

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amendment to territorial agreement in Charlotte, Lee, and Collier Counties, by Florida Power & Light Company and Lee County Electric Cooperative.

DOCKET NO. 140210-EU  
ORDER NO. PSC-15-0021-PAA-EU  
ISSUED: January 5, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT  
BETWEEN FLORIDA POWER & LIGHT COMPANY AND  
LEE COUNTY ELECTRIC COOPERATIVE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**BACKGROUND**

On November 3, 2014, Florida Power & Light Company (FPL) and Lee County Electric Cooperative (LCEC) jointly filed a petition for approval of an amendment to the existing territorial agreement (Amendment)<sup>1</sup> between the two Utilities. We approved the existing territorial agreement in 1993, establishing service areas in Charlotte, Collier, Hendry, and Lee Counties.<sup>2</sup> A territorial variance agreement relating to Lee County was approved by this Commission in 1997.<sup>3</sup>

<sup>1</sup> See, Attachment 1, Amendment to Territorial Agreement Between Florida Power & Light Company and Lee County Electric Cooperative.

<sup>2</sup> See, Order No. PSC-93-0705-FOF-EU, issued May 10, 1993, in Docket No. 930092-EU, In re: Joint application for approval of territorial agreement between Florida Power & Light Company and Lee County Electric Cooperative, Inc.

<sup>3</sup> See, Order No. PSC-97-0527-FOF-EU, issued May 7, 1997, in Docket No. 970105-EU, In re: Petition for approval of change in territorial boundary under territorial agreement with Lee County Electric Cooperative, Inc., by Florida Power & Light Company.

The instant petition follows a petition from Babcock Ranch Community Independent Special District (Babcock Ranch) requesting we acknowledge Babcock Ranch as a new municipal electric utility.<sup>4</sup> LCEC, the Florida Electric Cooperatives Association, and Tampa Electric Company filed comments in opposition to Babcock Ranch's Petition. Before we could take the matter under consideration, however, Babcock Ranch, LCEC, and FPL requested the matter be deferred while the parties attempted to resolve their disputes on the matter. On November 4, 2014, the parties advised us that they had reached a settlement agreement in the form of a territorial amendment, which is the subject of the instant matter. In addition, the parties agreed that, "[a]fter the Commission has rendered a Final Order approving the territorial amendment and the time for appeal has lapsed, the District will voluntarily dismiss its notice and petition in this docket."<sup>5</sup>

We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

### **DECISION**

Pursuant to Section 366.04(2)(d), F.S., we have jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.0440(2), F.A.C., provides that in approving territorial agreements, we may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

As stated above, the proposed Amendment alters the territorial boundary between FPL and LCEC in Charlotte, Lee, and Collier Counties to allow both FPL and LCEC to serve the anticipated development more efficiently and avoid unnecessary duplication of facilities in two mostly undeveloped areas where both utilities currently have minimal infrastructure in place. The two areas to be transferred are identified in the proposed Amendment as Exchange Parcels 1 and 2.

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<sup>4</sup> See, Docket No. 140059-EM, established March 24, 2014, In re: Notice of new municipal electric service provider and petition for waiver of Rule 25-9.044(2), F.A.C., by Babcock Ranch Community Independent Special District. Documents providing the notices of opposition, requests for deferral, and announcement of a settlement are all contained in the docket file.

<sup>5</sup> Id., Document No. 06196-14, November 4, 2014, Letter from counsel for Babcock Ranch to Commission Executive Director Baez regarding settlement agreement and requesting deferral of matter pending resolution of Docket No. 140210-EU, In re: Joint petition for approval of amendment to territorial agreement in Charlotte, Lee, and Collier Counties, by Florida Power & Light Company and Lee County Electric Cooperative.

