

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-

DATE: June 1, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (P. Kelley, Hampson) *JGH*
Office of the General Counsel (Brownless) *JSC*

RE: Docket No. 20230035-EU – Joint petition for approval of temporary territorial variance, by Duke Energy Florida, LLC and Peace River Electric Cooperative, Inc.

AGENDA: 06/13/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 15, 2023, Duke Energy Florida, LLC (Duke) and Peace River Electric Cooperative, Inc. (PRECO), (jointly, the Parties) filed a joint petition for approval of a temporary territorial agreement variance (2023 Agreement). The 2023 Agreement would enable Duke to provide temporary electric service to an industrial customer's planned eastern phosphate mining expansion project (project) south of State Road 64 (SR 64). The area south of SR 64 is located in PRECO's service territory; however, PRECO does not have the transmission facilities necessary to serve the planned mining load. The 2023 Agreement also includes a provision to transfer Duke's Lake Branch substation and 1.84 acres of land on which the substation resides to PRECO.

In 1994, the Commission approved a territorial agreement that established service territory boundaries for the Parties in Hardee, Highlands, Polk, and Osceola counties (1994 Agreement).¹ The 1994 Agreement contained a provision permitting Duke (formerly Florida Power Corporation) to provide transmission level electric service to certain phosphate mining companies in PRECO's service territory, because PRECO did not have the appropriate facilities to meet the industrial customers' service needs. In 2006, the Commission approved an amendment to certain sections of the 1994 Agreement to clarify the Parties' obligations with respect to the existing phosphate mining customers in PRECO's service territory.²

In 2019, the Commission approved a territorial agreement between the Parties which replaced the prior territorial agreement in its entirety (2019 Agreement).³ The 2019 Agreement modified the territorial boundaries, transferring customers to better eliminate duplication of service and creating operational efficiencies for both utilities. Furthermore, the 2019 Agreement incorporated many provisions from the previous agreements, including Section 2.5, which allows Duke to provide electric service to a phosphate mining industrial customer in PRECO's service territory north of SR 64. The 2019 Agreement was negotiated for an initial term of 30 years, which would expire in 2049 and would remain in effect for succeeding periods of five years.

Order No. PSC-2023-0127-PCO-EU, acknowledges the Office of Public Counsel's (OPC) intervention in this docket. Duke and PRECO responded to Staff's First Data Request on April 21, 2023 and to Staff's Second Data Request on May 18, 2023. On May 17, 2023, the Parties responded to OPC's First Set of Interrogatories and First Request for Production of Documents.

This is staff's recommendation regarding the joint petition for a temporary territorial variance agreement. The 2023 Agreement and map providing the proposed territorial boundaries are included in the recommendation as Attachments A and B. The Commission has jurisdiction pursuant to Section 366.04, Florida Statutes (F.S.).

¹ 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.*

² 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.*

³ Order No. PSC-2019-0048-PAA-EU, issued January 28, 2019, in Docket No. 20180159-EU, *In re: 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.*

Discussion of Issues

Issue 1: Should the Commission approve Duke and PRECO's joint petition for a temporary territorial variance?

Recommendation: Yes. The Commission should approve Duke and PRECO's joint petition for a temporary territorial variance, entered into by the Parties on February 28, 2023, because it is in the public interest and will avoid uneconomic duplication of facilities. For the term of the variance agreement, Duke will temporarily serve the mining load south of SR 64 in the eastern expansion project area until the mining project is completed. The mining project south of SR 64 is estimated to begin in 2024 and continue until 2028. The Parties should notify the Commission once the mining operations subject to the variance are concluded. (P. Kelley, Hampson)

Staff Analysis: Pursuant to Section 2.5 of the 2019 Agreement, Duke provides service to the industrial customer in PRECO's service territory north of SR 64. The eastern expansion project's site includes areas located both north and south of SR 64. The part of the project located south of SR 64 is currently within PRECO's service territory. The project is an industrial phosphate mining operation and associated pump operation. Phosphate mining companies operate draglines that excavate phosphate used to produce fertilizer and other commercial products. Once a specific mining area has been depleted, the companies move to another location.

The Parties request that Duke, instead of PRECO, temporarily serve the industrial customer's entire project area including the area south of SR 64. The Parties estimate the customer will conclude its mining operations in the project south of SR 64 by December 31, 2028. The Parties stated in response to Staff's Second Data Request that they will notify the Commission once the mining operations are concluded.

