

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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**DATE:** December 27, 2018

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

**FROM:** Division of Economics (Guffey) *SKG PND EJD PSH*  
Office of the General Counsel (Nieves) *ON JSC*

**RE:** Docket No. 20180159-EU – Joint petition for approval of amendment to territorial agreement in Hardee, Highlands, Polk, and Osceola Counties, by Peace River Electric Cooperative and Duke Energy Florida, LLC.

**AGENDA:** 01/08/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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COMMISSION  
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## Case Background

On August 31, 2018, Peace River Electric Cooperative (PRECO) and Duke Energy Florida, LLC (DEF) filed a joint petition for approval of an amendment to their current territorial agreement in Hardee, Highlands, Polk, and Osceola Counties. The proposed agreement is shown in Attachment A and a map depicting the current service territories and proposed changes is shown in Attachment B to this recommendation. Detailed maps delineating the service boundaries and their written descriptions are provided in petition Exhibits A and B, respectively. Due to their voluminous nature, the detailed maps are not attached to this recommendation.

In 1994, the Commission approved a territorial agreement that established the boundaries for the utilities' service territories in the counties mentioned above.<sup>1</sup> The 1994 agreement contained a provision permitting DEF (Florida Power Corporation at the time) to provide transmission level electric service (69 kilovolt and higher) to certain phosphate mining companies in PRECO's service territory. The mining companies have unique service requirements and PRECO did not have the appropriate facilities to meet the phosphate customers' transmission level electric needs.

In 2006, the Commission approved an amendment to Sections 1.9 and 2.4 of the 1994 territorial agreement.<sup>2</sup> These sections address the provision of electric service to the phosphate mining companies in PRECO's service territory and the 2006 amendment clarified the parties' obligations with respect to the existing phosphate mining customers in PRECO's service territory. The number of phosphate mining customers served by DEF in PRECO's service territory, pursuant to the 1994 territorial agreement, decreased from nine customers in 1994 to two customers in 2006. The 2006 agreement will expire on December 12, 2019.

PRECO and DEF entered into the proposed territorial agreement and filed the instant petition. The proposed agreement replaces the current 2006 agreement in its entirety while incorporating many provisions of the current agreement. Under the proposed agreement the territorial boundaries have been modified and, if approved, the agreement would result in the transfer of 2,858 customers from DEF to PRECO and 28 customers from PRECO to DEF.

During the review of this joint petition, staff issued a joint data request to DEF and PRECO on November 8, 2018, for which responses were received on November 20, 2018. Staff also had follow-up questions for which responses were received on December 20, 2018. The responses have been placed in the docket file. The Commission has jurisdiction over this matter pursuant to Section 366.04(2)(d), Florida Statutes (F.S.).

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<sup>1</sup> Order No. PSC-94-1522-FOF-EU, issued December 12, 1994, in Docket No. 940376-EU, *In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Peace River Electric Cooperative, Inc.*

<sup>2</sup> Order No. PSC-06-0673-PAA-EU, issued August 7, 2006, in Docket No. 060277-EU, *In re: Joint petition for approval of territorial amendment in Polk, Hardee, Highlands, Manatee, and Osceola Counties by Progress Energy Florida, Inc. and Peace River Electric Cooperative, Inc.*

## Discussion of Issues

**Issue 1:** Should the Commission approve the joint petition by DEF and PRECO for approval of their territorial agreement in Hardee, Highlands, Polk, and Osceola Counties?

**Recommendation:** Yes. The Commission should approve the joint petition by DEF and PRECO for approval of their territorial agreement in Hardee, Highlands, Polk, and Osceola Counties. The proposed territorial agreement is in the public interest and will enable DEF and PRECO to serve their customers in an efficient manner. (Guffey)

**Staff Analysis:** Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>3</sup>

Through the proposed agreement, the joint petitioners desire to revise the service area boundaries within the four-county area in order to serve customers more reliably and economically. Under the proposed agreement, 2,858 customers in Hardee County and a small area in southern Polk County will be transferred from DEF to PRECO (409 commercial, 6 industrial, and 2,443 residential customers). The petitioners explained in their response to staff's data request that over the years the service areas of the two utilities have overlapped and resulted in duplicate electric service facilities and that such evolution is not unusual in rural areas. As an example, the petitioners stated that in Hardee County, DEF has facilities on one side and PRECO has facilities on the other side of the same road. The petitioners stated that transferring customers from DEF to PRECO will eliminate the duplication of services, create operational efficiencies for both utilities, and will ensure customers continue to receive safe and reliable service.

