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Item 1

FILED 10/24/2024 DOCUMENT NO. 09656-2024 FPSC - COMMISSION CLERK

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Mallow, CH

Fogleman)

Office of the General Counsel (Farooqi) AEH

RE: Application for Certificate of Authority to Provide Telecommunications

Service

AGENDA: 11/5/2024 - Consent Agenda - Proposed Agency Action - Interested

Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	NO.
20240127-TX	COMEXCEL TECHNOLOGIES CORPORATION	8995

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

FILED 10/24/2024 DOCUMENT NO. 09654-2024 FPSC - COMMISSION CLERK

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Ferrer, D. Buys)

Office of the General Counsel (Marquez, Faroogi) AEH

RE: Docket No. 20240131-EI – Application for authority to issue and sell

securities for 12 months ending December 31, 2025, by Tampa Electric

Company.

AGENDA: 11/5/2024 - Consent Agenda - Final Action - Interested Persons May

Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20240131-EI – Application for authority to issue and sell securities for 12 months ending December 31, 2025, by Tampa Electric Company.

Tampa Electric Company (TECO or Company) seeks authority to issue, sell and/or exchange equity securities and issue, sell, exchange and/or assume long-term or short-term debt securities and/or to assume liabilities or obligations as guarantor, endorser, or surety during calendar year 2025. The Company also seeks authority to enter into interest rate swaps or other derivative instruments related to debt securities during calendar year 2025.

The amount of all equity and long-term debt securities issued, sold, exchanged, or assumed and liabilities and obligations assumed or guaranteed, as guarantor, endorser, or surety will not exceed in the aggregate \$1.1 billion during the calendar year 2025, including any amounts issued to retire existing long-term debt securities. The maximum amount of short-term debt outstanding at any one time will be \$1.2 billion during calendar year 2025.

In its application, TECO states it confirms that the capital raised pursuant to this application will be used in connection with the activities of the Company's regulated electric activities and not the unregulated activities of the utility or their affiliates.

Staff has reviewed TECO's projected capital expenditures in Exhibit B. The amount requested by the Company (\$2.3 billion) exceeds its expected capital expenditures (\$1.6 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regard to unexpected events such as hurricanes, financial market disruptions, and

Docket No. 20240131-EI Date: October 24, 2024

other unforeseen circumstances. Staff believes the requested amounts are reasonable and appropriate. Staff recommends TECO's application for authority to issue and sell securities be approved.

For monitoring purposes, this docket should remain open until May 1, 2026, to allow the Company time to file the required Consummation Report.

FILED 10/24/2024 DOCUMENT NO. 09655-2024 FPSC - COMMISSION CLERK

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Quigley, D. ALM

Buys) Office of the General Counsel (Sparks) AEH

RE: Docket No. 20240138-EI - Application for authority to issue and sell

securities during 12 months ending December 31, 2025, by Duke Energy

Florida, LLC.

AGENDA: 11/5/2024 - Consent Agenda - Final Action - Interested Persons May

Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20240138-EI - Application for authority to issue and sell securities during 12 months ending December 31, 2025, by Duke Energy Florida, LLC.

Duke Energy Florida, LLC (DEF or Company) seeks the authority to issue, sell, or otherwise incur during 2025 up to \$1.5 billion of any combination of equity securities, long-term debt securities, and other long-term obligations. Additionally, the Company requests authority to issue, sell, or otherwise incur during 2025 and 2026, up to \$2.0 billion outstanding at any time of short-term debt securities and other obligations.

In its application, DEF states it confirms that the capital raised pursuant to this application will be used in connection with the regulated activities of the Company and not the unregulated activities of its unregulated affiliates.

Staff has reviewed the Company's projected capital expenditures in Exhibit B. The total amount requested by the Company (\$3.5 billion) exceeds its expected capital expenditures (\$2.5 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regard to unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are reasonable and appropriate. Staff recommends DEF's application for authority to issue and sell securities be approved.

For monitoring purposes, this docket should remain open until May 1, 2026, to allow the Company time to file the required Consummation Report.

FILED 10/24/2024 DOCUMENT NO. 09653-2024 FPSC - COMMISSION CLERK

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Souchik, D.

Buys) Office of the General Counsel (Faroogi) *AED*

RE: Docket No. 20240128-GU - Application for authority to issue and sell

securities for 12 months ending December 31, 2025, by Peoples Gas

System, Inc.

AGENDA: 11/5/2024 - Consent Agenda - Final Action - Interested Persons May

Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20240128-GU – Application for authority to issue and sell securities for 12 months ending December 31, 2025, by Peoples Gas System, Inc.

Peoples Gas System, Inc. (PGS or Company) seeks authority to issue, sell, and/or exchange equity securities and issue, sell, exchange and/or assume long-term or short-term debt securities and/or to assume liabilities or obligations as guarantor, endorser, or surety during calendar year 2025. The Company also seeks authority to enter into interest rate swaps or other derivative instruments related to debt securities during calendar year 2025.

The amount of all equity and long-term debt securities issued, sold, exchanged, or assumed liabilities and obligations assumed or guaranteed, as guarantor, endorser, or surety will not exceed in the aggregate \$300 million during the period covered by this application, including any amounts issued to retire existing long-term debt securities. The maximum amount of short-term debt outstanding at any one time will be \$500 million.

In its application, PGS states it confirms the capital raised pursuant to this application will be used in connection with the activities of the Company's regulated gas activities and not the unregulated activities of the utility or its affiliates.

Staff has reviewed PGS's projected capital expenditures in Exhibit B. PGS's estimated construction expenditures for 2025 are \$355 million. The amount requested by the Company (\$800 million) exceeds its expected capital expenditures (\$355 million). The additional amount requested exceeding the estimated capital expenditures allows for financial flexibility with

Docket No. 20240128-GU Date: October 24, 2024

regard to unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are reasonable and appropriate. Staff recommends PGS's application for authority to issue and sell securities during calendar year 2025 be approved.

For monitoring purposes, this docket should remain open until May 1, 2026, to allow the Company time to file the required Consummation Report.

Item 2

FILED 10/24/2024 DOCUMENT NO. 09661-2024 FPSC - COMMISSION CLERK

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams, Fogleman)

Office of the General Counsel (Imig, Faroogi, Harper) AEH

RE: Docket No. 20240043-TP – Request for submission of proposals for relay service,

beginning in March 2025, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida

Telecommunications Access System Act of 1991.

AGENDA: 11/05/24 – Regular Agenda – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: Current contract expires on February 28, 2025.

SPECIAL INSTRUCTIONS: Anticipate the need for sign language interpreters and

assisted listening devices. Please place at the beginning

of the agenda to reduce interpreter costs.

Case Background

The Telecommunications Access System Act of 1991 (TASA), Chapter 427, Part II, Florida Statutes (F.S.), requires the Florida Public Service Commission (Commission) to select a Telecommunications Relay Services (TRS or relay service)¹ provider and oversee the administration of the relay system. The Commission currently contracts with T-Mobile USA, Inc. (T-Mobile), for the provision of relay service. The existing Florida relay service provider contract expires February 28, 2025. On March 1, 2024, T-Mobile provided notice to the

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¹ Telecommunications Relay Services allow persons who are deaf, hard of hearing, deafblind, or have speech disabilities to communicate by telephone through a Communication Assistant (CA) or advanced assistive technology.

