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April 21, 2023

**VIA ELECTRONIC FILING**

Adam J. Teitzman, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: *Re: Joint Petition for Approval of Temporary Variance, by Duke Energy Florida, LLC and Peace River Electric Cooperative, Inc.*; Docket No. 20230035-EU

Dear Mr. Teitzman:

On behalf of Duke Energy Florida, LLC ("DEF"), please find enclosed for electronic filing in the above-referenced docket, DEF and PRECO's Response to Staff's First Data Request.

Thank you for your assistance in this matter. If you have any questions concerning this filing, please feel free to contact me at (850) 521-1428.

Sincerely,

/s/ Stephanie A. Cuello

Stephanie A. Cuello

SAC/mw  
Enclosures

cc: Patrick Kelley, FPSC (pkelley@psc.state.fl.us)

**CERTIFICATE OF SERVICE**

*Docket No. 20230035-EI*

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 21<sup>st</sup> day of April, 2023.

*s/Stephanie A. Cuello*

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**Response of Duke Energy Florida, LLC (“DEF”) and Peace River Electric Cooperative,  
Inc. (“PRECO”) to Florida Public  
Service Commission’s (“FPSC”) First Data Request (Nos. 1-11)**

**Docket No. 20230035-EU**

**General**

1. Are the Parties seeking Commission approval of the asset purchase agreement?

Please explain.

**Response:**

No, the Parties are seeking approval of the Temporary Territorial Variance Agreement.

2. For the following questions, please refer to page 4, paragraph 9 of the petition.

- a. Please explain what the Parties mean by nominal consideration.

**Response:**

Nominal consideration, which usually takes the form of a small amount of money, is a legal formality commonly employed to ensure that a contract is enforceable. Under Florida law, for a contract to be enforceable courts generally require three things : a valid offer; a valid acceptance; and “consideration.” Consideration is something of value that is exchanged in return for the promise of performance by the other party. Here consideration comes in two forms. First, there is actual consideration: in exchange for PRECO allowing DEF to serve the special industrial customer in PRECO’s territory, DEF has promised to convey its Lake Branch substation to PRECO which PRECO will use to serve its customer load. Second, there is nominal consideration of “Ten Dollars,” which again is simply a legal formality to ensure that the asset purchase agreement is enforceable.

- b. Please clarify why there is not an estimated dollar value for the nominal consideration.

**Response:**

A precise estimated dollar amount is not necessary for nominal consideration as it is minimum necessary for a binding contract.

- c. How did the parties determine the appropriate nominal consideration? Please explain.

**Response:**

Nominal consideration was determined by considering the exchange of benefits between the Parties. DEF receives a benefit by PRECO allowing DEF to serve the special industrial customer in PRECO's territory. In return, PRECO will receive the benefit of acquiring DEF's Lake Branch substation, which PRECO will use to serve its customer load. The substation is currently underutilized by DEF and would be effectively utilized under PRECO. One megawatt or less of non-mining load would be transferred to PRECO under the agreement.

3. Page 3, paragraph 3 of the asset purchase agreement states that the purchase price of the assets will be \$10.00. Please explain how the purchase price was decided upon.

**Response:** Please see response to #2 (a) – (c).

4. The following questions refer to page 4, paragraph 10 of the petition.
  - a. The petition states that if additional time is needed to complete the project, the Parties will notify the Commission. What is the likelihood of this happening?

**Response:**

The Parties are not aware that additional time will be needed to complete the project. However, that schedule is determined by the special industrial customer, not the Parties.

- b. Please explain whether the Parties intend to file a petition to extend the territorial variance. Past December 31, 2028, if needed.

**Response:**

If additional time is necessary, the Parties will file a notice with the Commission. The Commission has previously allowed parties to extend territorial variance agreements beyond their initial terms by giving notice in lieu of filing a formal petition. *See Order No. PSC-12-0661-PAA-EU in Docket No. 120247-EU.*

- c. Please explain how the parties determined the appropriate duration for the temporary variance agreement. Please also explain why it has a certain end date (December 31, 2028) instead of until the mining operation at issue here is complete.