The current territorial boundary line between FPL and LCEC runs through the Babcock Ranch Community Independent Special District, thus resulting in two different utilities serving the Babcock Ranch area. Exchange Parcel 1 includes the western half of Babcock Ranch, as well as adjacent areas in Charlotte and Lee Counties, and is currently within LCEC's service area adjacent to the service area of FPL. The proposed Amendment places Exchange Parcel 1 wholly within an area to be served by FPL.<sup>6</sup>

Exchange Parcel 2, which is about 28 miles southeast of Exchange Parcel 1 in central Collier County, is currently within FPL's service area adjacent to the service area of LCEC. FPL and LCEC agreed to place Exchange Parcel 2 wholly within an area to be served by LCEC.<sup>7</sup> As required by Rule 25-6.0440(1)(a), F.A.C., FPL and LCEC provided us with maps and legal descriptions of the affected areas.

The proposed Amendment specifies that no existing customers will be transferred to the other utility until there is a "Change in Use," which is defined in the proposed Amendment as (1) a change in use of the property, (2) a change requiring reclassification of service, or (3) a change in ownership of the property.

As required by Rule 25-6.0440(1)(d), F.A.C., both FPL and LCEC have contacted their respective customers in the applicable exchange parcels. Each of the exchange parcels has four named customers, comprising fifteen accounts. Of the existing customers, none expressed opposition to the territorial amendment. One customer was in favor of the amendment, and the remainder had no concerns.

#### Reasonableness of the Purchase Price

The proposed Amendment states that any removal of facilities due to a transfer of service from one utility to the other will be at the sole cost of the owner of the facilities being removed. Furthermore, any transfer or exchange of facilities will be at net book value.

#### Reliability of Electric Service

In addition to LCEC continuing to provide uninterrupted electric service to its existing customers within Babcock Ranch, FPL and LCEC agreed to coordinate planning, construction, and service activities to provide timely service to new customers in the Babcock Ranch area. Should circumstances at the time require, LCEC will initially, but temporarily, provide service for no more than two years. During that period, FPL and LCEC have agreed to work expeditiously toward FPL assuming electric service responsibilities for new customers within the Babcock Ranch area.

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<sup>6</sup> See, Attachment 2, Sketch and Legal Description of Proposed Territorial Boundary (Exchange Parcel 1).

<sup>7</sup> See, Attachment 3, Sketch and Legal Description of Proposed Territorial Boundary (Exchange Parcel 2).

**RULING**

We find that the proposed Amendment to the existing territorial agreement between FPL and LCEC is in the best interests of FPL, LCEC, and their respective customers. The proposed Amendment will eliminate any existing or potential uneconomic duplication of facilities, will not cause a decrease in the reliability of electric service to existing or future ratepayers, and will not cause a detriment to the public interest. Therefore, for the reasons outlined herein, we approve the Amendment.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition for approval of amendment to the existing territorial agreement between Florida Power & Light Company and Lee County Electric Cooperative is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of January, 2015.



HONG WANG

Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 26, 2015.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**AMENDMENT TO TERRITORIAL AGREEMENT  
BETWEEN  
FLORIDA POWER AND LIGHT COMPANY  
AND  
LEE COUNTY ELECTRIC COOPERATIVE**

This Amendment to the Territorial Agreement, dated as of October 31, 2014, ("2014 Amendment") is entered into by Florida Power & Light Company ("FPL") and Lee County Electric Cooperative ("LCEC") each of which is a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in Section 366.02(2), Florida Statutes, and which corporations are herein collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, the Parties have an existing Territorial Agreement relating to their respective retail service areas in Charlotte, Collier, Hendry and Lee Counties, Florida, which was approved by the Florida Public Service Commission (the "PSC") by Order No. PSC-93-0705, and which was amended in 1997 and approved by the PSC by Order No. PSC-97-0527 (such agreement and amendment are collectively referred to as the "Territorial Agreement"); and,

**WHEREAS**, the Parties now desire to amend the territorial boundary in the existing Territorial Agreement as it relates to two specified parcels of land: one located in Charlotte and Lee Counties; the other located in Collier County; and,

