

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amended territorial agreement in Orange and Osceola Counties, by Duke Energy Florida, LLC and Reedy Creek Improvement District.

DOCKET NO. 20170175-EU  
ORDER NO. PSC-2017-0414-PAA-EU  
ISSUED: October 24, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman  
ART GRAHAM  
RONALD A. BRISÉ  
DONALD J. POLMANN  
GARY F. CLARK

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AMENDED TERRITORIAL AGREEMENT

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 August 14, 2017, Duke Energy Florida, LLC (Duke) and the Reedy Creek Improvement District (Reedy Creek) filed a joint petition for approval of an amended territorial agreement (proposed agreement) in Orange and Osceola Counties. The proposed agreement is contained in Attachment A. The maps and written descriptions delineating the area to be served by the proposed agreement are provided in the petition as Exhibits A and B, respectively. Additional maps are contained in the joint petitioners' response to Commission staff's data request filed in this docket on August 31, 2017. Due to the voluminous nature of Exhibits A and B and the maps provided in the data request response, they have not been attached to this Order.

The joint petitioners' territorial agreement was approved by this Commission in 1994 and amended in 2010 (existing agreement).<sup>1</sup> The expiration date of the existing agreement is

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<sup>1</sup> Order No. PSC-94-0580-FOF-EU, issued May 17, 1994, in Docket No. 940071-EU, In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Reedy Creek Improvement District; Order No. PSC-10-0206-PAA-EU, issued April 5, 2010, in Docket No. 090530-EU, In re: Joint Petition for approval to amend territorial agreement by Progress Energy Florida, Inc. and Reedy Creek Improvement District.

September 30, 2017. The joint petitioners stated that they will abide by the existing agreement until we approve the proposed agreement. 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., and Rule 25-6.0440(2), F.A.C., we have jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>2</sup>

Reedy Creek is a special taxing district created by the Florida legislature. Reedy Creek operates like a municipality in that it is authorized to furnish electric service to areas within its defined legal boundary; however, pursuant to its charter, Reedy Creek cannot furnish retail electric power outside of its boundary. Reedy Creek is authorized to furnish electric power to areas in Orange and Osceola Counties.

There are three differences between the existing and proposed agreements, as explained by the joint petitioners in their response to Commission staff's data request. First, the proposed agreement includes modified territorial boundaries. Second, the territorial boundary maps in the proposed agreement have been updated to a geographic information system (GIS) format, thus displaying the boundary lines in greater detail. Third, the term of the existing agreement is 23 years and the term of the proposed agreement is 30 years. After the expiration of the 30-year term of the proposed agreement in 2047, the agreement would remain in effect until and unless either party provides written notice of termination no less than 12 months prior to the termination date.

The proposed territorial boundary changes involve three areas. The boundary changes include two areas, which have been de-annexed by Reedy Creek and will be served by Duke under the proposed agreement: the Black Lake parcel and an area in the vicinity of I-4 and Osceola Parkway. The third boundary modification, an area in the vicinity of County Road (CR) 535 and Apopka Vineland Road, is in the Reedy Creek political boundary and is served by Reedy Creek; however, the area was previously shown as served by Duke. The three boundary changes are detailed in the joint petitioners' response to Commission staff's data request. There are no customer transfers and no facilities will be purchased or transferred; therefore, no noticing was required pursuant to Rule 25-6.0440(1)(d), F.A.C.

The joint petitioners assert that the proposed agreement will avoid duplication of service and wasteful expenditures, it will protect the health and safety of the public from potentially hazardous conditions, and it will not cause a decrease in the reliability of electric service.

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<sup>2</sup> Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

**Conclusion**

After review of the petition, the proposed agreement, and the joint petitioners' response to Commission staff's data request, we find that the proposed agreement is in the public interest and will enable Duke and Reedy Creek to better serve their current and future customers. It appears that the proposed agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, we find that the proposed agreement between Duke and Reedy Creek will not cause a detriment to the public interest and is hereby approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the joint petition by Duke Energy Florida, LLC and the Reedy Creek Improvement District for approval of an amended territorial agreement 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 24th day of October, 2017.



CARLOTTA S. STAUFFER

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 November 14, 2017.

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.

AMENDED TERRITORIAL AGREEMENT

Reedy Creek Improvement District, ("RCID"), Duke Energy Florida, LLC. ("DEF") (collectively, the "Parties") enter into this Amended Territorial Agreement (the "Amended Agreement") on this 3rd day of August, 2017.