**Response:**

The Parties determined the duration of the variance based on the special industrial customer's mining timeline.

### **Eastern Expansion Project**

5. Please state what rate schedule the special industrial customer is currently receiving service from Duke. Would the mining load south of SR 64 in the eastern expansion project be served under the same schedule? If not, please explain why.

**Response:**

The special industrial customer is receiving service from DEF under the IST-2 rate schedule. The load south of SR 64 would receive the same schedule.

6. Please provide a map of the area encompassing the Project that depicts the territorial boundary lines established by the currently approved territorial agreement. Please also indicate the boundary lines of the proposed territorial variance and the location of the Lake Branch substation on the map.

**Response:**

Please see attached.

7. The petition refers to the Lake Branch maps as Exhibit A. Please explain whether the substation diagrams attached to the petition are Exhibit A.

**Response:**

The substation diagrams are Exhibit A to the asset purchase agreement, not to the petition. A map of the area of the Project has been provided in response to Data Request # 6.

8. Paragraph 7 of the petition states that PRECO currently does not have the facilities in place to serve the special industrial customer's projected load for the portion of the project south of SR 64. Is it necessary for PRECO to construct additional facilities to tie the Lake Branch substation into its system upon acquisition? Please explain.

**Response:**

PRECO has feeder lines adjacent to the Lake Branch substation. Thus, it will be able to tie that substation into its distribution system with minimal additional construction.

### **Lake Branch Substation**

9. The following questions will be referring to paragraph 4 of Exhibit B.
  - a. Please explain why the substation is being transferred to PRECO on or before December 31, 2025 instead of being used to help serve as a mining substation until the completion of the eastern mining project in 2028.

**Response:**

The eastern mining project is being served by DEF from a different substation and therefore the Lake Branch substation will not be needed to serve the special industrial customer.

- b. On page 4, paragraph 9 it states that PRECO will acquire the substation in the beginning of 2026, but on paragraph 4 of the temporary territorial variance agreement it states that PRECO will acquire the substation on or before December 31, 2025. Please clarify which date it would be.

**Response:**

PRECO will acquire the substation on or before December 31, 2025.

10. Please explain how the cost to construct the Lake Branch substation was initially recovered. (Through rate base, Contribution in Aid of Construction, etc.)

**Response:**

The cost was recovered through base rates.

11. Please refer to paragraph 9 of the petition for the following data requests.
  - a. Please describe the timeline of the proposed transfer of the Lake Branch substation between Duke and PRECO.

**Response:**

The substation will be transferred to PRECO when the pumping load at the site ceases or December 31, 2025, whichever is earlier.