In addition to the customer transfers discussed above, 28 PRECO customers will be transferred to DEF (two commercial and 26 residential customers). The petitioners stated that during due diligence field surveys of the service territory, 28 customers located in DEF's service territory were identified as being inadvertently being served by PRECO. All the customers are expected to be transferred within 36 months of the effective date of this agreement and the petitioners will notify the Commission in writing if additional time is needed. The territorial boundary maps have been modified to reflect the customer transfers and have been updated to a GIS format to show the lines in greater detail.<sup>4</sup> Additionally, parcels that were divided (between the two electric providers) by the prior territorial boundary lines have been modified to eliminate split parcels.

The petitioners explained that the customer transfer process includes the following steps: planning and coordinating between multiple departments of each utility, seeking Commission approval of the proposed agreement, conducting engineering studies, developing customer communications plan, evaluating facilities, conducting various field reviews, and conducting individual engineering work requests designed for each customer being transferred.

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<sup>3</sup> Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

<sup>4</sup> Composite Exhibit A of the petition.

In accordance with Rule 25-6.0440(1)(d), F.A.C., the petitioners state that prior to the filing of this petition, the impacted customers were notified by mail of the transfer and provided a description of the differences in rates between DEF and PRECO.<sup>5</sup> As of July 2018, the bill for a residential customer using 1,000 kilowatt hours (kWh) was \$128.78 for PRECO and \$124.16 for DEF. As of July 2018, the bill for a commercial non-demand customer using 1,500 kWhs was \$207.63 for PRECO and \$189.41 for DEF. Customer deposits for DEF and PRECO customers will be applied to their last electric bill and any surplus will be refunded directly to the customers.

Additionally, the joint petitioners held an open house in Wauchula on August 14, 2018, for customers affected by the proposed transfers. Issues and concerns discussed at the open house were regarding differences in rates, billing, customer deposits, and residential seasonal service programs. The petitioners stated that PRECO and DEF had several representatives present to answer questions and there were no outstanding concerns after the open house. The petition includes customer notification letters and a summary of customer issues and concerns stated at the open house.<sup>6</sup>

Pursuant to Section 2.5 of the proposed agreement, DEF provides electric service to a phosphate mining customer in PRECO's service territory. DEF's service to the mining customer is limited to the electric requirements directly associated with the mining operations. The phosphate mining customer is referred to as a Special Industrial Customer in the agreement. The agreement provides that once the Special Industrial Customer operating in PRECO's service territory completes its mining operations, all rights to serve the Special Industrial Customer in PRECO's service territory will revert back to PRECO.

Pursuant to Section 3.4 of the proposed agreement, either utility may elect to purchase electric distribution facilities exclusively for providing electric service to the transferred customers. To determine the facilities' value, the utilities will use a common engineering cost estimation methodology such as the Handy-Whitman index. In response to staff's data request, the joint petitioners stated that they have not yet made a final decision regarding transferring or purchasing facilities, but will undertake a valuation of facilities once the proposed agreement is approved by the Commission.

Pursuant to Section 1.14 of the proposed agreement, the effective date of the agreement will be the date on which a final Order is issued by the Commission. The proposed agreement has been negotiated for an initial term of 30 years and may automatically be extended for succeeding periods of five years. The agreement may be terminated by either party upon one year's written notification to the other utility. Section 5.1 of the agreement states that any modifications to the agreement must be submitted to the Commission for approval.

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<sup>5</sup> Exhibit F of the petition.

<sup>6</sup> Attachment 1 of the petition.

### **Conclusion**

After review of the petition, the proposed territorial agreement, and the joint petitioners' responses to staff's data request, staff believes that the proposed amendments to the territorial agreement are in the public interest and will enable DEF and PRECO to serve their customers in an efficient manner. The joint petitioners in their responses state that they have worked collaboratively to structure the proposed amendments to their territorial agreement and that it furthers the goals of avoiding duplication of service and enables them to achieve operational efficiency. It appears that the proposed amendments will eliminate any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service to the customers. As such, staff believes that the proposed territorial agreement between DEF and PRECO will not cause a detriment to the public interest and recommends that the Commission approves it.

