

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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COMMISSION  
CLERK

**DATE:** December 4, 2014

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Garl) *EEO PD J.W.D.*  
Office of the General Counsel (Corbari) *KFC*

**RE:** Docket No. 140210-EU – 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.

**AGENDA:** 12/18/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Balbis

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

## Case Background

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

<sup>1</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>2</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.

Docket No. 140210-EU  
Date: December 4, 2014

The instant petition follows a petition from Babcock Ranch Community Independent Special District (Babcock Ranch) requesting the Commission to acknowledge Babcock Ranch as a new municipal electric utility.<sup>3</sup> LCEC, the Florida Electric Cooperatives Association, and Tampa Electric Company filed comments in opposition to Babcock Ranch's Petition. Before the Commission 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 in the matter. On November 4, 2014, the parties advised the Commission that they had reached a settlement agreement in the form of a territorial amendment which is addressed in Issue 1 below. In addition, the parties' notification to the Commission regarding the settlement stated, "[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>4</sup> The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes, (F.S.).

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<sup>3</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>4</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.

### Discussion of Issues

**Issue 1:** Should the Commission approve the proposed amendment to the territorial agreement between FPL and LCEC?

**Recommendation:** Yes. The amendment to the territorial agreement between FPL and LCEC eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, and does not cause a detriment to the public interest; therefore, it should be approved. (Garl, Corbari)

**Staff Analysis:** Pursuant to Section 366.04(2)(d), F.S., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.0440(2), Florida Administrative Code, (F.A.C.), provides that in approving territorial agreements, the Commission 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 the Commission determines 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).

The proposed amendment alters the territorial boundary between FPL and LCEC in Charlotte, Lee, and Collier Counties to allow both utilities to more efficiently serve anticipated development and to avoid unnecessary duplication of facilities in two mostly undeveloped areas where both utilities currently have minimal infrastructure in place. The amendment refers to the two areas to be transferred as exchange parcels 1 and 2.

The current territorial boundary line between FPL and LCEC runs through Babcock Ranch, which would result in two different utilities serving Babcock Ranch. Exchange parcel 1 includes the western half of Babcock Ranch, as well as adjacent areas in Charlotte and Lee Counties, and is currently within the service area of LCEC adjacent to FPL's service area. The amendment places exchange parcel 1 wholly within an area to be served by FPL and is shown in Attachment 1.

Exchange parcel 2, which is about 28 miles southeast of exchange parcel 1 in central Collier County, is currently within the service area of FPL adjacent to LCEC's service area. The utilities agreed to place the exchange parcel 2 wholly within an area to be served by LCEC. As required by Rule 25-6.0440(1)(a), the utilities provided maps and legal descriptions of the affected areas.

The amendment specifies that no existing customers will be transferred to the other utility until there is a "Change in Use," which is defined 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 have 4

named customers, comprising 15 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. The script and letters the utilities used when contacting the customers and a spreadsheet recording the results of the utilities' customer contacts is included in Attachment 2.