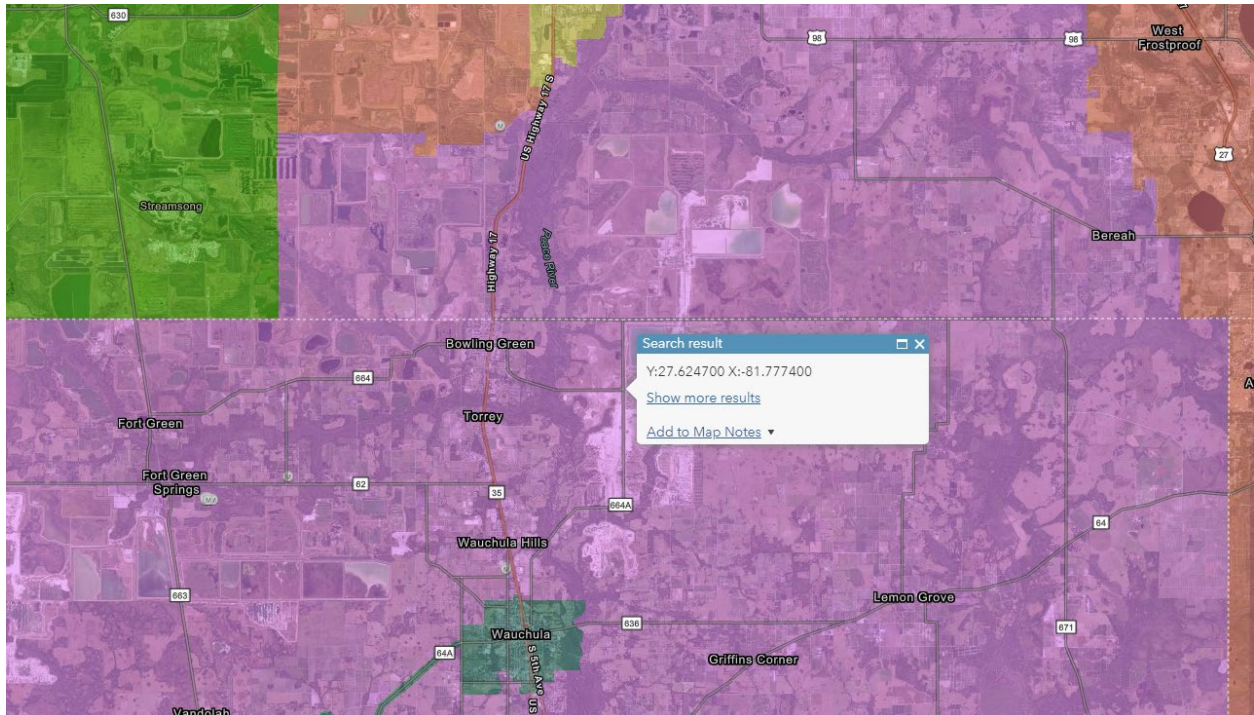
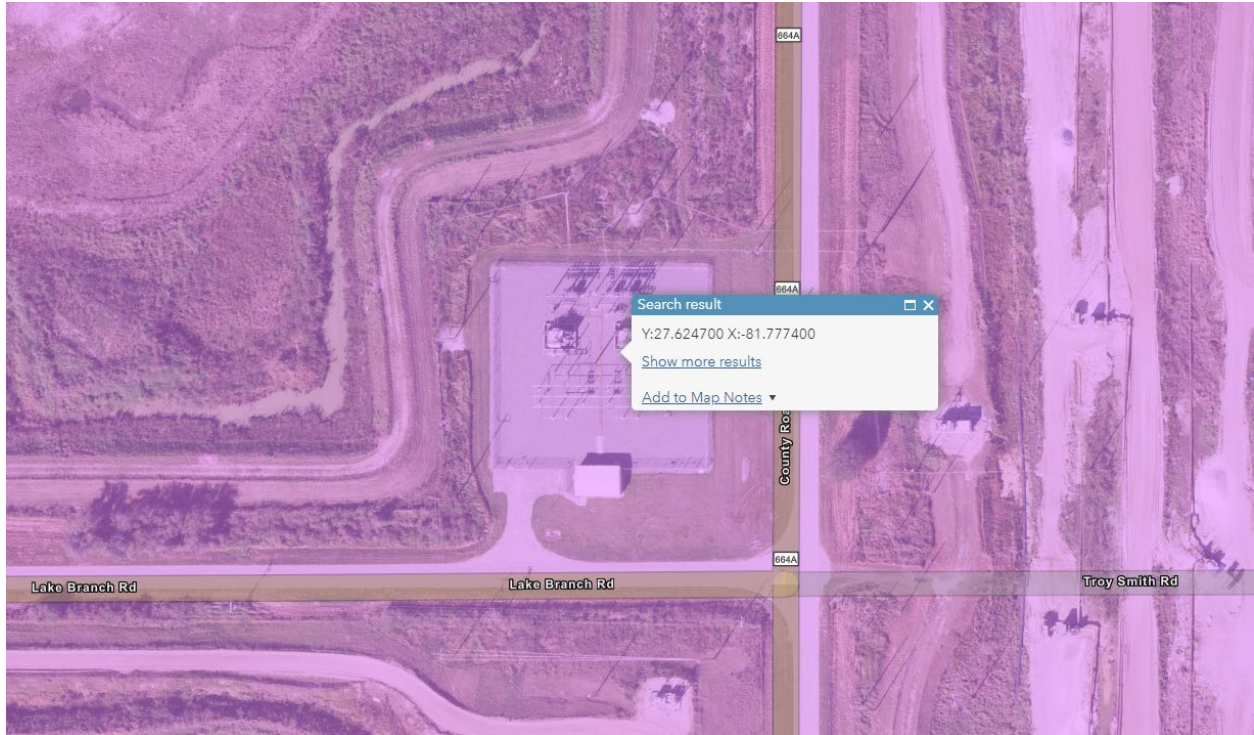
- b. Please clarify if there is a possibility that the Lake Branch substation could be owned by one utility while being operated by the other, under the terms of the asset purchase agreement.