Docket No. 20240043-TP Date: October 24, 2024

Commission that when the existing contract in Florida expires it would not seek to extend the contract into the optional renewal year. In response, staff opened Docket No. 20240043-TP to initiate a new Request for Proposals (RFP) to provide relay service in Florida.

At the July 9, 2024 Agenda Conference, the Commission approved the issuance of the RFP. Accordingly, a Notice of Request for Proposals (Notice) was published in the Florida Administrative Register on July 16, 2024. Staff also placed the RFP on the Florida Department of Management Services' Vendor Bid System, and posted a link to the RFP on the Commission's website under Florida Relay. The deadline for filing proposals was August 19, 2024.

A Proposal Review Committee (PRC) was established that consisted of eight members, one from the TASA Advisory Committee and seven members from Commission staff. One staff member reviewed the financial information of the companies. Five staff members, plus the TASA Advisory Committee member, reviewed and scored the technical aspects of the proposals. A staff member was selected by the Director of the Office of Industry Development & Market Analysis to serve as the PRC Chairman. To remain independent, the PRC Chairman did not participate in the scoring of the financial or technical proposals. The role of the PRC Chairman was to coordinate and oversee the procurement process, to gather materials from references specified in the proposals, to interface with the RFP respondents regarding clarifications and questions about their proposals, and to tabulate scores to identify the winning proposal.

Two companies, Hamilton Relay, Inc. (Hamilton) and T-Mobile, responded to the RFP and filed price and technical proposals.² Evaluation of the proposals began with a pass/fail evaluation of 31 technical and 2 financial aspects of the proposals. This was followed by an evaluation of 30 technical aspects of the proposals, with an assignment of numerical scores for each of the 30 technical items. The price proposals were submitted in sealed envelopes separate from the companies' technical proposals and were opened in the Office of the Commission Clerk on October 1, 2024, after the technical scoring was completed. As previously approved by the Commission in the RFP, a weight of 50 percent was applied to the technical aspect of the proposals and a weight of 50 percent was applied to the proposals.

This recommendation addresses which provider the Commission should select as the relay service provider. The Commission has jurisdiction pursuant to Section 427.704, F.S.

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² Hamilton and T-Mobile price and technical proposals. https://www.floridapsc.com/pscfiles/library/filings/2024/09360-2024/09360-2024/09360-2024/pdf

Date: October 24, 2024

Discussion of Issues

Issue 1: Who should be awarded the Florida relay service provider contract?

Recommendation: Based upon the RFP evaluation process, staff recommends the Commission select T-Mobile as the relay service provider and direct the Commission's Executive Director or designee to: (1) issue the attached letter of intent to T-Mobile and Hamilton (Attachment A); (2) provide notice on the Florida Department of Management Services Vendor Bid System of the Commission's decision to award a three-year contract to provide the statewide relay service in Florida to T-Mobile; and (3) finalize and sign a contract with T-Mobile to provide the relay service. (Williams, Imig)

Staff Analysis: The RFP encompassed the criteria in Section 427.704(3)(a), F.S., for the selection of the provider of the telecommunications relay service by the Commission. Section E of the RFP, entitled "The Evaluation Method to be Used and Filing Checklist," provides specific instructions and guidelines for the evaluation of the proposals. In accordance with the instructions, each RFP respondent's weighted percentage score for its technical proposal and its price proposal were added together to determine the proposal with the highest score.

Evaluation of Proposals

The PRC evaluated the technical proposals using a pass/fail criterion for some items and a point rating system for other items. Each proposal successfully advanced beyond the pass/fail section. After evaluating the pass/fail items, the evaluators scored the technical items and the technical scores were calculated. The price proposals were not opened until after the technical evaluations were completed.

The evaluators received specific forms on which to record their evaluations. The forms included an affidavit that each evaluator signed accepting the conflict of interest provisions in Section 427.704(3)(c), F.S. Also, each page of the forms included a place for the evaluator to indicate the date the evaluation was performed, a signature line, and a place to score the points or enter a pass/fail, whichever was appropriate for the item under evaluation.

Assignment of Points

Each technical evaluator independently assigned points within the RFP allotted range to 30 items. The items rated had maximum point values ranging from 25 to 200 points. The points from each evaluator were added together to produce the technical score for each proposal.

The technical and price proposals were evaluated, as described in Section E of the RFP, using a weighting of 50 percent for the technical and 50 percent for the price. The weighted percentage scores for the technical proposal and the price proposal were then added together to produce a final score for each proposal. Table 1 below shows the results of the scoring.

Date: October 24, 2024

TABLE 1
Summary of the Technical and Price Proposals

	Hamilton	T-Mobile
Technical Points	15,214	14,861
Highest Technical Score – Hamilton	15,214	
Technical Evaluation (Bidder's score/highest score) X 0.5	.5000	.4884
Price Per Minute for Basic TRS	\$4.40	\$2.58
Lowest Price – T-Mobile	\$2.58	
Price Evaluation for Basic TRS (Lowest Price/Bidder's Price) X 0.5	.2932	.5000
Final Score (Technical Evaluation + Price Evaluation)	.7932	.9884

Analysis of the Scoring

As presented in Table 1, Hamilton received the highest technical score with 15,214 technical points. T-Mobile received 14,861 technical points. Five of the six technical evaluators scored Hamilton the highest, while one evaluator scored T-Mobile the highest. However, the point margin difference was small for each evaluator resulting in only a 353 higher technical point total for Hamilton. T-Mobile offered the lowest price per session minute for basic TRS at \$2.58. Hamilton's basic TRS price per session minute was \$4.40. The \$1.82 rate differential between the two price proposals is significant. While both price proposals represent higher rates than the current \$1.60 rate, Hamilton's \$4.40 rate would result in higher relay service expense for FTRI. In addition, the \$4.40 rate would potentially provide less flexibility in maintaining or lowering the relay surcharge imposed on Florida consumers.

As stated earlier, Hamilton's technical score is only marginally higher than T-Mobile's technical score. However, T-Mobile's relay service price is considerably lower than Hamilton's price. Given that both technical proposals are impressive and responsive to the Commission's RFP service standards, T-Mobile's lower price makes its proposal a better overall choice for FTRI and Florida consumers.

Date: October 24, 2024

Highlights of T-Mobile's Proposal

• T-Mobile makes a commitment to meet and exceed FCC minimum service standards and provide the Commission with direct support in responding to FCC required filings including State Relay Program Certification filings, Consumer Complaint filings, and Multiple Average Rate Structure filings.