**WHEREAS**, amending the territorial boundary in the existing Territorial Agreement will avoid uneconomic duplication of services and provide for the cost effective provision of service to utility customers;

**NOW THEREFORE**, in consideration of the following mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to amend the Territorial Agreement as follows:

1. Territorial Exchange. In order to avoid unnecessary duplication of facilities and to serve anticipated development, the Parties agree to amend the boundaries in the Territorial Agreement in order to exchange two mostly undeveloped parcels within their respective retail service territories where both utilities currently have minimal infrastructure in place.

a) The first parcel is currently within the territory boundary of LCEC and includes a portion of the Babcock Ranch Independent Special District ("Special District") and adjacent lands in Charlotte County and adjacent lands in Lee County ("Exchange Parcel 1"). A legal description and sketch of Exchange Parcel 1 is attached as Exhibit "A". Upon approval of this 2014 Amendment by the PSC, Exchange Parcel 1 will be transferred from LCEC to FPL.

b) The second parcel is currently within the territory of FPL and located in Collier County ("Exchange Parcel 2"). A legal description and sketch of Exchange Parcel 2 is attached as Exhibit "B". Upon approval of this 2014 Amendment by the PSC, Exchange Parcel 2 will be transferred from FPL to LCEC.

2. Transition.

a) There are currently 15 existing customer accounts serving 4 named customers in Exchange Parcel 1 and 15 existing customer accounts serving 4 named customers in Exchange Parcel 2 (collectively "Existing Customers"). Those

Existing Customers and the Party by which they are presently served are listed in Exhibit "C" attached hereto and made a part hereof. In order to minimize any impacts on existing customers, each Party shall continue temporarily to serve their respective Existing Customers listed on Exhibit "C" even though the location at which they are using electric service shall be located in the new retail service territory of the other Party as established by this 2014 Amendment. Each Party will have the right and responsibility to provide retail electric service to each of its Existing Customers listed in Exhibit "C" at any location now being served by that utility until there is a "Change In Use" and the Parties mutually agree that their respective distribution facilities will economically support the service to the customer. Within two (2) years of such Change In Use and agreement, that customer will be served by the utility in whose territory the customer lies. For purposes of this 2014 Amendment, a "Change in Use" means: (1) a change in the use of the real property from agricultural to residential or commercial; (2) a change in the use of real property that would normally require reclassification of service under the applicable tariff of either Party; or (3) a change in the use of real property by reason of a change in the ownership or occupancy thereof to any person other than a widow, widower, or divorced spouse of an Existing Customer who received electric service at the same location. In the event there is a change in service pursuant to this section, LCEC and FPL shall coordinate on the economic transfer and/or removal of facilities which would eliminate duplication of facilities or avoid hazardous conditions. Any removal of facilities will be at the sole cost of the owner



of the facilities being removed. Any transfer or exchange of facilities will be at net book value.

b) The Parties agree that electric service will continue to be provided, on an uninterrupted basis, to the current customers served by LCEC within the Special District. The Parties further agree that they shall use reasonable and economic efforts to promptly coordinate their planning, construction and service activities as may be necessary such that electric service shall be available and provided on a timely basis and pursuant to existing tariffs, policies and procedures to new customers within the Special District including, but not limited to, facilities to be constructed by MSKP Town & Country, Utility, LLC, and new customers anticipated to require service in Increment 1 of the proposed development within the Special District. The Parties may agree that LCEC shall provide electric service initially and temporarily in these and other certain areas of the Special District, however, the Parties further agree that service by LCEC should it be required, shall be for a period not to exceed two (2) years after the date the first temporary service meter of LCEC is energized within the Special District. The Parties agree to work expeditiously toward the assumption by FPL of all electric service within the Special District.

c) The Parties also may agree that LCEC, in other areas of Exchange Parcel 1, and FPL, in Exchange Parcel 2, shall provide electric service initially and temporarily to new customers in the respective Exchange Parcels, however, the Parties further agree that such temporary service by LCEC and FPL, should it be

required, shall be for a period not to exceed two (2) years after the date the first temporary service meter is energized.