**Response:**

No. The substation will not be owned by one utility while operated by the other under the terms of the asset purchase agreement.



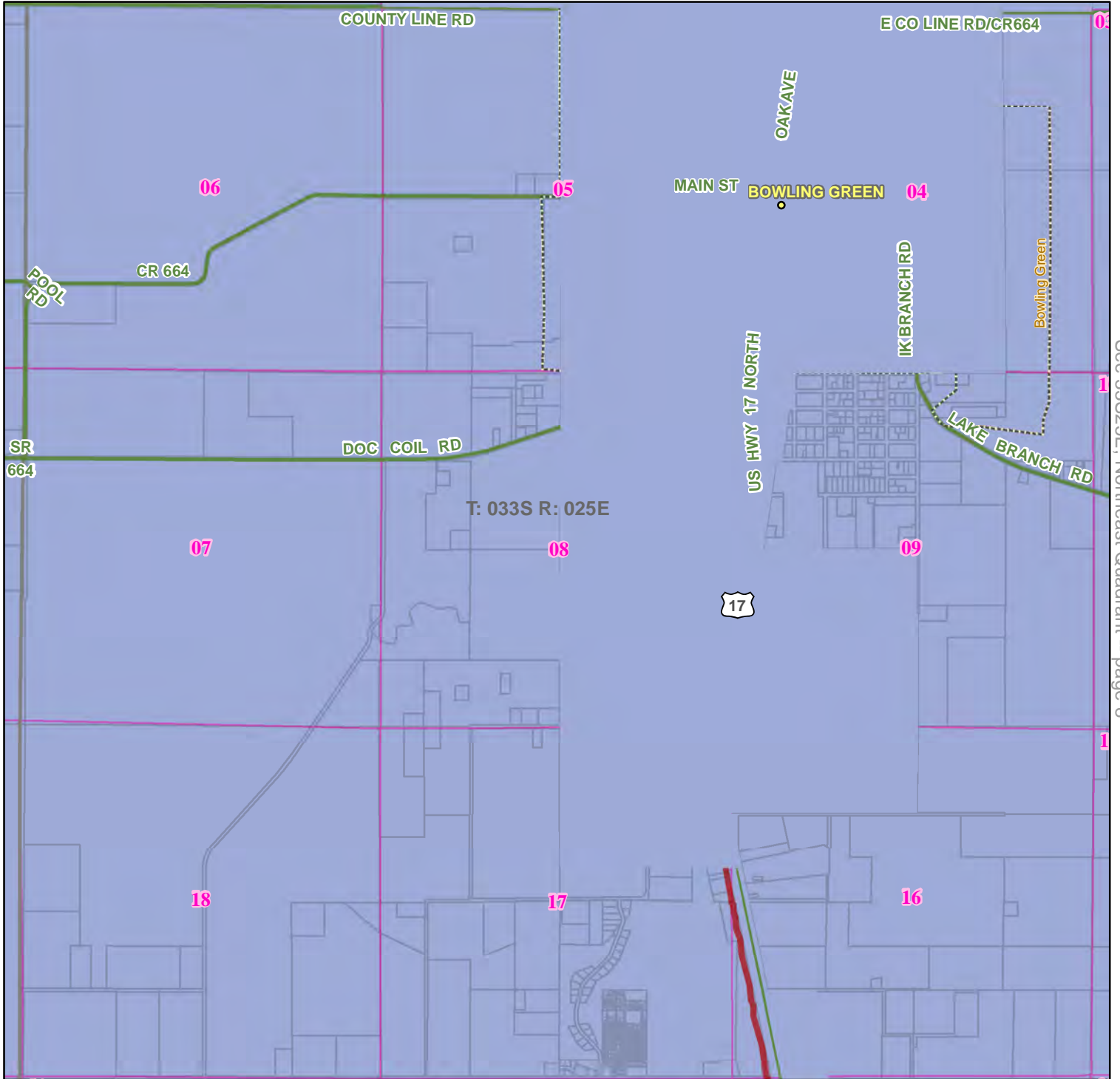




# DUKE ENERGY - PEACE RIVER ELECTRIC COOP (PRECO) TERRITORIAL AGREEMENT HARDEE COUNTY



See 32S25E, Southwest Quadrant -- page 5

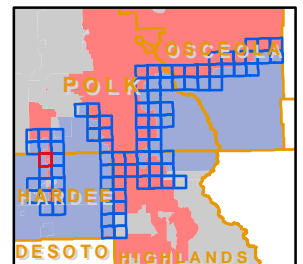


See 33S25E, Northeast Quadrant -- page 8

See 33S25E, Southwest Quadrant -- page 9

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|-----------------------------------|---------------------|---------|----------------------|
| <b>UTILITY</b>                    | Limited Access      | Water   | County               |
| Duke Energy                       | Highway             | Section | City and Place Names |
| Peace River Electric Coop (PRECO) | Major Road          | Parcel  | City/Place Boundary  |
| Not Part of This Agreement        | Major Railroad Line |         |                      |