- Communications Assistants (CA) Qualifications and Testing will remain a priority as it does in the current contract. T-Mobile has committed to align Florida relay service users with its Gold Star Relay Operators who T-Mobile states consistently maintain its highest typing speeds and accuracy. T-Mobile's proposal states that all CA applicants are tested before hiring, and CAs in training have proficient typing skill, call processing knowledge, and interpretation of typewritten American Sign Language (ASL). T-Mobile also acknowledges that all relay CAs receive continuous training and are routinely evaluated to monitor service quality. Both in-house and third-party testing will be used to evaluate CAs. Further, T-Mobile ensures all CAs meet performance specifications using a Quality Assurance (QA) program. The QA program encompasses all stages of employee development, including hiring, training, ongoing performance evaluations, and individual development training. Lastly, T-Mobile makes a commitment to continue ethics and diversified culture training. Throughout the company's training, CAs receive information and guidelines on professional conduct with an emphasis on ethics and confidentiality. CAs and supervisors are required to sign and abide by a pledge of confidentiality. Diversified training focuses on the needs of the Deaf, Hard of Hearing, Deaf-Blind, seniors with a hearing loss, and people with a speech disability. Specifically, employees are trained on the culture, background, and language of relay user communities.
- T-Mobile will continue to assign a Florida Relay Quality Assurance (QA) Manager to oversee all areas of training, quality assurance, monthly testing, and customer feedback in Florida. T-Mobile QA managers coordinate all training and policies with the call center supervisors and trainers to maintain quality standards.
- T-Mobile will maintain an in-state Customer Relationship Manager to lead its consumer input program, coordinate outreach efforts with Florida Telecommunications Relay, Inc., and address relay user issues. The position also serves as a liaison between the QA manager, the T-Mobile Operations team, and the Commission.
- T-Mobile will continue to conduct monthly TRS Quality Compliance Testing using an experienced third-party evaluator. In addition to T-Mobile's internal testing, T-Mobile has committed to use an independent company to evaluate service quality.
- T-Mobile Voice Response Unit (VRU) for Florida's toll-free numbers help reduce misdialed calls. Misdialed calls became an issue in 2022. To address the issue, T-Mobile developed and implemented the VRU on Florida relay service toll-free numbers allowing voice callers to listen to a message to assist in minimizing misdials. FTRI is not billed for calls arriving at the VRU. If the caller remains on the line after listening to the VRU,

Date: October 24, 2024

billing starts once the caller with a hearing loss or speech disability is connected to the relay CA. T-Mobile's VRU should continue to improve service levels and reduce cost to FTRI.

- T-Mobile commits to include 30,000 Relay Conference Captioning (RCC) Service minutes annually at no charge. RCC was presented in T-Mobile's proposal as an unsolicited service offering. RCC requires a computer, laptop/tablet, or mobile device with high-speed internet connection. As conference call participants speak, the CA transcribes the conversation over the internet to the RCC user. The RCC user can speak or type responses. Transcripts are also available at no additional charge. RCC users include individuals, private sector organizations, and government agencies.
- T-Mobile will contribute \$20,000 toward a Public Service Announcement to expand outreach informing consumers about the availability of Speech-to Speech (STS) service.

Conclusion

Of the two proposals, T-Mobile's proposal was awarded the highest final score (see Table 1). As required by Section E of the RFP, staff recommends the Commission contract with T-Mobile to provide the statewide relay service in Florida for the next three years (March 2025 - February 2028), with the option of four additional one-year periods upon mutual agreement.

Based upon the RFP evaluation process, staff recommends the Commission direct the Commission's Executive Director or designee to: (1) issue the attached letter of intent to T-Mobile and Hamilton (Attachment A); (2) provide notice on the Florida Department of Management Services Vendor Bid System of the Commission's decision to award a three-year contract to T-Mobile to provide the statewide telecommunications relay service in Florida; and (3) finalize and sign a contract with T-Mobile to provide the relay service.

FINALIZATION OF THE CONTRACT

After the Commission's vote on this recommendation, the notice of its decision will be posted on the Florida Department of Management Services Vendor Bid System. Persons will have 72 hours after the posting of the notice to protest the decision. In addition, the attached letter of intent (Attachment A) to contract with T-Mobile for relay service will be sent by certified mail to the two bidders. If no protest is filed in accordance with Section 120.57(3), F.S., using the electronic posting as the start date, staff will work with T-Mobile to finalize contract language and incorporate T-Mobile's response to the RFP, along with the RFP, as the contract. Two copies of the contract are to be signed by an authorized T-Mobile representative and the Commission's Executive Director or designee, with each party receiving an original signed contract.

Date: October 24, 2024

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the life of the contract. (Imig)

Staff Analysis: This docket will address matters related to the relay service throughout the life of the contract. Therefore, this docket should remain open for the life of the contract.

Docket No. 20240043-TP Attachment A

Date: October 24, 2024

November xx, 2024

DELIVERED VIA E-MAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

(ADDRESSEE)

Dear (addressee):

It is the intent of the Florida Public Service Commission to award a three-year contract to provide the statewide relay service in Florida to T-Mobile USA, Inc. Please accept our sincere appreciation for participating in the Request for Proposals process.

You are reminded that pursuant to Section 120.57(3), Florida Statutes (F.S.), any party choosing to file a protest of the Commission's intent to award the contract to T-Mobile USA, Inc., must file a notice of protest in writing within 72 hours after the decision is posted on the Florida Department of Management Services Vendor Bid System. The party is then required by Section 120.57(3), F.S., to file a formal written protest within 10 days after filing the notice of protest. Such formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a protest within the time prescribed in Section 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S.

All documents should be filed in Docket No. 20240043-TP and addressed to Mr. Adam J. Teitzman, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Attention: Curtis J. Williams.

Respectfully,

Executive Director or Designee

Item 3

FILED 10/28/2024 DOCUMENT NO. 09700-2024 FPSC - COMMISSION CLERK

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:

October 28, 2024

TO:

Office of Commission Clerk (Teitzman)

FROM:

Office of the General Counsel (Harper, Augspurger, Farooqi) AH

Office of Industry Development and Market Analysis (Fogleman, Day, Deas) *& F*

RE:

Docket No. 20240146-TP – Initiation of show cause proceeding against Q LINK

WIRELESS LLC for apparent violation of Order No. PSC-2024-0201-PAA-TP.

AGENDA: 11/05/24 - Regular Agenda - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER:

istrative # 10/28/24

CRITICAL DATES:

None

SPECIAL INSTRUCTIONS:

None

Case Background

Staff of the Florida Public Service Commission (Commission) opened this docket to initiate a show cause proceeding against Q LINK WIRELESS LLC (Q LINK or Company) for apparent violation of Commission Order No. PSC-2024-0201-PAA-TP. O LINK is a provider of commercial mobile radio service and offers prepaid wireless telecommunications services to consumers as a wireless reseller. The company is regulated as a common carrier pursuant to 47 U.S.C. § 153(11). Q LINK is a Limited Liability Company that was organized in the State of Delaware on August 25, 2011, and is wholly-owned by its parent, Quadrant Holdings Group LLC.

¹ Order No. PSC-2024-0201-PAA-TP, issued June 20, 2024, in Docket No. 20240065-TP, In re: Petition for designation as eligible telecommunications carrier in the State of Florida, by Q LINK WIRELESS.

Docket No. 20240146-TP Date: October 28, 2024

By Order No. PSC-2024-0201-PAA-TP (ETC Order), the Commission designated Q LINK as an Eligible Telecommunications Carrier (ETC) throughout Florida, pursuant to 47 C.F.R. § 54.201(c)(2020).² Q LINK's purpose in seeking its ETC designation was to receive federal support for offering the Lifeline discount to its low-income customers. As part of its petition seeking ETC designation, the Company committed to follow applicable state and federal rules. It is believed that Q LINK has approximately 15,429 Lifeline customers in Florida.

