as follows:

To Town:
Town Clerk
P.O. Box 128
Howey-In-The-Hills, FL 34737
Phone: (352) 324-2290
Facsimile: (352) 324-2126

To Company:
Government & Community Relations
Duke Energy
P.O. Box 14042 - FL: 163
St. Petersburg, FL 33733-4042
Phone: (727) 820-5474
Facsimile: (727) 820-5715

Section 17. Non-Waiver Provision

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

Section 18. Repealer and Superseding Provision

This ordinance shall supersede, as to the rights, privileges and obligations between Town and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance No. 2001-301 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance and none of the provisions of such repealed Ordinance No. 2001-301 and any amendments thereto shall have any further force and effect.

Section 19. Dispute Resolution

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

PASSED AND ORDAINED on
_____ 2017, by
the Town Council of the Town of
Howey-in-the-Hills, Florida.

(B) It is the intent and agreement of Town and Company that Company shall not be required to pay Town a franchise fee under Section 6 of a percentage greater than that paid to Town by any other Electric Utility or Electric Energy Provider utilizing Town's Rights-of-Way on such Electric Utility's or Electric Energy Providers revenues attributable to services that are the same or substantially the same as those performed by Company. It is further the intent and agreement of Town and Company that Company should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Company without utilizing Town's Rights-of-Way.

(C) If Town Imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Company to customers within Town's municipal boundaries, whether utilizing Town's Rights-of-Way or not utilizing Town's Rights-of-Way, Company's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, Town shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of Town shall be given a competitive advantage over Company.

Section 8. Town Rights

The right is hereby reserved to the Town, in addition to the provisions herein contained and existing applicable ordinances, to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the Town relating to Company's rights to perform work in and/or occupancy of the Rights-of-Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

Section 9. Work in Rights-of-Way

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights-of-Way of the Town related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, op-

(D) Availability of Records and Reports. Company shall supply information that Town or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of Town, be open for examination and audit by Town and Town's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of five (5) years.

(E) Audit. Town may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every five (5) years. Company will reimburse Town's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to Town's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Agreement, Town shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the Town and annually thereafter a report identifying any changes to the address listing provided the previous year.

Section 12. Retail Wheeling

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between the Company and the Town. If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Lake County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

Section 13. Severability

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, 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 thereof, other than the part declared to be invalid. In the event of any such partial invalidity, Town of Howey-in-the-Hills, and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

Section 14. Governing Law and Venue

This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida. In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Lake County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Ocala Division.

Section 15. Merger

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject

Chris Sears, Mayor

ATTEST:

Dalrian Burke, Interim Town Clerk

APPROVED AS TO FORM AND LEGALITY

for use and reliance by the Town of Howey-in-the-Hills, Florida, only.

Heather M. Blom-Ramos, Town Attorney

First Public Hearing held August 14, 2017

Second Public Hearing and Adoption held August 28, 2017
Advertised August 18, 2017

Accepted by:

Harry Sideris, State President
Duke Energy Florida, LLC

Ad No: 10067380
August 18, 2017

insider, and we written
reside all prior consens
of the representation