**Quadrant:** Northwest  
**Township:** 33S  
**Range:** 25E  
**County:** HARDEE COUNTY, FL



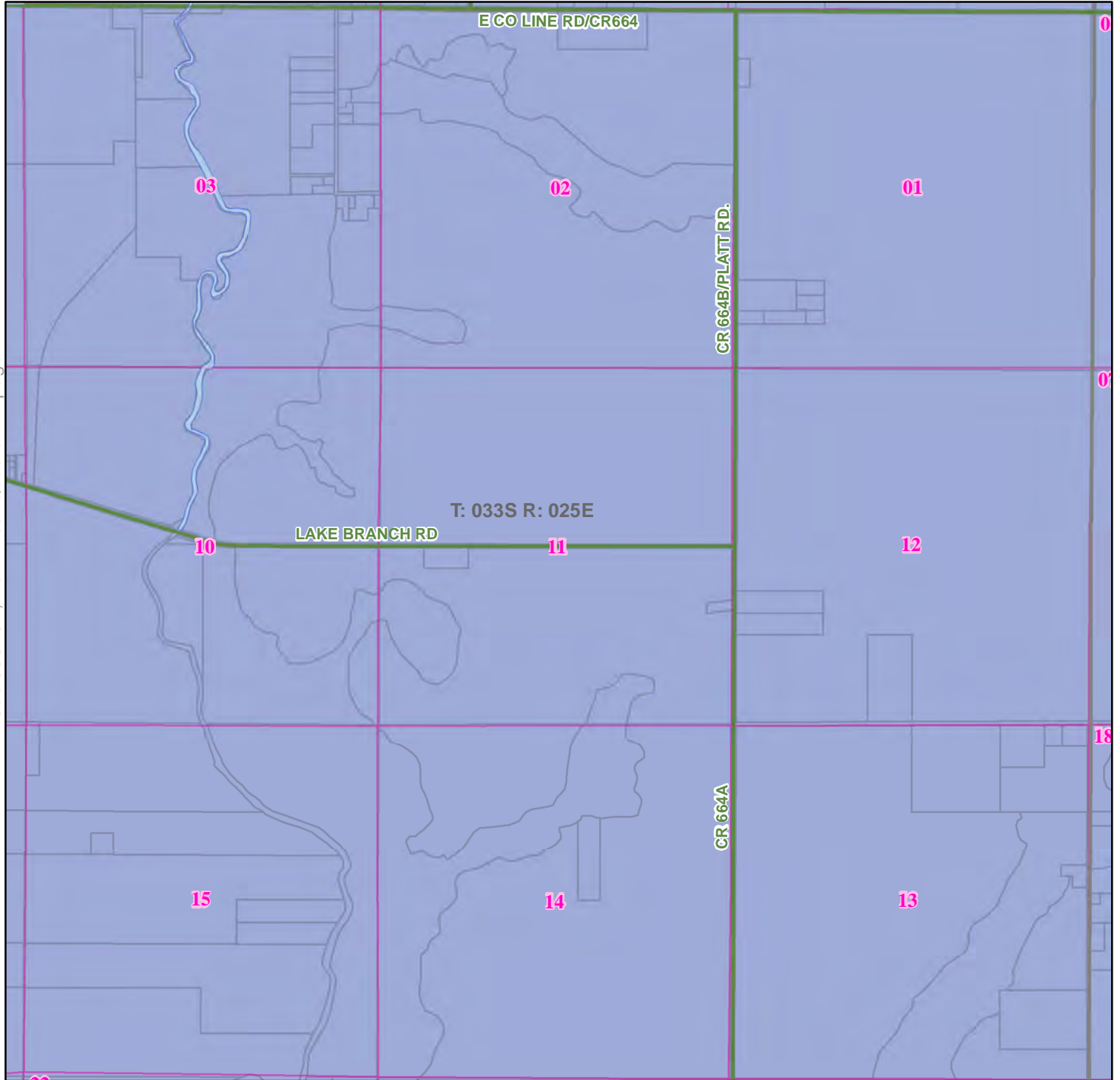


# DUKE ENERGY - PEACE RIVER ELECTRIC COOP (PRECO) TERRITORIAL AGREEMENT HARDEE COUNTY



See 32S25E, Southeast Quadrant -- page 6

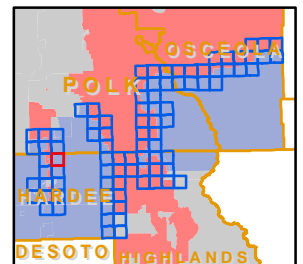
See 33S25E, Northwest Quadrant -- page 7



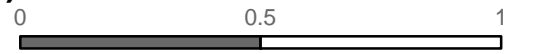
See 33S25E, Southeast Quadrant -- page 10

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|-----------------------------------|---------------------|---------|----------------------|
| <b>UTILITY</b>                    | Limited Access      | Water   | County               |
| Duke Energy                       | Highway             | Section | City and Place Names |
| Peace River Electric Coop (PRECO) | Major Road          | Parcel  | City/Place Boundary  |
| Not Part of This Agreement        | Major Railroad Line |         |                      |