Duke asserts in the petition that it has sufficient capacity to serve the industrial customer's load south of SR 64 and can provide immediate electric service to the project from an existing substation located within Duke's electric service territory located in Hardee County. PRECO asserts in the petition that it does not have sufficient capacity to serve the load and will need Duke's assistance to provide immediate electric service to the project. To serve the new load south of SR 64, PRECO would need to construct a new substation, estimated to cost approximately \$4 million. Due to these circumstances, the Parties agree Duke should serve the load as the industrial customer estimates that the project would add approximately 20 megawatts (MW) of load south of SR 64.

No customers are being transferred as a result of the proposed variance. Therefore, Rule 25-6.0440 (1) (d), Florida Administrative Code, regarding customer notification of transferred customers, does not apply.

Lake Branch Substation Transfer

The proposed variance includes a provision that PRECO will acquire Duke's Lake Branch substation (substation) by December 31, 2025. The substation is located in PRECO's service territory north of SR 64 by the intersection of Lake Branch Road and Platt Road (County Road 664A) in Hardee County. Pursuant to Section 2.5 of the 2019 Agreement, Duke serves the

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phosphate mining load in certain areas north of SR 64. Specifically, the industrial customer receives electric service for its South Meade mining operations from Duke at multiple delivery points, including Duke's Lake Branch substation. Pursuant to the 2019 Agreement, Duke only has the right to serve the industrial customer's load in the particular area served by the Lake Branch substation; PRECO has the right to serve any other load.

Section 4 of the 2023 Agreement includes a provision that the Lake Branch substation would be transferred to PRECO on or before December 31, 2025, dependent on if the substation's pumping load ceases before the stated date. The Parties have agreed upon a transfer of the Lake Branch substation and the 1.84 acres of land on which the substation resides for the nominal consideration of \$10. The Parties explained that nominal consideration is a legal formality commonly employed to ensure that a contract is enforceable. The details of the substation transfer are contained in the Asset Purchase Agreement that was included with the petition. The Parties stated that they are not seeking Commission approval of the Asset Purchase Agreement.

The Parties assert that the nominal consideration was determined by considering the exchange of benefits between the Parties. Duke would have the benefit of serving the industrial customer and associated additional 20 MW of load, south of SR 64, for approximately five years (2024-2028) in PRECO's territory. In exchange, PRECO would acquire the substation to serve its customers. Duke stated that the substation only serves the industrial customer and will have no other benefit to Duke once the mining operations served by the substation cease. PRECO stated that it would be able to tie the substation into its distribution system with minimal additional construction, because the utility has feeder lines adjacent to the Lake Branch substation.

To support the transfer of the Lake Branch substation, the Parties assert that by agreeing to convey the substation to PRECO, Duke's customers would no longer have the obligation for the cost of removal of the substation. Further, the revenues Duke is projected to receive from the additional 20 MW of load will more than offset the estimated \$1.9 million net book value of the substation as of December 31, 2025. Duke provided an analysis showing that the future expected non-fuel revenues from the additional 20 MW of load total \$6.4 million on a nominal basis, or \$4.3 million on a net present value basis. Based on Duke's analysis, the expected revenues offset the net book value of the substation. Therefore, Duke's general body of ratepayers is not being harmed by the transfer of the substation to PRECO for nominal consideration.

Conclusion

Based on the assertions made in the petition and the Parties' responses to staff's and OPC's Data Requests, staff believes the Commission should approve Duke and PRECO's joint petition for a temporary territorial variance, entered into by the Parties on February 28, 2023, because it is in the public interest and will avoid uneconomic duplication of facilities. For the term of the 2023 Agreement, Duke will temporarily serve the mining load south of SR 64 in the eastern expansion project area until the mining project is completed. The mining project south of SR 64 is estimated to begin in 2024 and continue until 2028. The Parties should notify the Commission once the mining operations subject to the 2023 Agreement are concluded.

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. (Brownless)

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.

Exhibit B

AGREEMENT FOR TEMPORARY TERRITORIAL VARIANCE

Duke Energy Florida, LLC (“DEF”), and Peace River Electric Cooperative, Inc. (“PRECO”), collectively referred to as the “Parties”, enter into this Agreement for Temporary Territorial Variance (“Agreement”), this 28th day of February, 2023.