3. Condition Precedent. The approval of this 2014 Amendment by the PSC without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2014 Amendment shall have no effect whatsoever until such approval has been granted by the PSC, and the date of the PSC's order, if any, granting such approval shall be deemed to be the effective date of the 2014 Amendment

4. Existing Territorial Agreement. All other parts of the Territorial Agreement shall remain in effect.

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IN WITNESS WHEREOF, this 2014 Amendment has been caused to be executed by FPL in its name by its Vice President, and by LCEC in its name by its Chief Executive Officer, on the day and year first written above.

**FLORIDA POWER & LIGHT COMPANY**

By: 

Date: 12/31/14

Name: Manny Miranda

Title: Vice President, Power Delivery

**LEE COUNTY ELECTRIC COOPERATIVE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Dennie Hamilton

Title: Chief Executive Officer

**IN WITNESS WHEREOF**, this 2014 Amendment has been caused to be executed by FPL in its name by its Vice President, and by LCEC in its name by its Chief Executive Officer, on the day and year first written above.

**FLORIDA POWER & LIGHT COMPANY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Manny Miranda

Title: Vice President, Power Delivery

**LEE COUNTY ELECTRIC COOPERATIVE**

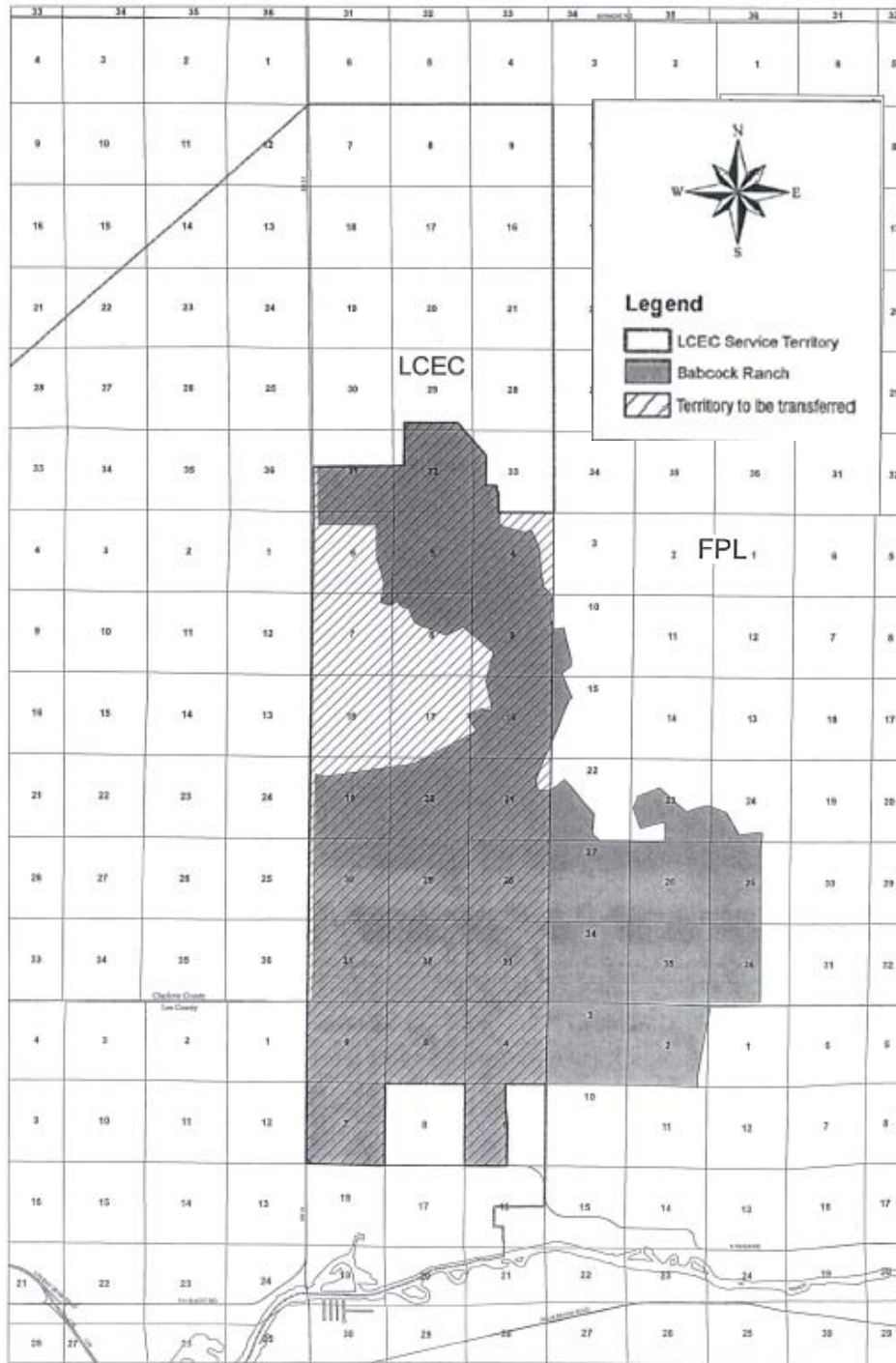
By: 