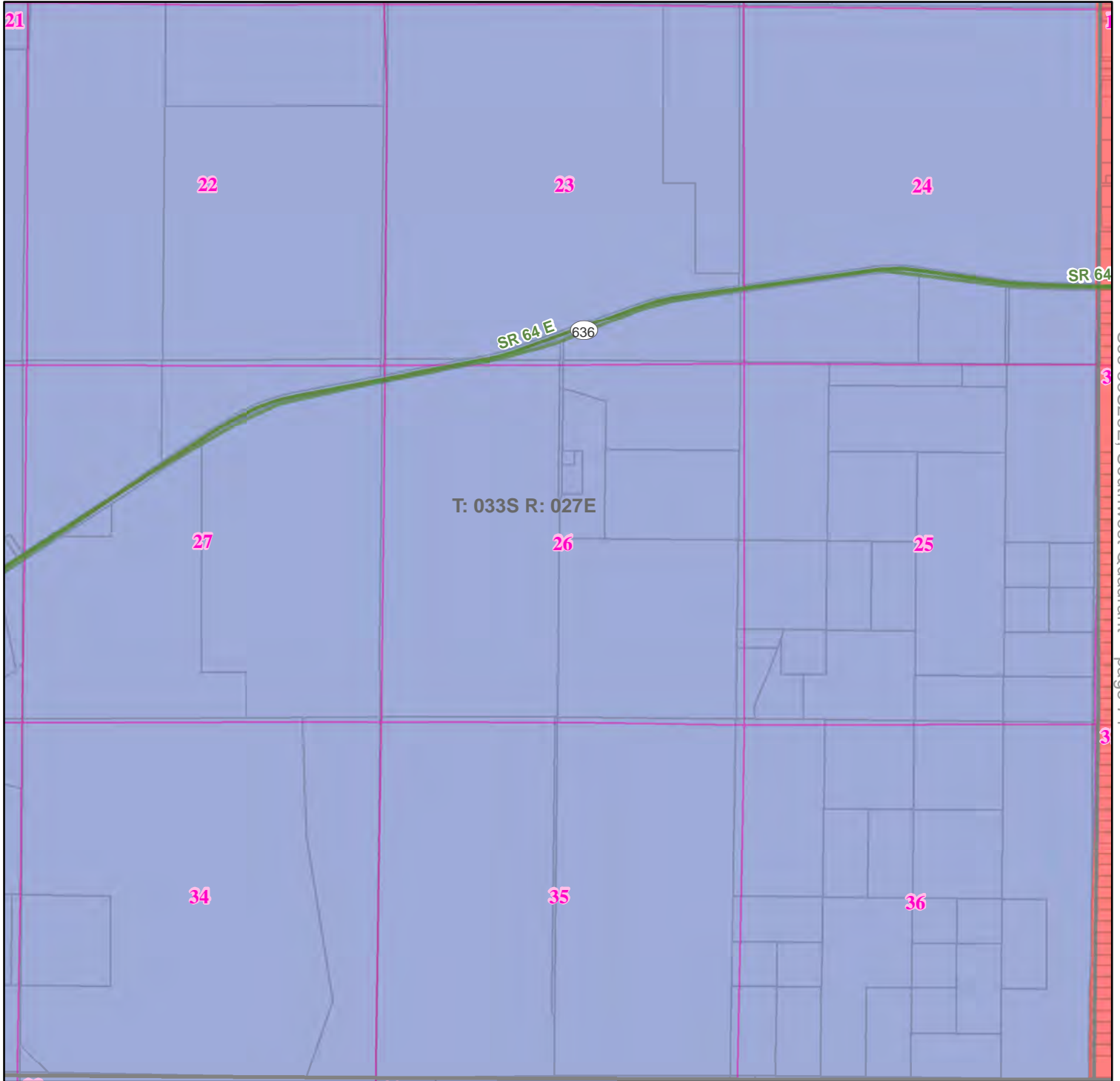
**Quadrant:** Northeast  
**Township:** 33S  
**Range:** 25E  
**County:** HARDEE COUNTY, FL



**DUKE ENERGY - PEACE RIVER ELECTRIC COOP (PRECO)  
TERRITORIAL AGREEMENT  
HARDEE COUNTY**



See 33S27E, Northeast Quadrant -- page 64



See 34S27E, Northeast Quadrant -- page 76

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|-----------------------------------|---------------------|---------|----------------------|
| <b>UTILITY</b>                    | Limited Access      | Water   | County               |
| Duke Energy                       | Highway             | Section | City and Place Names |
| Peace River Electric Coop (PRECO) | Major Road          | Parcel  | City/Place Boundary  |
| Not Part of This Agreement        | Major Railroad Line |         |                      |

**Quadrant: Southeast**  
**Township: 33S**  
**Range: 27E**  
**County: HARDEE COUNTY, FL**