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

**Recommendation:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Nieves)

**Staff Analysis:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

Territorial Agreement Between  
Duke Energy Florida, LLC  
And  
Peace River Electric Cooperative, Inc.  
Polk, Hardee, Highlands, and Osceola Counties

**AGREEMENT**

**Section 0.1:** Duke Energy Florida, LLC d/b/a Duke Energy (DEF) and Peace River Electric Cooperative, Inc. (PRECO) (collectively, the “Parties” and individually, a “Party”) enter into this Territorial Agreement (the “Agreement”) on this 31st day of August, 2018.

**WITNESSETH:**

**Section 0.2:** WHEREAS, PRECO, by virtue of Chapter 425, Florida Statutes, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, governmental agencies and political subdivisions, and to other persons, as defined by the laws of Florida, and pursuant to such authority, presently, furnishes electricity and power to members and customers in areas of Polk, Hardee, Highlands, and Osceola counties<sup>1</sup>; and

**Section 0.3:** WHEREAS, DEF, by virtue of Chapter 425, Florida Statutes, is authorized and empowered to furnish electricity to customers throughout the State of Florida, and pursuant to such authority, presently, furnishes electric service to customers in areas of Polk, Hardee, Highlands, and Osceola counties; and

**Section 0.4:** WHEREAS, PRECO and DEF are Parties to a currently effective territorial agreement approved by the Florida Public Service Commission ( the “Commission”) in Order No. PSC-94-1522-FOF-EU, issued December 12, 1994 and in Order PSC-2006-0742-CO-EU, issued September 1, 2006, in Docket No. 20060277-EU (the “Existing Agreement”), which delineates the Parties’ respective service territories in Polk, Hardee, Highlands and Osceola counties; and

**Section 0.5:** WHEREAS, the Existing Agreement has a term of twenty five years through December 12, 2019, and provides for automatic renewal for another twenty five year period with prerequisite approval by the Commission.

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<sup>1</sup> PRECO presently furnishes retail electric service in Manatee and DeSoto counties, however, those territorial areas are not contiguous to any DEF territorial areas and therefore are not part of this agreement.



**Section 0.6:** WHEREAS, the Parties desire to amend and restate the Existing Agreement in its entirety through this amended Agreement to gain further operational efficiencies and customer service improvements in their respective retail service areas, while continuing to eliminate circumstances giving rise to uneconomic duplication of service facilities; and;

**Section 0.7:** WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties seek to minimize costs to their respective rate payers by avoiding duplication of generation, transmission and distribution facilities; and

**Section 0.8:** WHEREAS, the Commission has previously recognized that any such duplication of facilities results in needless and wasteful expenditures and may create hazardous conditions, both being detrimental to the public interest; and

**Section 0.9:** WHEREAS, the Parties desire to continue to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous conditions, and in furtherance of such desire have established Territorial Boundary Lines to delineate their respective retail Territorial Areas, subject to the approval of the Commission; and

**Section 0.10:** WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve territorial agreements and resolve territorial disputes between rural electric cooperatives and other electric utilities under its jurisdiction, has often recognized the wisdom of such territorial agreements, and held such agreements, when properly presented to the Commission are advisable in proper circumstances, and, indeed, in the public interest;

**Section 0.11:** NOW, THEREFORE, in consideration of the premises of aforesaid and the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1:** Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" shall mean the boundary lines which circumscribe the geographic areas

shown on the maps attached hereto as **Composite Exhibit "A"**, which differentiate and divide the PRECO Territorial Areas from the DEF Territorial Areas in Polk, Hardee, Highlands, and Osceola counties. The portions of the counties which are not subject to this agreement are marked on the maps as "Not Part Of This Agreement." Additionally, as required pursuant to Rule 25-6.0440(1)(a), F.A.C., a written description of the territorial areas served is attached as **Exhibit "B"**. If there are any discrepancies between Composite Exhibit "A" and Exhibit "B", then the territorial boundary maps in Composite Exhibit "A" shall prevail.

**Section 1.2: PRECO Territorial Area.** As used herein, the term "PRECO Territorial Area" shall mean the geographic areas in Polk, Hardee, Highlands, and Osceola counties allocated to PRECO as its retail service territory and labeled as "PRECO" on the maps contained in Composite Exhibit "A."