*Reasonableness of the Purchase Price*

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

*Conclusion*

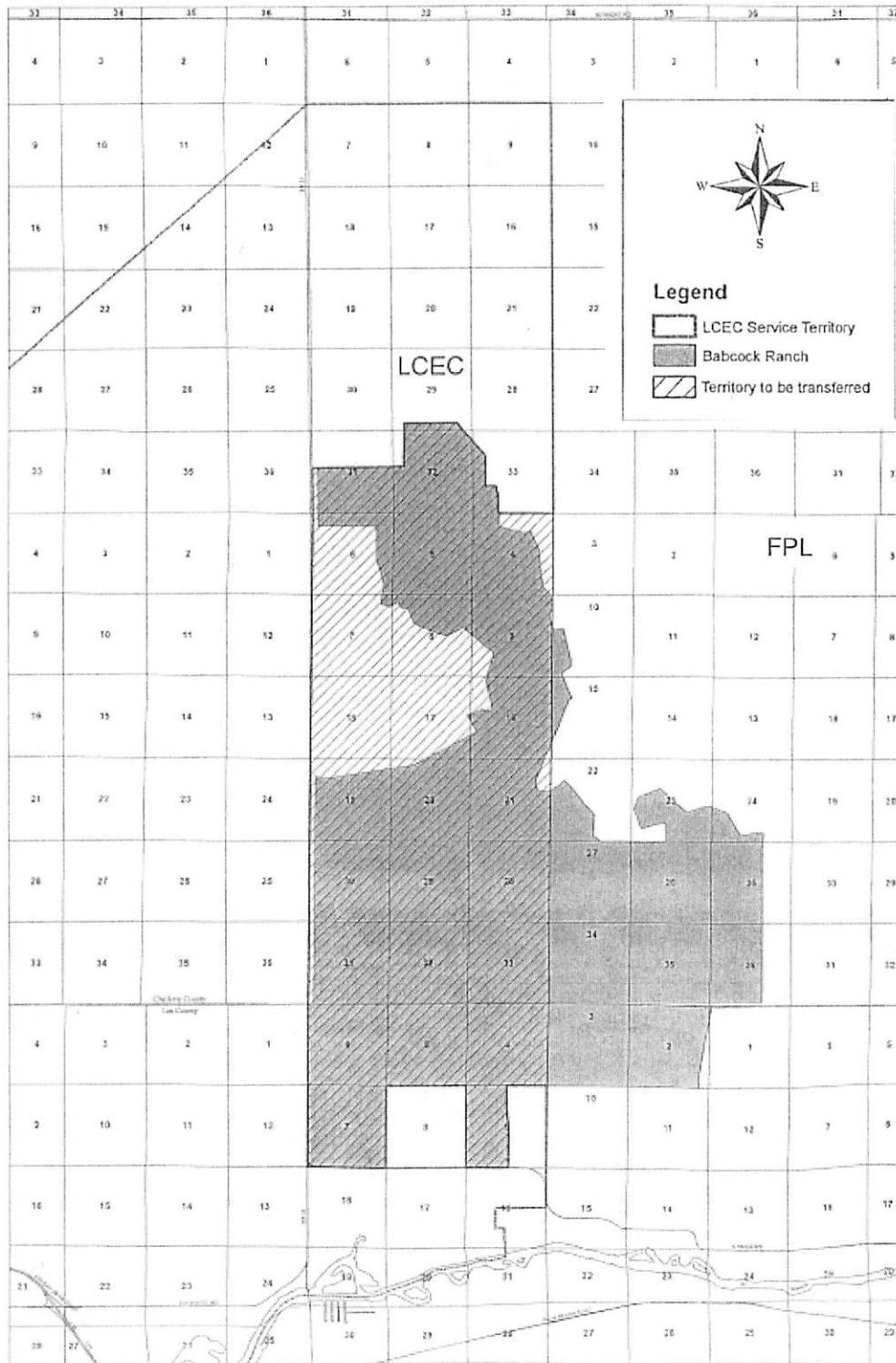
Staff believes that the proposed amendment to the existing agreement is in the best interests of FPL, LCEC, and their respective customers. The amendment to the territorial agreement between FPL and LCEC eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, and does not cause a detriment to the public interest; therefore, it should be approved.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Corbari)

**Staff Analysis:** This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.

### Proposed Territorial Boundary (Exchange Parcel 1)



Source: Document No. 06148-14, Joint Petition for Approval of Amendment to Territorial Agreement – Exhibit A “Legal description and sketch of Exchange Parcel 1,” Docket 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.

## **SCRIPT FOR CALLS TO CUSTOMER AFFECTED BY TERRITORY SWAP**

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Following is proposed language for calls that will be placed to existing customers that are within Babcock Ranch Special District and the proposed boundaries of the Big Cypress.

A representative from each company will be on each call when possible.

The employer representative of the company that is currently providing service will lead the call.

Hello:

My name is (current company) with (company name).

On the phone with me is (replacement company) with (company name).

We want to inform you that there is a planned change in the Florida Public Service Commission approved service territory boundaries that will result in a change of the company that provides electric service in your area.

In the future your area will fall within (name of new provider) service territory and not (name of existing provider) as it is now.

However, even though your facility will be in (name of new company) service territory in the future, you will continue to receive electric service from (name of existing company) until there is a change of use of your existing service.

A change of use would include:

1. A request for new service.
2. A change in ownership or change of name on the account, or,
3. A change in the type of service that would fall under a different tariff.

After a change in use occurs and the utilities agree that their facilities can economically support service to the new customer, that new customer then would be served by the (new company) and would receive service under (new company ) applicable rate tariff in effect at the time. Because LCEC and FPL have different tariffs and their rates change periodically it's not possible to say what those tariffed rates would be. At present LCEC's rates are generally 8 to 10% higher than FPL depending on rate class, but are subject to change at any time. Again, however, your current service provider will not change unless and until there is a change in use.