In its Petition³ for ETC designation, filed on April 16, 2024, Q LINK made various representations to the Commission regarding its adherence with federal and state regulations related to the Lifeline program:

- a. Q LINK, in its representations regarding "Prevention of Waste, Fraud and Abuse," indicated its "commitment to being a trusted steward with public resources" and further discussed at length its alleged steps to prevent such waste, fraud and abuse by employing a "state-of-the-art proprietary fraud prevention system;" 5
- b. Q LINK represented that "consistent with federal regulations, [it] would not seek USF reimbursement for inactive subscribers and will de-enroll any subscriber who has not used [its] Lifeline service as set forth in 47 C.F.R. § 54.407(c)(2);" ⁶
- c. Q LINK represented that "[a]n account will be considered active if the authorized subscriber establishes usage, as 'usage' is defined by 47 C.F.R. § 54.407(c)(2), during the specified time frame, currently a period of thirty (30) days, or during the notice period set forth in 47 C.F.R. § 54.405(e)(3), currently a period of fifteen (15) days;"⁷
- d. Q LINK represented that "[b]y this Petition, [it] hereby asserts its willingness and ability to comply with the rules and regulations that the Commission may lawfully impose upon the Company's provision of service contemplated by this Petition;"8
- e. Q LINK represented that "100% of federal universal service funds will flow through directly to Lifeline customers;" and,
- f. Q LINK stressed in its Petition, for a second time, that it "remains committed to careful stewardship of the Lifeline program." ¹⁰

² Florida Public Service Commission Order No. PSC-2024-0201-PAA-TP, Docket No. 06753-2024, *Notice of Proposed Agency Action Order Granting Eligible Telecommunications Carrier Designation*, issued June 20, 2024.

³ Florida Public Service Commission, *supra*, Docket No. 20240065-TP, Document No. 01893-2024, Petition, filed April 16, 2024.

⁴ *Id.*, Petition at p. 18.

⁵ *Id.*, Petition at p. 17.

⁶ *Id.*, Petition at p. 18.

⁷ *Id.*, Petition at p. 18.

⁸ *Id.*, Petition at p. 1.

⁹ *Id.*, Petition at p. 18-19.

¹⁰ *Id.*, Petition at p. 22.

Docket No. 20240146-TP Date: October 28, 2024

On August 22, 2024, the United States commenced its criminal prosecution against Q LINK and Issa Asad [CEO of Q LINK and owner of Q LINK's parent company (QUADRANT)] with the filing of an Information in the United States District Court, Southern District of Florida. 11 The Government charged both defendants with "Conspiracy to Commit Offenses Against, and to Defraud, the United States (18 U.S.C. § 371)." Further, Asad was charged with Money Laundering (18 U.S.C. § 1957).

On October 15, 2024, Q LINK and Asad each admitted guilt and entered into Plea Agreements for conspiring to defraud and commit offenses against the United States in connection with a years-long scheme to steal over \$100 million from the federal Lifeline program. ^{14,15}

Asad, in addition to entering a guilty plea to the conspiracy to defraud the United States, also entered a plea of guilty to laundering money from a separate scheme to defraud a different federal program meant to aid individuals and businesses hurt by the COVID-19 pandemic.

As part of their Plea Agreements, Q LINK and Asad agreed to pay, jointly and severally, the sum of \$109,637,057.00 in restitution to the Federal Communications Commission (FCC) no later than the time of their sentencing hearings (currently set for January 15, 2025).

Asad separately agreed to pay \$1,758,339.25 in restitution to the U.S. Small Business Administration and to a forfeiture judgment against him of at least \$17,484,118.00.

Q LINK agreed in its Plea Agreement that "it shall not participate in any program administered by the FCC" ¹⁶ as of the date of sentencing, and further agreed that it would "cooperate with the FCC in the transition of all customers of any program administered by the FCC to other telecommunications providers." The sentencing date is currently scheduled for January 15, 2025.

In a Factual Proffer, Q LINK admitted that

[It] conspired with others, including Asad and Director of Customer Relations #1, to submit and cause to be submitted false and fraudulent claims to the FCC Lifeline program for customers who were not using their cellphones according to the FCC usage rules. The Defendant and others conspired to mislead and trick the FCC into thinking customers were using their cellphones by manufacturing cellphone activity to pass off as usage and by engaging in coercive marketing techniques to get people to remain Q Link customers." ¹⁸

¹¹ United States v. Asad & Q Link Wireless LLC, U.S. Distr. Ct. for the S.D. Fla., Case 1:24-cr-20363-RAR, Document 1 (Information), filed August 22, 2024, accessed via PACER.

¹² U.S. v Asad/Q Link, Id.

¹³ U.S. v. Asad/Q Link, Id.

¹⁴ U.S. v. Asad/O Link, Document 21 (Asad Plea Agreement).

¹⁵ U.S. v. Asad/Q Link, Document 23 (Q Link Plea Agreement).

¹⁶ *U.S.* v. *Asad/Q Link, Id.* at p. 3.

¹⁷ U.S. v. Asad/Q Link, Id. at p. 4.

¹⁸ U.S. v. Asad/Q Link, Document 24 (Q Link Factual Proffer), p. 3.

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For instance, as discussed in the Q Link Factual Proffer, its employees took "cellphone numbers of the Defendant's customers who were not using their phones and placed outbound calls by temporarily swapping the customer's electronic serial number ("ESN") assigned to the physical cellphone for the ESN number of a cellphone in the Defendant's shipping department." This scheme was carried out roughly between 2013 and 2016 so that the cellphone records of a customer would reflect an outbound call, and thus would have created "usage" as required by the FCC for reimbursement. ²⁰

Around March 2020, Asad and Q LINK devised an automated script for its customers that falsely warned "Hello, your Medicaid, Foodstamp and Lifeline benefits are about to get cancelled." Customers were then directed to press 1 to indicate that they wished to remain enrolled in the noted programs.

Other practices implemented by Q LINK included using

auto-dialers to originate a high volume of outbound calls from [Q LINK] to customers who were not using their cellphones to trick them into answering the phone to assent to [Q LINK's] Lifeline services, including using the local area codes not facially associated with [Q LINK] and spoofing [the customers'] own cellphone numbers to deceive customers into thinking that [Q LINK's] representative were (sic) was not on the other end . . . in order to trick and mislead customers into pressing a button to agree to remain Q Link customers so that the Defendant could keep billing the Lifeline program. ²²

Other Q LINK business practices included ensuring that customers could not cancel online, but had to call Q LINK on the phone, with company representatives employing different scripts intended to prevent customers from cancelling.²³

Q LINK was aware as early as 2014 that the FCC was investigating it regarding customer usage issues. ²⁴ Between 2015 and 2021, Q LINK provided to the FCC records of manufactured cellphone activity for those customers who were not meeting usage requirements – even including activity for phones for customers who were "so fed up" with Q LINK that they had turned over their phones to the FCC. ²⁵

Other fraudulent business activity included trying to pass off records of unchecked voicemails as answered voice calls (hence creating "usage"), as well as changing the name of a header on a spreadsheet from "voicemail' to 'voice' to leave the FCC with the false impression that the call records contained voice calls."²⁶

²⁰ U.S. v. Asad/Q Link, Id.

¹⁹ U.S. v. Asad/Q Link, Id.

²¹ U.S. v. Asad/Q Link, Id.

²² U.S. v. Asad/Q Link, Id. at p. 4.