**Section 1.3: DEF Territorial Area.** As used herein, the term "DEF Territorial Area" shall mean the geographic areas in Polk, Hardee, Highlands, and Osceola counties allocated to DEF as its retail service territory and labeled as "DEF" on the maps contained in Composite Exhibit "A."

**Section 1.4: Transmission Line.** As used herein, the term "Transmission Line" shall mean any electric line of either party having a rating of 69kV or greater.

**Section 1.5: Distribution Line.** As used herein, the term "Distribution Line" shall mean any electric line of either party having a rating of up to, but not including 69 kV.

**Section 1.6: Person.** As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

**Section 1.7: New Customer.** As used herein, the term "New Customer" shall mean any person that applies to either PRECO or DEF for retail electric services after the Effective Date of this Agreement at a Point of Use in the Territorial Area of either Party.

**Section 1.8: Existing Customer.** As used herein, the term “Existing Customer” shall mean any person receiving retail electric service from either PRECO or DEF on the Effective Date of this Agreement.

**Section 1.9: Special Industrial Customers.** As used herein, the term “Special Industrial Customers” shall mean phosphate mining customers in PRECO’s service territory.

**Section 1.10: Extra-Territorial Customers.** As used herein, the term “Extra Territorial Customers” shall mean any person receiving retail electric service from either PRECO or DEF on the Effective Date of this Agreement who are located in the Territorial Area of the other Party established by this Agreement.

**Section 1.11: Temporary Service Customers.** As used herein, the term “Temporary Service Customers” shall mean any person being served under the temporary service provisions of the Agreement in Section 2.3.

**Section 1.12: 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 retail service under this Agreement, irrespective of where the customer’s point of delivery or metering is located.

**Section 1.13: Commission.** As used herein, the term “Commission” shall mean the Florida Public Service Commission.

**Section 1.14: 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 Agreement in its entirety becomes no longer subject to judicial review.

**ARTICLE II**  
**AREA ALLOCATIONS AND SERVICE TO CUSTOMERS**

**Section 2.1: Territorial Allocations.** Except as otherwise specifically provided herein, during the term of this Agreement, PRECO shall have the exclusive authority to furnish retail electric service within the PRECO 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 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 of them will knowingly serve or 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 Section 2.3 of this Agreement.

**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 agree, in writing, to temporarily provide service to such New Customer. Prior to the commencement of temporary service, the Party providing such service shall inform the New Customer of the temporary nature of such service and that the other Party will ultimately serve the customer. In the event any such temporary service exceeds a period of one year, the Parties shall submit a list of said temporary services exceeding one year to the Commission for approval.

In conjunction with such discontinuance, the Party providing temporary service shall be compensated by the requesting Party in accordance with Section 3.4 for its distribution facilities used exclusively to provide such service, which the other Party may elect to acquire, but the other Party shall not be entitled to compensation for any loss of revenues for the period during which such temporary service is provided.

Subject to the exceptions for temporarily providing service provided for in the immediately preceding paragraph, in the event that a New Customer or 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 such a request or application shall refer the New Customer or prospective New Customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other Party of such request or application.

**Section 2.4: Correction of Inadvertent Service Errors.** If any situation is discovered during the term of this Agreement in which either Party is inadvertently providing retail electric service to a customer's Point of Use located within the Territorial Area of the other Party, service to such customer will be transferred to such other Party, and service by the other Party shall be established at the earliest practical time, but in any event, within twelve (12) 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.

**Section 2.5: Service to Special Industrial Customer.** DEF provides retail electric service to a single phosphate mining customer in PRECO's service territory. This customer has unique service requirements due to the nature of its businesses. In order to provide safe and efficient service to this customer and to avoid uneconomic duplication of service and facilities, the Parties have agreed that DEF will provide retail electric service to this Special Industrial Customer, and its successors and assigns, but only in that portion of PRECO's service territory depicted in the maps attached hereto as **Composite Exhibit "C"** as specifically provided herein. Service to the Special Industrial Customer shall be limited to the electric requirements directly associated with the mining operations of this customer at present locations and expansions of present locations in that portion of PRECO's Territorial Area depicted in **Composite Exhibit "C."** Except as otherwise specifically provided for in this Agreement, PRECO will continue to provide retail electric service to all other customers in its service territory, and DEF's limited right to serve the Special Industrial Customer shall not affect PRECO's right to serve such other customers. Further, once the Special Industrial Customer currently operating in PRECO's service

territory completes its mining operations, all rights to serve Special Industrial Customers in PRECO's Territorial Area will revert back to PRECO. Consistent with the provisions of Sections 3.3 and 3.4 of this Agreement, any substations owned by DEF within PRECO's service territory that are used exclusively to serve the Special Industrial Customer may be sold by DEF to PRECO for the replacement cost of such facilities, less depreciation, once the Special Industrial Customer currently operating in PRECO's service territory completes its mining operations.