WITNESSETH:

WHEREAS, RCID, a special district organized and existing by virtue of legislative authority, and DEF, an electric utility organized under the laws of Florida and is subject to the regulatory jurisdiction of the Florida Public Service Commission pursuant to Section 366.04(2), F.S., are each authorized, empowered and obligated by their corporate charters and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas in Orange and Osceola Counties; and

WHEREAS, RCID and DEF are Parties to a territorial agreement delineating their respective service territories in Orange and Osceola Counties which was approved by the Florida Public Service Commission ("Commission") in Order No. PSC-94-0580-FOF-EU, issued on May 17, 1994, in Docket No. 940071-EU, and amended by Commission Order No. PSC-94-0580-EU, issued April 5, 2010, in Docket No. 090530-EU ("Existing Agreement"); and

WHEREAS, the Parties desire to further amend the Existing Agreement through this Amended Agreement pertaining to Orange and Osceola Counties in order to

continue operational efficiencies and customer service improvements in the aforesaid Counties, while continuing to eliminate circumstances that could give rise to the uneconomic duplication of service facilities and hazardous situations that territorial agreements are intended to avoid; and

WHEREAS, the Commission is empowered by the Florida legislature, pursuant to section 366.04(2)(d), Florida Statutes, to approve territorial agreements and the Commission, as a matter of long-standing regulatory policy, has encouraged retail territorial agreements between electric utilities subject to its jurisdiction based on its findings that such agreements, when properly established and administered by the parties and actively supervised by the Commission, avoid uneconomic duplication of facilities, promote safe and efficient operations by utilities in rendering electric service provided to their customers, and therefore serve the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary line(s) depicted on the maps attached hereto as Exhibit A which delineate and differentiate the Parties' respective Territorial Areas in Orange and Osceola Counties. Additionally, pursuant to Rule 25-6.0440 (10(a), a



written description of the territorial areas served by each Party is attached hereto as Exhibit B.

Section 1.2: RCID Territorial Area. As used herein, the term "RCID Territorial Area" shall mean the geographic areas in Orange and Osceola Counties allocated to RCID as its retail service territory and labeled as "Reedy Creek Improvement District" on the maps contained in Exhibit A.

Section 1.3: Duke Energy Territorial Area. As used herein, the term "Duke Energy Territorial Area" shall mean the geographic areas in Orange and Osceola Counties allocated to Duke Energy as its retail service territory and labeled as "Duke Energy" on the maps contained in Exhibit A.

Section 1.4: Point of Use. As used herein, the term "Point of Use" shall mean the location within the Territorial Area of a Party where a customer's end-use facilities consume electricity, wherein such Party shall be entitled to provide electric service under this Amended Agreement, irrespective of where the customer's point of delivery or metering is located.

Section 1.5: Existing Customers. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either RCID or DEF on the Effective Date of this Amended Agreement.

Section 1.6: New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term of this Amended Agreement at a Point of Use in the territorial area of either Party which has not previously been served by either utility.

Section 1.7: Temporary Service Customers. As used herein, the term "Temporary Service Customers" shall mean customers who are being temporarily served under the temporary service provisions of the Agreement.

Section 1.8: Commission. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.9: Effective Date. As used herein, the term "Effective Date" shall mean the date on which the final Order of the Commission granting approval of this Amended Agreement in its entirety becomes no longer subject to judicial review.

## ARTICLE II

### RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, RCID shall have the exclusive authority to furnish retail electric service within the RCID Territorial Area and DEF shall have the exclusive authority to furnish retail electric service within the DEF Territorial Area. The Territorial Boundary Line shall not be altered or affected by any change that may occur in the corporate limits of any municipality or county lying within the RCID Territorial Area or the DEF Territorial Area, through annexation or otherwise, unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.2: Service to New Customers. The Parties agree that neither will knowingly serve nor attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Sections



2.3, 4.2, and 4.3 below. However, in those instances where the Territorial Boundary Line traverses the property of an individual New Customer or prospective New Customer, the Party in whose service area the preponderance of the Customer's electric energy usage is expected to occur shall be entitled to serve all of the Customer's usage. The Parties will promptly notify the Commission if one Party is going to serve a New Customer whose property spans both Parties' Territorial Areas pursuant to this Section.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer's Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer's Point of Use is located, the other Party may, in its sole discretion, agree in writing to temporarily provide service to such New Customer until such time as the requesting Party provides written notice of its intent to serve the Point of Use. Prior to the commencement of Temporary Service, the Party providing such service shall inform the New Customer of the temporary nature of its service and that the other Party will ultimately serve the New Customer. Any such agreement for Temporary Service which lasts, or is anticipated to last, for more than one year shall be submitted to the Commission for approval in accordance with Section 5.1 hereof. Such Temporary Service shall be discontinued upon written notice from the requesting Party of its intent to provide service, which the Parties shall coordinate to minimize any inconvenience to the customer. The Party providing Temporary Service hereunder shall not be required to

pay the other Party for any loss of revenue associated with the provision of such Temporary Service, nor shall the Party providing temporary service be required to pay the other party any going concern value.