²³ U.S. v. Asad/Q Link, Id.

²⁴ U.S. v. Asad/O Link, Id. at p. 5.

²⁵ U.S. v. Asad/Q Link, Id.

²⁶ U.S. v. Asad/Q Link, Id.

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Importantly, as of October 15, 2024, Q LINK admitted that it "has continued to bill the FCC Lifeline program up until the present, including for customers that O Link should have stopped billing because the customers were not using their cellphones."²⁷

Issue 1 is staff's recommendation regarding O LINK's apparent violation of its ETC Order arising from its admitted fraud against the Lifeline program and as a result it no longer being in the public interest for Q LINK to be designated as an ETC in Florida.

The procedure followed by the Commission in dockets such as this is to consider the Commission staff's recommendation and determine whether the alleged facts warrant requiring the entity to respond. If the Commission agrees with staff's recommendation, the Commission issues an Order to Show Cause (Show Cause Order). A Show Cause Order qualifies as an administrative complaint by the Commission against the entity as required by Section 120.60(5), Florida Statutes (F.S.).²⁸ If the Commission issues a Show Cause Order for Issue 1, then for Q LINK to potentially keep its ETC designation in the State of Florida, it must provide a written response to the Commission within 21 days, disputing the factual allegations set forth in the Show Cause Order, and requesting a hearing pursuant to Sections 120,569 and 120,57, F.S. If the Company requests a hearing, a further proceeding would be scheduled before the Commission makes a final determination on the matter.

If Q LINK fails to timely respond to the Show Cause Order, then it would be deemed to have admitted the factual allegations contained in the Show Cause Order. The Company's failure to timely respond would also constitute a waiver of its right to a hearing. If the Company does not timely respond, a final order would be issued imposing the sanctions set out in the Show Cause Order.

If a final order is issued regarding Issue 1, then Q LINK's ETC status would be revoked in the state of Florida, and the Company would no longer be able to offer the Lifeline discount to its customers in Florida. Q LINK would also be prohibited from receiving monetary support from the Universal Service Fund for its Lifeline customers in Florida.

The Commission has jurisdiction pursuant to Sections 364.10(2), 364.285, and 364.335, F.S.; 47 C.F.R. § 54.201; 47 C.F.R. § 54.400 – 54.423; and, Rule 25.4.0665, F.A.C.

²⁷ U.S. v. Asad/Q Link, Id. at p. 6.

²⁸ See also Rule 28-106.2015(1), Florida Administrative Code (F.A.C.) ("[A]n agency pleading or communication that seeks to exercise an agency's enforcement authority and to take any kind of disciplinary action . . . shall be deemed an administrative complaint.)

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Discussion of Issues

Issue 1

Issue 1: Should the Commission order Q LINK to show cause, in writing, within 21 days from the issuance of the order, why its ETC status in Florida should not be revoked for apparent violation of Order No. PSC-2024-0201-PAA-TP, due to its admitted fraud against the Lifeline program and it no longer being in the public interest for Q LINK to be designated as an ETC in Florida?

Recommendation: Yes, Q LINK should be ordered to show cause, in writing, within 21 days from the issuance of the order, why its ETC status in Florida should not be revoked for apparent violation of Order No. PSC-2024-0201-PAA-TP, due to its admitted fraud against the Lifeline program and it no longer being in the public interest for Q LINK to be designated as an ETC in Florida. If the Company's ETC status is to be revoked, staff recommends ordering the Company to immediately cease accepting new Lifeline applicants in Florida as of the date of the final order. Staff also recommends that any final order indicate that the Company's ETC status shall be revoked 30 days after issuance of the final order to provide time for affected customers to be advised of the need to change Lifeline carriers and to effect such transition. (Augspurger, Farooqi, Fogleman, Day, Deas)

Staff Analysis:

Law

State commissions have the primary responsibility for performing ETC designations. In Florida, the Commission has the jurisdiction to designate wireless carriers as ETCs to participate in the federal Lifeline program.²⁹ 47 C.F.R. Section 54.201(c), provides that:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

47 C.F.R. § 54.407(c) provides that Lifeline providers that do not assess and collect a monthly fee from its subscribers: (1) shall not receive universal service support until the subscriber activates the service, and (2) shall only continue to receive universal service support for subscribers who have used the service within the last 30 days.

In addition to the responsibility for performing ETC designations, the Commission also possesses the authority to revoke ETC designations for the failure of an ETC's compliance with

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²⁹ Section 364.10(3), F.S.

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any conditions imposed by the state.³⁰ The FCC has found that individual state commissions are qualified to determine what information is necessary to ensure that ETCs are in compliance with applicable requirements, including state-specific ETC eligibility requirements.³¹

Pursuant to Section 364.285(1), F.S., the Commission may impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each such day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, F.S. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the entity and is enforceable by the Commission as a statutory lien.

As an alternative to the above monetary penalties, Section 364.285(1), F.S., provides that the Commission may amend, suspend, or revoke any certificate issued by the Commission for any such violation. Part of the determination the Commission must make in evaluating whether and how to penalize a company is whether the company willfully violated the order, rule, or statute. Section 364.285(1), F.S., does not define what it is to "willfully violate" an order, rule, or statute. Willfulness is a question of fact.³² The plain meaning of "willful" typically applied by the Courts in the absence of a statutory definition, is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law."³³

"It is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." In making similar decisions, the Commission has repeatedly held that certificated companies are charged with the knowledge of the Commission's orders, rules, and statutes, and that the intent of Section 364.285(1), F.S., is to penalize those who affirmatively act in opposition to those orders, rules, or statutes. In other words, a company cannot excuse its violation because it "did not know."

In recommending a monetary penalty or a form of certificate suspension or revocation, staff reviews prior Commission orders concerning the company at issue. While Section 364.285(1), F.S., treats each day of each violation as a separate offense with penalties of up to \$25,000 per offense, the general purpose of imposing monetary penalties is to obtain compliance with the Commission's orders, rules, or statutes.

³⁰ See Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 05-46, https://docs.fcc.gov/public/attachments/FCC-05-46A1.pdf, page 34.

³¹ *Id.* at 33.

³² Fugate v. Fla. Elections Comm'n, 924 So. 2d 74, 75 (Fla. 1st DCA 2006), citing Metro. Dade County v. State Dep't of Envtl. Prot., 714 So. 2d 512, 517 (Fla. 3d DCA 1998).

³³ Id. at 76.

³⁴ Barlow v. United States, 32 U.S. 404, 411 (1833).

³⁵ See Order No. PSC-15-0391-SC-TX, issued November 10, 2015, in Docket No. 20150158-TX, In re: Initiation of show cause proceedings against Sun-Tel USA, Inc. for apparent violation of Section 364.335(2), F.S., (Application for Certificate of Authority), Section 364.183(1), F.S., (Access to Company Records), Rule 25-4.0665(20), F.A.C., (Lifeline Service), and Rule 25-4.0051, F.A.C., (Current Certificate Holder Information).

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If a company has a pattern of noncompliance with an order, rule, or statute, or in particular if the violation of an order, rule, or statute adversely impacts the public health, safety, or welfare, then a monetary penalty may not be appropriate or sufficient to address the situation. In such a case, the sanction should be the most severe.