Date: 10/31/14

Name: Dennie Hamilton

Title: Chief Executive Officer

### EXCHANGE PARCEL 1



**EXCHANGE PARCEL 1  
LEGAL DESCRIPTION OF PROPOSED SERVICE  
AREA TO BE TRANSFERRED FROM LCEC TO FP&L**

**Lee County**

**Parcel 1**

Sections 4, 5, 6, and 7, Township 43 South, Range 26 East, less right-of-way for State Road 31

**Parcel 2**

That part of Section 9, Township 43 South, Range 26 East lying westerly of the following described line and northerly of County Road No. 78:

Commencing at the Northeast corner of said Section 9, thence N89°51'54"W a distance of 2650.21 feet to the North one-quarter corner of Section 9 and the Point of Beginning of the herein described line.

From said Point of Beginning, thence S00°23'25"W a distance of 1330.71 feet to the Southwest corner of the North one-half of the Northeast one-quarter of Section 9, Township 43 South, Range 26 East; thence S06°02'41"E a distance of 1338.42 feet to a point on the North line of the Southeast one-quarter of said Section 9 (said point being 150.00 feet East of the Northwest corner of the Southeast one-quarter of said Section 9); thence S00°22'58"W, parallel with and 150.00 feet East of the West line of the Southeast one-quarter of said Section 9, a distance of 2611.68 feet to a point on the North right-of-way line of County Road No. 78 and the end of said line.