RECITALS:

WHEREAS, DEF and PRECO are parties to a territorial agreement most recently approved by the Florida Public Service Commission (“Commission”) on January 28, 2019 in Order No. Order No. PSC-2019-0048-PAA-EU (the “Existing Agreement”).

WHEREAS, the Existing Agreement establishes a territorial boundary line between DEF’s and PRECO’s service territories;

WHEREAS, the Existing Agreement authorizes DEF to serve the South Meade phosphate mining load of the Special Industrial Customer in areas north of State Road 64 in Hardee County, Florida, and PRECO to serve the Special Industrial Customer’s mining load south of State Road 64 in Hardee County.

WHEREAS, the Special Industrial Customer has planned a new mining project (the “Eastern Expansion Project” or the “Project”) which includes areas located both north and south of SR 64 in Hardee County.

WHEREAS, under the Existing Agreement the Project will be partly in the service territory of DEF and partly in the service territory of PRECO.

WHEREAS, based on these unique circumstances, DEF and PRECO have concluded that to avoid uneconomic duplication of facilities it would be most efficient for DEF to temporarily provide electric service to the Special Industrial Customer’s entire mining load for the Eastern Expansion Project.

Exhibit B

WHEREAS, the Parties have negotiated a temporary variance to the Existing Agreement such that DEF will temporarily serve the entire mining load for the Project, including the new addition south of SR 64.

NOW, THEREFORE, in consideration of ten dollars (\$10.00), and other good and valuable considerations the receipt and adequacy of which are hereby acknowledged by the Parties, DEF and PRECO agree as follows:

1. The foregoing recitals are true and correct, and are incorporated herein by reference.
2. This Agreement addresses the provision of electric service on a temporary basis to the phosphate loads associated with the Special Industrial Customer's Eastern Expansion Project located in the general area of Sections 24, 25, 26, 27, and 34, Township 33 S, Range 27 E, in Hardee County, Florida, said area containing approximately 2,260 acres in Hardee County as shown in Attachment A.
3. For the term of this Agreement, DEF will temporarily serve the Special Industrial Customer's mining load south of SR 64 in the Eastern Expansion Project area. The Parties estimate that this new mining load will begin in 2024 and continue until 2028, but the Parties intend for the territorial variance to be in place until the Special Industrial Customer concludes its mining operations in the Project area.
4. In exchange, PRECO will acquire DEF's Lake Branch substation and the estimated non-mining load of approximately 1 MW for nominal consideration on or before December 31, 2025. The Parties agree that DEF will continue to serve the Special Industrial Customer's load from the Lake Branch substation until the earlier of December 31, 2025 or the date all tailing pumping operations served by the Lake Branch substation ceases.

Exhibit B

5. Upon termination of this Agreement, the Parties' rights and obligations with respect to the provisions of electric service to the Special Industrial Customer's load in the areas addressed herein shall revert to and be governed by the Existing Agreement.

6. The Parties agree that the above temporary service assignment is economically sound and consistent with good engineering practices.

7. This Agreement and the Parties' performance thereof are subject to the approval of the Commission and shall become effective on the date of issuance of a final non-appealable Commission order approving same without modification. The Parties agree to jointly seek approval of this Agreement by the Commission.

8. In the event Commission approval of this Agreement without modification is not obtained, neither Party will have any cause of action against the other arising under the Agreement or on account of such nonattainment of approval

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

This Agreement shall be non-assignable unless approved in writing by both Parties and the Commission.

IN WITNESS WHEREOF, DEF and PRECO have executed this Agreement on the day and year first above written.

Witnesses:

Dadalia Redford
Joanna Wilkins

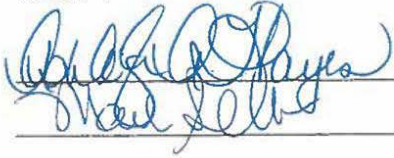
DUKE ENERGY FLORIDA LLC

By: *Melissa Seys*

As Its: *State President, Florida*

Exhibit B

Witnesses:



PEACE RIVER ELECTRIC
COOPERATIVE, INC.

By: 

As Its: General Manager / CEO