In this docket, staff's informal investigation revealed that the admitted fraud committed by Q LINK has included, amongst other fraudulent practices, creating the appearance of customer usage of its service to receive federal funding from the Lifeline program by falsifying and/or manipulating records. Q LINK admitted on October 15, 2024, that it "has continued to bill the FCC Lifeline program up until the present, including for customers that Q Link should have stopped billing because the customers were not using their cellphones."36 Staff asserts this activity is in direct violation of Order No. PSC-2024-0201-PAA-TP for various reasons, as will be discussed below.

47 C.F.R. § 54.407(c)(2)(i)-(v) sets forth usage requirements which would permit Q LINK to be reimbursed for offering Lifeline:

- (2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber, will establish "usage" of the Lifeline service:
- (i) Completion of an outbound call or usage of data;
- (ii) Purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan;
- (iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier's agent or representative;
- (iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or
- (v) Sending a text message.

Rule 25-4.0665, Florida Administrative Code (F.A.C.), specifically addresses the Lifeline Assistance Program. As set forth in the subject Rule, companies with ETC designations (which are issued by states) "must offer Lifeline Assistance as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 54, Subpart E, Universal Service Support for Low-Income Consumers, Sections 54.400 through 54.423 . . . which are hereby incorporated into this rule by reference" (Emphasis added.) Hence, a

³⁶ U.S. v. Asad/Q Link, Q Link Factual Proffer, p. 6.

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violation of the noted provisions of 47 C.F.R. § 54.407(c)(2)(i)-(v) is likewise a violation of Florida law.

Staff believes that the admissions contained in the Plea Agreement of Q LINK and its associated Factual Proffer, as well as the admissions contained in the Plea Agreement and Factual Proffer of Asad, document that it is no longer in the public interest for Q LINK to be designated as an ETC in Florida. Staff recommends the penalty of revocation of Q LINK's ETC designation.

Factual Allegations

Q LINK submitted false and fraudulent claims to the Universal Service Administrative Company (USAC) for Lifeline program reimbursements for customers who were not using their cellphones according to the FCC's usage rules. The company conspired to mislead the FCC into thinking customers were using their cellphones by manufacturing cellphone activity to pass off as usage and by engaging in coercive marketing techniques to get people to remain subscribed to its service.³⁷ Q LINK and Mr. Asad have entered pleas of guilty to these charges of fraud.

Conclusion

Q LINK has pleaded guilty to fraud and violating federal Lifeline reimbursement rules. As a result, staff recommends Q LINK is also in violation of its ETC Order issued by this Commission for the following reasons:

- 47 C.F.R. §54.407(c)(2)(i)-(v) sets forth usage requirements which would permit Q LINK to be reimbursed for offering Lifeline;
- The usage requirements of 47 C.F.R. §54.407(c)(2)(i)-(v) are incorporated into Rule 25-4.0665, F.A.C., by reference. Thus a violation of any of any portion of 47 C.F.R. §§ 54.400 54.423 constitutes a violation of Rule 25-4.0665, F.A.C.;
- In the ETC Order for Q LINK, the Commission reiterated that Q LINK "asserts that it meets all applicable federal requirements for designation as a Lifeline only ETC in Florida . . . and asserts that, if approved, it will comply with . . . Rule 25-4.0665, Florida Administrative Code (F.A.C.) which govern Lifeline service"³⁸
- By its own admission, Q LINK has violated 47 C.F.R. §54.407(c)(2)(i) and, hence, has violated Rule 25-4.0665, F.A.C., due to continuing "to bill the FCC Lifeline program up until the present, including for customers that Q Link should have stopped billing because the customers were not using their cellphones."³⁹

³⁷ U.S. v. Asad/Q Link, Id. at p. 3.

³⁸ Order No. PSC-2024-0201-PAA-TP, issued June 20, 2024, in Docket No. 20240065-TP, *In re: Petition for designation as eligible telecommunications carrier in the State of Florida, by O LINK WIRELESS* at p. 2.

³⁹ U.S. v. Asad/Q Link, Q Link Factual Proffer, p. 6.

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• Further, due to the admitted fraud against the Lifeline program, staff believes that it is no longer in the public interest for ETC designation to be extended to Q LINK.

Accordingly, staff recommends that the Commission order Q LINK to show cause, in writing, within 21 days from the issuance of the order, why its ETC designation should not be revoked for apparent violation of Commission Order No. PSC-2024-0201-PAA-TP, due to, at a minimum, its violation of the Lifeline reimbursement provisions of 47 C.F.R. § 54.407(c)(2)(i) and, hence, Rule 25-4.0665, F.A.C., and because it is no longer in the public interest for Q LINK to be designated as an ETC.

Staff recommends that the order incorporate the following conditions:

- 1. This Show Cause Order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Q LINK WIRELESS LLC, as respondent.
- 2. Q LINK shall respond to the Show Cause Order within 21 days of service on the Company, and the response shall reference Docket No. 20240146-TP, Initiation of show cause proceeding against Q LINK WIRELESS LLC for apparent violation of Order No. PSC-2024-0201-PAA-TP.
- 3. Q LINK has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
- 4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
- 5. Q LINK's response to the Show Cause Order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
- 6. If Q LINK files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
- 7. A failure to file a timely written response to the Show Cause Order will constitute an admission of the facts alleged herein, and a waiver of the right to a hearing on this issue
- 8. In the event that Q LINK fails to file a timely response to the Show Cause Order, a final order will issue which will:
 - a. Require Q LINK to immediately cease accepting new Lifeline applicants in Florida as of the date of the final order;
 - b. Require Q LINK to provide a spreadsheet of its existing Lifeline customers in Florida to the Commission, including names, phone numbers, mailing addresses, and, if available, email addresses within 3 days of the final order;

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Issue 1

c. Direct Q LINK to contact all of its existing Lifeline customers in Florida in writing within 7 days of the date of the final order and advise of the specific need for the customer to select a new Lifeline carrier that is designated as either a wireline or wireless ETC. This notice shall include the Lifeline contact list on the Commission's website located at: https://www.florida.psc.com/pscfiles/website-files//PDF/Utilities/Telecomm/Lifeline/Customer-CompanyContact-EN.pdf ⁴⁰

- d. Advise Q LINK that a random sampling of Q LINK's Lifeline customers in Florida will be conducted by Commission staff approximately 15 days after issuance of the final order to ascertain compliance by Q LINK with paragraph (c), above;
- e. Direct Q LINK to advise the Commission in writing within 10 days of the final order of its compliance with paragraph (c), above;
- f. Confirm that in the event random sampling by Commission staff indicates that Q LINK has failed to notify its Florida Lifeline customers as required, prior to the sentencing hearing the prosecutor in the pending U.S. District Court criminal proceeding will be notified of Q LINK's apparent failure to assist in the transition of customers to other Lifeline providers; and,
- g. Revoke Q LINK's ETC status 30 days after the date of the final order.

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⁴⁰ There are up to 14 wireless ETCs and up to 1 wireline ETC that could provide the Lifeline discount to Q LINK's current customers, depending on the geographic location of the customer.

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Issue 2: Should this docket be closed?