Section 2.4: Referral of Service Request. In the event that a prospective New Customer requests or applies for service from either party to be provided to a Point of Use located in the Territorial Area of the other Party, the Party receiving the request or application shall advise the prospective New Customer that such service is not permitted under this Amended Agreement as approved by the Commission, and shall refer the prospective New Customer to the other Party.

Section 2.5: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Amended Agreement in which either Party has begun to inadvertently provide retail electric service to a customer's Point of Use located within the Territorial Area of the other Party after the Effective Date of this Amended Agreement, service to such customer will be transferred to such other Party at the earliest practical time, but in any event within twelve months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be Temporary Service provided and governed in accordance with Section 2.3 above.

### ARTICLE III

#### TRANSFER OF CUSTOMERS AND FACILITIES

Section 3.1: In General. There are no known customers or facilities to be transferred pursuant to this Amended Agreement.

In the event circumstances arise during the term of this Amended Agreement in which the Parties agree that, based on sound economic considerations or good engineering practices, an area located in the Territorial Area of one Party would be better served if reallocated to the service territory of the other Party, the Parties shall jointly petition the Commission for approval of a modification of the Territorial Boundary line that places the area in question (the "Reallocated Area") within the Territorial Area of the other Party and transfer of the customers located in the Reallocated Area to the other Party.

### ARTICLE IV

#### OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. Other than as expressly provided for herein, no generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder; provided, however, that each Party shall operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other Party.

Section 4.2: RCID Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of RCID to serve any facility of

RCID located in the DEF Territorial Area which is used exclusively in connection with RCID business as an electric utility; provided, however, that RCID shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of DEF in the Duke Energy Territorial Area.

Section 4.3: Duke Energy Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of DEF to serve any DEF facility located in the RCID Territorial Area which is used exclusively in connection with DEF business as an electric utility; provided, however, that DEF shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of RCID in the RCID Territorial Area.

## ARTICLE V

### PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Amended Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of this Amended Agreement in its entirety shall be an absolute condition precedent to the validity, enforceability, and applicability hereof. This Amended Agreement shall have no effect whatsoever until Commission approval has been obtained. Any proposed modification to this Amended Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance hereunder.

Upon approval of the Commission, this Amended Agreement shall be deemed to replace the Existing Agreement between Parties regarding their respective retail service areas in Orange and Osceola Counties.

Section 5.2: Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither Party shall have claim against the other Party arising under this Amended Agreement and the terms of the Existing Agreement shall remain in full force and effect.

## ARTICLE VI

### DURATION

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of thirty years from the Effective Date. After expiration of the thirty year term provided herein, this Amended Agreement shall remain in effect until and unless either Party provides written notice of termination. Such written notice shall be provided as contemplated by Section 8.3 and shall be provided no less than twelve months prior to the date of termination.

## ARTICLE VII

### CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Amended Agreement is intended to define, establish, or affect in any manner, the rights of either Party hereto relative to any other electric utility not a party to this Amended Agreement with respect to the furnishing of retail electric service, but not limited to, the service territory of

either Party. The Parties understand that RCID or DEF may, from time to time and subject to Commission approval, enter into territorial agreements with other electric utilities that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to prevent RCID or DEF from designating any portion of its Territorial Area under this Amended Agreement as the retail service area of such other electric utility.

Section 7.2: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Amended Agreement shall be interpreted and construed, among other things, to further Florida's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generation, transmission, and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties respective obligations to serve.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1: Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Amended Agreement, the only terms and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement, or supplement to this Amended Agreement shall be binding upon either of the Parties hereto unless agreed to in writing by both Parties, and approved by the Commission.



Section 8.2: Successors and Assigns. Nothing in this Amended Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation, other than the Parties, any right, remedy, or claim under or by reason of this Amended Agreement or any provision or conditions hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the Parties and their respective representatives, successors, and assigns.

Section 8.3: Notices. Notices and other written communications contemplated by this Amended Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier, or by confirmed facsimile transmittal, as follows:

To RCID:	To Duke Energy Florida LLC:
John Classe Jr., District Administrator	Harry Sideris, State President
Reedy Creek Improvement District	Duke Energy Florida, LLC
PO Box 10170	PO Box 14042
Lake Buena Vista, Florida 32830	St. Petersburg, Florida 33733
Facsimile: 407-934-6200	Facsimile: 727-820-5041

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

IN WITNESS WHEREOF, the Parties have caused this Amended Agreement to be executed in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

REEDY CREEK IMPROVEMENT DISTRICT

By   
District Administrator

ATTEST:  
  
Secretary

(SEAL)

DUKE ENERGY FLORIDA, LLC

By   
State President

ATTEST:

  
Associate General Counsel

(SEAL)

DUKE ENERGY, INC. LEGAL DEPARTMENT APPROVED BY: _____ DATE: _____
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