**Charlotte County**

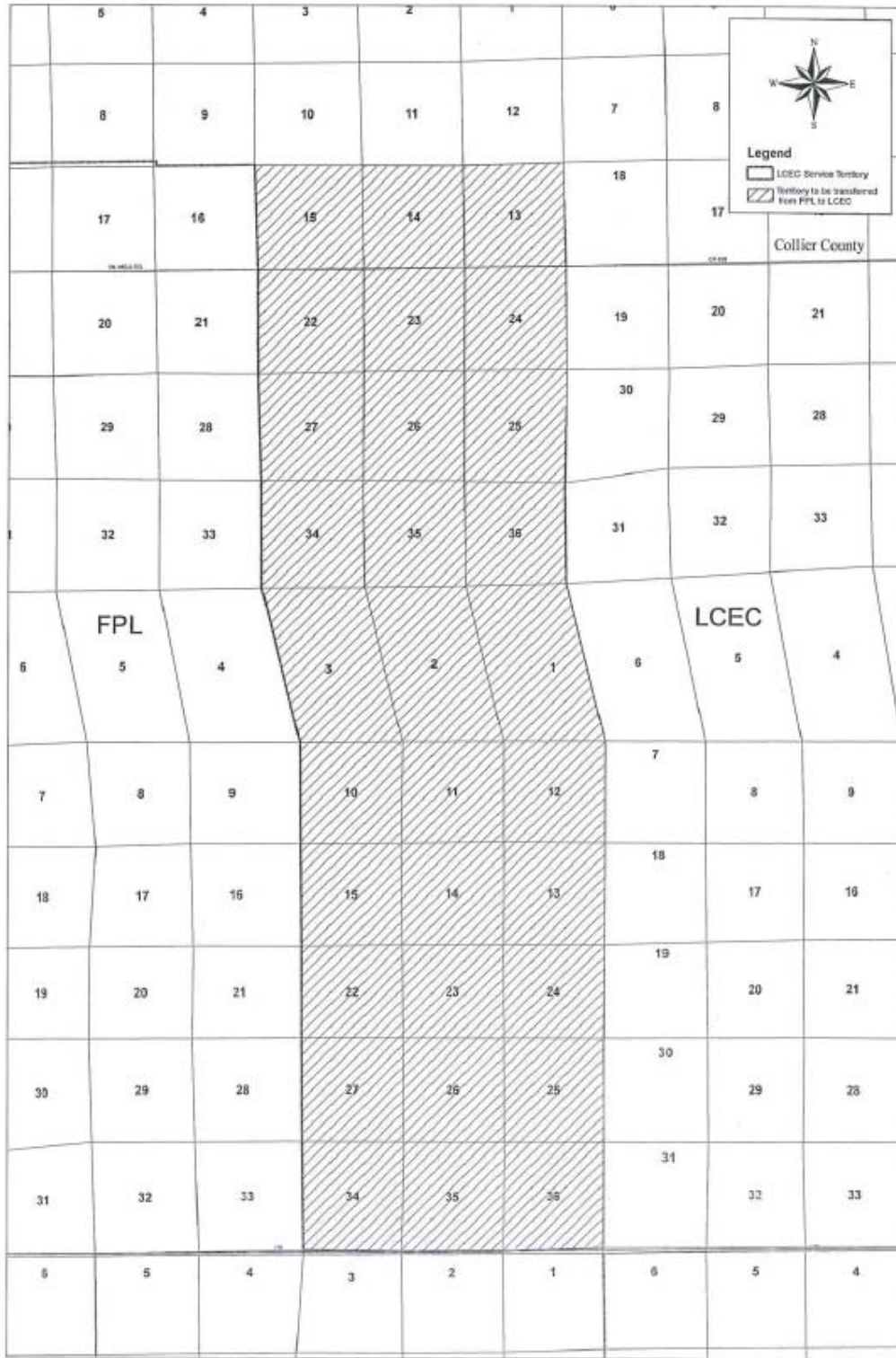
**Parcel 1**

Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33, Township 42 South, Range 26 East, Charlotte County, Florida, less the road right-of-way of State Road 31.

**Parcel 2**

Those portions of Sections 29, 31, 32 and 33, Township 41 South, Range 26 East, Charlotte County, Florida, which lie within the boundaries of the Babcock Ranch Community Independent Special District as established by Chapter 306 of the Laws of Florida (2007), less the road right-of-way of State Road 31.

EXCHANGE PARCEL 2



**EXCHANGE PARCEL 2  
LEGAL DESCRIPTION OF PROPOSED SERVICE  
AREA TO BE TRANSFERRED TO LCEC**

**COLLIER County**

**Parcel 1**

Sections 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36 Township 48 South, Range 28 East

**Parcel 2**

Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36 Township 49 South, Range 28 East