Recommendation: If the Commission orders Q LINK to show cause as to Issue 1 and Q LINK timely responds in writing to the Show Cause Order, this docket should remain open to allow for the appropriate processing of the response. If the Commission orders Q LINK to show cause as to Issue 1 and Q LINK does not timely respond to the Show Cause Order, then the Commission should issue a final order, and this docket should be closed after the time for filing an appeal has run. If the Commission does not order Q LINK to show cause as to Issue 1 then this docket should be closed. (Augspurger, Farooqi)

Staff Analysis: If the Commission orders Q LINK to show cause as to Issue 1 and Q LINK timely responds in writing to the Show Cause Order, this docket should remain open to allow for the appropriate processing of the response. If the Commission orders Q LINK to show cause as to Issues 1 and Q LINK does not timely respond to the Show Cause Order, then the Commission should issue a final order, and this docket should be closed after the time for filing an appeal has run. If the Commission does not order Q LINK to show cause as to Issue 1 then this docket should be closed.

Item 4

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

Division of Economics (Prewett, Barrett, Guffey) FROM:

Office of the General Counsel (Sandy)

RE: Docket No. 20240110-EU – Joint petition for approval of territorial agreement in

Marion County, by City of Ocala and Duke Energy Florida, LLC.

AGENDA: 11/05/24 – Regular Agenda – Proposed Agency Action – Interested Persons May

Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 2, 2024, the City of Ocala, Florida d/b/a Ocala Electric Utility (Ocala) and Duke Energy Florida, LLC (DEF), collectively the joint petitioners, or utilities, filed a petition seeking Commission approval of a Territorial Agreement in Marion County, Florida (2024 Territorial Agreement). The 2024 Territorial Agreement provides details on the boundary line changes and also proposes a total of seven customer transfers (one customer from DEF to Ocala, and six customers from Ocala to DEF). The joint petitioners regard these seven customers as extraterritorial customers, since their point of use is in one party's territory, but they are receiving service from the other party. In its petition, the joint petitioners provided sample customer notifications that were sent to each of the customers who are subject to being transferred. The letters were issued to comply with Rule 25-6.0440(1)(d), Florida Administrative Code (F.A.C.). The proposed Agreement, maps depicting the new territorial boundaries, and written descriptions are attached hereto as Attachment A.

Docket No. 20240110-EU Issue 1 Date: October 24, 2024

Since 2009, Ocala and DEF have been parties to a territorial agreement that expired in 2019. The Commission approved that agreement by Order No. PSC-09-0485-CO-EU, dated July 7, 2009. In early 2017, the joint petitioners began negotiations on a new territorial agreement to replace the 2009 Agreement. Although the 2009 Agreement expired, the parties have continued to meet their obligations under it while negotiations towards the new Territorial Agreement were underway.2

Both Ocala and DEF acknowledge that their current respective Geographic Information System (GIS) mapping systems offer more precision than prior mapping resources, and at various times, both have inadvertently connected a very small number of customers who are located in the other utility's territory. As discussed in this staff recommendation, the negotiated 2024 Territorial Agreement includes boundary line changes that acknowledge these inadvertent connections. Other boundary lines changes address mapping discrepancies and split parcels along the territorial boundaries. Through sharing of GIS mapping files, the joint petitioners are currently able to evaluate whether service addresses are located within or outside either utility's respective service territory, which greatly enhances their ability to prevent future inadvertent connections.

During the review process, staff issued two data requests to the joint petitioners, for which responses were received August 30, 2024 and September 30, 2024. The proposed 2024 Territorial Agreement, if approved as filed, establishes the new territorial boundaries reflecting the assets and customer transfers between the joint petitioners. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

¹ Order No. PSC-09-0485-CO-EU., issued Jule 6, 2009, in Docket No. 080724-EU, In re: Joint petition for approval of territorial agreement in Marion County by Ocala Electric Utility and Progress Energy Florida, Inc.

² Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 2.a.

Date: October 24, 2024

Discussion of Issues

Issue 1: Should the Commission approve the proposed 2024 Territorial Agreement between Ocala and DEF in Marion County, dated August 2, 2024?

Recommendation: Yes, staff recommends that the Commission should approve the proposed 2024 Territorial Agreement between Ocala and DEF in Marion County, dated August 2, 2024, as consistent with the Standards for Approval pursuant to Rule 25-6.0440(2), F.A.C. The proposed territorial agreement amends the respective boundary between these utilities to more clearly delineate the service territory of while also resolving ongoing matters related to inadvertently served customers. Moreover, approval of the 2024 Territorial Agreement would help the joint petitioners to gain further operational efficiencies and customer service improvements in their respective retail service territories, and to address circumstances giving rise to uneconomic duplication of service facilities and hazardous situations. (Prewett, Guffey, Barrett)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), (F.A.C.), the Commission has 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.³

Compliance with Rule 25-6.0440(2), F.A.C.

Rule 25-6.0440(2), F.A.C., addresses the standards the Commission should consider for approving territorial agreements for electric utilities. The Rule states:

- (2) In approving territorial agreements, the Commission may consider:
- (a) The reasonableness of the purchase price of any facilities being transferred;
- (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement;
- (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities; and
- (d) Any other factor the Commission finds relevant in reaching a determination that the territorial agreement is in the public interest.

Proposed 2024 Territorial Agreement

Ocala and DEF executed the proposed 2024 Territorial Agreement on August 2, 2024, to replace the 2009 Agreement which expired in July 2019. Upon its approval by the Commission, the proposed 2024 Territorial Agreement will supersede the 2009 Agreement and all other prior agreements between the joint petitioners in Marion County. Through the proposed 2024 Territorial Agreement, the joint petitioners seek to (1) transfer certain customers to address errors each utility made in connecting and serving customers that were located in the geographic area of the other utility and (2) make minor boundary changes to correct mapping errors and address

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

Date: October 24, 2024

split parcels, in order to more clearly delineate the respective service areas each utility serves.⁴ These combined objectives are expected to aid the utilities in eliminating circumstances that give rise to the uneconomic duplication of service facilities and hazardous situations.

Pursuant to Section 6.0, the proposed 2024 Territorial Agreement will remain in effect for 20 years from the date the Commission issues its order approving the agreement in its entirely and it is no longer subject to judicial review. Upon the expiration of the initial 20-year term, pursuant to Section 6.0, the agreement shall remain in effect unless either party provides written notice of termination at least 12 months prior to the termination of the Agreement in accordance with the Section 8.2.

Proposed Boundary Changes

The joint petitioners assert that the proposed boundary line changes are minor, and there are two main reasons for them.⁵ First, minor changes are needed to implement the transfer of the seven extra-territorial customers and to accommodate the 54 inadvertently-served customers who will not be transferring. Second, other proposed boundary line changes are proposed to address mapping discrepancies (errors) and consolidate parcels that were previously split.⁶ Maps depicting the proposed boundary lines are shown in Attachment B.⁷

Regarding the proposed boundary changes to accommodate customer transfers, the joint petitioners contend that the inadvertent connections were the result of human error in interpreting older paper boundary maps, or because one utility or the other did not have facilities at/near the service address at the time service was requested by the customer. ⁸ The joint petitioners contend that the proposed changes to accommodate customer transfers will accomplish the objectives of avoiding duplication of services and wasteful expenditures, as well as to best protect the public health and safety from potentially hazardous conditions. ⁹ Other proposed boundary line changes are on vacant land parcels that are unrelated to the seven extra-territorial customers proposed to be transferred.