**ARTICLE III**  
**TRANSFER OF CUSTOMERS AND FACILITIES**

**Section 3.1: In General.** In order to achieve the operational efficiencies and other benefits contemplated by this Agreement, except as provided in Section 2.5, all Extra-Territorial Customers of either Party shall be served by the Party in whose Territorial Area they are located in at the earliest practical time, consistent with sound utility practices and reasonable customer notice. Accordingly, no later than thirty-six (36) months after the Effective Date of this Agreement, except as provided in Section 2.5 all Extra-Territorial Customers located in the PRECO Territorial Area who are served by DEF on the Effective Date shall be transferred to and thereafter served by PRECO, and all Extra-Territorial Customers located in the DEF Territorial Area who are served by PRECO on the Effective Date of this Agreement shall be transferred to and thereafter served by DEF.

In accordance with Rule 25-6.0440(1)(d), F.A.C., the affected Extra-Territorial Customers subject to transfer have been sent written notification of this Agreement and the transfer provisions described above. Sample copies of the letters providing such notification are attached as **Exhibit F**.

In the event that circumstances arise during the term of this 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.

**Section 3.2: Transfer of Extra-Territorial Customers.** The Extra-Territorial Customers currently served by PRECO and subject to transfer to DEF pursuant to this Agreement are listed by the service address and/or other identifying factor, in **Exhibit D**, hereto. The Extra-Territorial Customers currently served by DEF and subject to transfer to PRECO pursuant to this Agreement are listed by the service address and/or other identifying factor, in **Exhibit E**, hereto.

**Section 3.3: Transfer of Related Service Facilities.** In conjunction with the transfer of Extra-Territorial Customers pursuant to Sections 3.1 and 3.2 above, the receiving Party may elect to purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service to the transferred customers for an amount to be determined in accordance with Section 3.4 below.

**Section 3.4: Compensation for Transferred Facilities.** Should the receiving Party elect to purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service, the receiving Party shall compensate the transferring Party in an amount based upon the replacement cost (new), less depreciation calculated on a straight line basis over the life of the asset (facility) as determined from the transferring Party’s books and records. The replacement cost shall be determined by applying a cost calculator such as the Handy Whitman index or a common engineering cost estimation methodology to the original cost, as long as both Parties apply the same estimation method.

**Section 3.5: Transfer Segment Closings.** The Parties acknowledge that it may be more efficient to accomplish a particular transfer in segments or phases. The Parties shall mutually agree on a closing date for each transfer segment, allowing sufficient time for the Parties to identify the customers and facilities to be transferred; to determine the compensation for transferred customers and facilities; and to prepare the appropriate closing statements, assignments, and other instruments to transfer and convey the transferring Party’s interest in the electric distribution facilities to the receiving Party pursuant to Section 3.3 above. At the closing, the receiving Party shall pay the transferring Party the compensation due it, and the transferring

Party shall execute and deliver to the receiving Party the assignments and other instruments referred to above.

**Section 3.6: Transfer Instruments.** For each transfer made under this Agreement, the transferring Party will make, execute, and deliver to the receiving Party a conveyance, deed or other instrument of transfer, as is appropriate, in order to convey all rights, titles and interests of the transferring Party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving Party.

**Section 3.7: Time of Payment.** All payments from the receiving Party to the transferring Party determined in accordance with this section shall be made in cash within 60 days of the presentation of an invoice from the transferring Party.

#### **ARTICLE IV** **OPERATION AND MAINTENANCE**

**Section 4.1: Facilities to Remain.** Except as expressly provided herein, a generating plant, transmission line, substation, distribution line or related facility now or hereafter constructed or used by either party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its customers by either of the Parties, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each party shall operate and maintain all such plants, lines, substations or facilities in such a manner as to minimize any interference with the operations of the other party.

**Section 4.2: PRECO Facilities to be served.** Nothing herein shall be construed to prevent or in any way inhibit the right and authority of PRECO to serve any facility of PRECO located in the DEF Territorial Area; provided, however, that PRECO shall construct, operate, and maintain its lines and facilities in such a manner as to minimize any interference with the operations of DEF in the DEF Territorial area.