We want to assure you that both of our companies support this change in electric providers and believe it is in the best interest of our long-term strategic goals of providing low cost and reliable electricity to our customers.

We appreciate your time and would be happy to address any questions you may have.

If nothing further, again thank you for your time.

Source: Document No. 06377-14 FPL-LCEC Territory Amendment – Received via email from Scott Goodland 11/17/14, Docket 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.



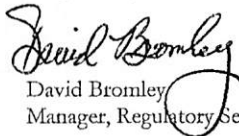
November 24, 2014



On October 23, November 12, and November 17, 2014, Ms. Charlotte Miller (External Affairs Manager, Florida Power & Light Company) contacted you in regard to the Joint Petition that FPL and Lee County Electric Cooperative have filed with the Florida Public Service Commission to amend the territorial boundaries between the two companies. We were unable to reach you directly, however, full details of the matter were provided on voice messaging, including information advising that there are no current plans to switch your electric service provider.

Should you have any question regarding the information provided, or any other information related to the above, please contact Ms. Miller at 239-332-9103.

Respectfully,

  
David Bromley  
Manager, Regulatory Services

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Florida Power & Light Company  
700 Universe Boulevard, Juno Beach, FL 33408

Source: Document No. 06573-14 FPL-LCEC Territory Amendment – Received via email from Scott Goodland 12/3/14, Docket 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.





Lee County Electric Cooperative, Inc.  
Post Office Box 3455  
North Fort Myers, FL 33918-3455  
239-995-2121 • FAX 239-995-7904  
[www.lcec.net](http://www.lcec.net)

November 21, 2014



On October 23 and November 17, 2014, LCEC contacted you in regard to the Joint Petition that FPL and LCEC have filed with the Florida Public Service Commission to amend the territorial boundaries between the two companies. We were unable to reach you directly, however full details of the matter were provided on voice messaging, including information advising that there are no current plans to switch your electric service provider.

Should you have any questions regarding the information provided, or any other information related to the above, please contact LCEC at 239-656-2347.

Sincerely,

A handwritten signature in cursive script that reads "Frank R. Cain, Jr.".

Frank R. Cain, Jr.  
Director, Regulatory and Governmental Relations and CRCO  
Lee County Electric Cooperative, Inc. (LCEC)

cc: Bruce May

Source: Document No. 06573-14 FPL-LCEC Territory Amendment – Received via email from Scott Goodland 12/3/14, Docket 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.

**Contacts with Exchange Parcel 1 Customers Currently Served by LCEC**

Row No. from Exhibit "C" to Appendix "A" of Exchange Parcel 1 Customers*	Dates of Contact	Comments
1 to 12	10/23/2014, 11/17/2014	Spoke to Customer. Provided full messaging. The customer expressed no concerns. During follow-up call customer expressed thanks for the follow-up call and had no questions.
13	10/23/2014, 11/4/2014, 11/17/2014, 12/2/14	Left three voice messages with full messaging. Calls were not returned. When able to speak with the customer, the customer expressed no concerns about the amended service area.
14	10/23/2014, 11/17/2014, 12/2/14	Left two voice messages with full messaging. Calls were not returned. When able to speak with the customer, the customer expressed no concerns about the amended service area.
15	10/23/2014, 11/10/2014, 11/17/2014	Spoke to customer. Provided full messaging. The Customer expressed thanks and indicated there were no questions.

Source: Document No. 06573-14 FPL-LCEC Territory Amendment – Received via email from Scott Goodland 12/3/14, Docket 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.

**Contacts with Exchange Parcel 2 Customers Currently Served by FPL**

Row No. from Exhibit "C" to Appendix "A" of Exchange Parcel 2 Customers*	Dates of Contact	Comments
1 to 3	10/23/2014, 11/17/2014	Left voice messages with full details. When able to speak with the customer, the customer expressed appreciation for the call.
4 to 14	10/23/2014, 11/12/2014, 11/17/2014, 12/3/14	Left voice messages with full details. When able to speak with the customer, the customer expressed no concerns about the amended service area.
15	10/23/2014, 11/12/2014, 11/17/2014	Left voice messages with the customer and gave full details. When able to speak with the customer, the customer expressed appreciation for the call and asked to be notified if a meter is ever changed out in case an outage needs to be coordinated.

Source: Document No. 06573-14 FPL-LCEC Territory Amendment – Received via email from Scott Goodland 12/3/14, Docket 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.

**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".

**W I T N E S S E T H**

**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 Bahcock 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.

(Remainder of page intentionally left blank)



**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