**Section 4.3:** **DEF 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 facility of DEF located in the PRECO Territorial Area; provided, however, that DEF shall construct, operate and maintain its lines and facilities in such a manner as to minimize any interference with operations of PRECO in the PRECO Territorial Area.

**ARTICLE V**  
**PREREQUISITE APPROVAL**

**Section 5.1:** **Commission Approval.** The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute prerequisite to the validity, enforceability, and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's Order, if any, granting initial Commission Approval of this Agreement shall be deemed to be the Effective Date of this Agreement. Any proposed modification to this 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 of this Agreement.

**Section 5.2:** **No Liability in the Event of Disapproval.** In the event approval of this Agreement pursuant to Section 5.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document or on account of such nonattainment of approval.

**Section 5.3:** **Supersedes Prior Agreements.** Upon approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties regarding their respective retail service areas in Polk, Hardee, Highlands, and Osceola counties.

**ARTICLE VI**  
**DURATION**

**Section 6.1:** This Agreement shall become effective upon approval by the Commission and shall continue in effect until termination, or until supplemented and amended by mutual written agreement of the parties and approval by the Commission, but in no event for a period exceeding thirty (30) years from the date of the Commission's initial Order approving this Agreement. Thereafter, the Agreement may automatically be extended for succeeding periods of five (5) years except that this Agreement may be terminated by either Party after expiration of the thirty (30) year term period or succeeding five (5) year period upon one (1) year's written notice to the other Party.

**ARTICLE VII**  
**CONSTRUCTION OF AGREEMENT**

**Section 7.1: Intent and Interpretation.** It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of approving territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction; to further the State's policy of actively regulating and supervising the service territories of electric utilities; and supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; and avoiding uneconomic duplication of transmission and distribution facilities.

**Section 7.2: Other Electric Utilities.** Nothing in this Agreement shall restrict or affect in any manner the right of either Party to establish its retail service area with respect to the retail service territory of any other electric utility not a party to this Agreement. The Parties understand that PRECO 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 PRECO or DEF from designating any portion of its Territorial Area under this Agreement as the service area of such other electric utility.

**Section 7.3: Bulk Power for Resale.** Nothing herein shall be construed to prevent either party from providing bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in the *United States of America v. Florida Power Corporation and the Tampa Electric Company*, United States District Court for the Middle District of Florida, Case No. 68-297-Civ-T (“the Final Judgment”), regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final Judgment.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.1: Negotiations.** Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article V, Section 5.1 hereof.

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

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

To Peace River Electric Cooperative, Inc.:

Randall W. Shaw, General Manager/CEO  
Peace River Electric Cooperative, Inc.  
P.O. Box 1310  
Wauchula, Florida 33873  
Fax: 855-278-7403

To Duke Energy Florida:

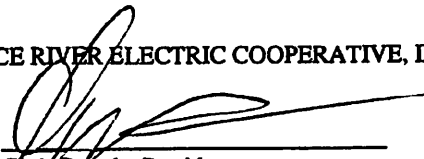
Catherine Stempien, State President  
Duke Energy Florida, LLC  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Fax: 727-820-5044

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 hereby have caused this 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.

PEACE RIVER ELECTRIC COOPERATIVE, INC.

By:

  
Chris Poffale, President  
P.O. Box 1310  
Wauchula, Florida 33873

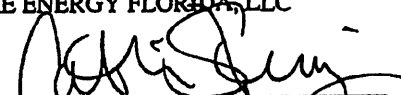
ATTEST:

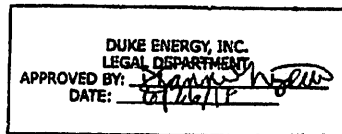
By:

  
Ellen Bachman, Secretary

DUKE ENERGY FLORIDA, LLC

By:

  
Catherine Stempien, State President  
P.O. Box 14042  
St. Petersburg, Florida 33733



ATTEST:

By:

  
Dianne Triplett, Deputy General Counsel

**DUKE ENERGY - PEACE RIVER ELECTRIC COOP (PRECO)  
 TERRITORIAL AGREEMENT  
 HARDEE, HIGHLANDS, OSCEOLA, and POLK COUNTIES**