The joint petitioners are also proposing boundary line adjustments that rectify mapping discrepancies and errors. The utilities propose to do this, in part, by eliminating or greatly reducing the number of split parcels in one or the other utility's service territory. They contend that split parcels lead to confusion regarding which utility should serve a portion or all of a parcel, whereas, if a negotiated map adjustment eliminated the split and incorporated a whole parcel, such confusion would be averted. ¹⁰ In addition, other adjustments are proposed to clarify (or re-draw) parcels where needed, and also to make adjustments that would remove the need for duplicative facilities. ¹¹

⁴ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 3.a.

⁵ The joint petitioners provided maps in their application in conformity with Rule 25-6.0440(1)f, F.A.C., that show their proposed boundary lines.

⁶ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 6.

⁷ Document No. 08767-2024, joint petitioners' response to staff's first data request, No.13.

⁸ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.c.

⁹ Docket No. 20240110-EU, *In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC.*

¹⁰ Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 5.a.

¹¹ Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 6.a.

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Through their careful review of GIS-based resources, the joint petitioners also determined their existing maps had errors in them. Specifically, these errors were parcels or land areas that were shown on the old and outdated resources as part of one utility's service territory, and the GISbased resource indicated the parcels are legally part of another utility's service territory. 12 The joint petitioners are in agreement as to the nature of the mapping errors and that such errors should be corrected. The utilities also reported that detailed GIS-based mapping that each utility uses, along with written descriptions included in the 2024 Territorial Agreement, will help to avoid similar errors on a going-forward basis. 13

Inadvertently Served Customers Not Proposed to be Transferred

A total of 54 customers are being inadvertently served, which means their respective point of connection for receiving electrical service is located outside of their utilities' currently approved service territory. The joint petitioners have forged boundary line changes to avert the need for customer transfers by either utility so that these customers may continue to receive service from their current utility rather than be transferred. DEF currently provides inadvertent service to 41 customer who are not proposed to be transferred to Ocala. These DEF customers are reflected on the current territorial maps as being located in Ocala's service territory, although proposed map adjustments to allow these customers to continue to be served by DEF. Likewise, a total of 13 customers with service addresses in DEF's territory are currently being served by Ocala. Map adjustments are proposed that will avert the need for implementing transfers.¹⁴ The joint petitioners state that many of the inadvertently served customers are in areas where there were split parcels, and because the proposed boundary line changes are addressing those parcels, these inadvertently served customers are not being transferred because the existing facilities are in place and it makes "operational sense" that they continue to be served by their current utility. 15 Pursuant to Section 1.8 of the Agreement, the joint petitioners clarified that there are no Temporary Service Customers currently being serviced by either party. ¹⁶ Temporary Service Customers are defined in the Territorial Agreement as customers who are being temporarily served under the temporary service provisions of the Agreement.

Proposed Seven Customer Transfers

The proposed customer transfers under the 2024 Territorial Agreement are the result of negotiations between the parties, with the intent of avoiding duplication of services and wasteful expenditures, as well as to best protect the public health and safety from potentially hazardous conditions. A total of seven active customer accounts are proposed to be transferred, one from DEF to Ocala and six customer accounts are proposed to be transferred from Ocala to DEF.¹⁷

¹² Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 6.a.

¹³ Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 6.i.

¹⁴ Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 2.

¹⁵ Document No. 09305-2024, joint petitioners' response to staff's second data request, No. 5.a.

¹⁶ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 7.

¹⁷ Docket No. 20240110-EU, In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC.

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DEF to Ocala Customer Transfer (one customer)

The one active DEF customer account that is proposed to be transferred to Ocala, as shown in Exhibit C of the proposed Territorial Agreement, is a residential class customer whose service was established in 2021.¹⁸ At that time, DEF relied upon its then-current mapping resources, which included older paper boundary maps approved by the Commission in 2009, that indicated that the service address was within its franchised service territory.¹⁹ More correct GIS-based mapping resources now indicate that the original connection was in error, and the proposed transfer pursuant to the 2024 Territorial Agreement corrects this.²⁰

Ocala to DEF Customer Transfers (six customers)

The six active Ocala customer accounts that are proposed to be transferred to DEF were connected at various times, some dating back to 1995. Exhibit D of the proposed Territorial agreement reflects that three of the customer locations shown are receiving service as commercial class customers and the other three are receiving service as residential class customers. Ocala also stated that the serving utilities relied on mapping sources that were current at the time, and have since been enhanced. 22

The joint petitioners also share their mapping files with one another as an effort to make sure there is no disagreement on the exact boundaries. Both parties intend to continue using these mapping tools and share data as an ongoing practice to avert errant connections prospectively.²³

Implementation and Customer Notifications

The joint petitioners state that there will be no customer transfers until the Commission approves the joint petition. Although specific details regarding the transfer of facilities have not been developed yet, the joint petitioners state that upon the Commission's approval of the 2024 Territorial Agreement, the customer transfers will be coordinated to take place over a 36-month period.²⁴

Pursuant to Rule 25-6.0440(1)(d), F.A.C., DEF notified its one customer of the proposed transfer to Ocala, and Ocala informed its designated 6 customers of their proposed transfer to DEF. The customer notification letters dated March 19, 2024, provided information on the general service rate changes that would be applicable under their proposal. As of August 2024, the residential service rate was \$0.09171 per kilowatt hours (kWh) for DEF customers and \$0.10126 per kilowatt hours (kWh) for Ocala customers, a difference of about \$.00955 per kWh (approximately a 10 percent difference). On a comparative basis, for a typical residential customer using 1,000 kWh per month, a DEF customer would be paying \$91.71 per month, and an Ocala customer would be paying \$101.26, a difference of \$9.55 per month. For a commercial

¹⁸ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.b.

¹⁹ Order No. PSC-09-0485-CO-EU., issued Jule 6, 2009, in Docket No. 080724-EU, *In re: Joint petition for approval of territorial agreement in Marion County by Ocala Electric Utility and Progress Energy Florida, Inc.*

²⁰ Docket No. 20240110-EU, In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC.

²¹ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.a.

²² Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.c and 5.d.

²³ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.d.

²⁴ Docket No. 20240110-EU, In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC.

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class customer, DEF's general service rate is \$0.07332 per kWh, and the comparable charge for Ocala is \$.10310 per kWh (approximately a 34 percent difference).

At the time of filing this recommendation, Commission staff has not received correspondence from customers related to the proposed transfers. The joint petitioners assert they have not received any written correspondence from customers related to the proposed transfers. They also assert that at least 30 days prior to the actual transfer, the affected customers will receive a second notification of the transfer. The joint petitioners assert that no additional charges will be imposed on those customers that will be transferred.²⁵ Staff believes DEF and Ocala have met their obligations of providing notification pursuant to Rule 25-6.0440(1)(d), F.A.C., and both commit to doing so again when the specific transfer is eminent.

Standards of Approval

Construction cost estimates or detailed engineering drawings were not presented to staff for review. The joint petitioners stated that construction cost estimated or detailed engineering drawings have not been developed yet.²⁶ Upon approval of the proposed 2024 Territorial Agreement, the parties assert they will address which facilities are to be transferred or purchased, if any, and undertake a valuation of facilities subject to transfer. DEF and Ocala have mutually agreed to use an engineering cost estimation methodology to determine the value of facilities subject to transfer.²⁷ In its review, staff analyzed each component of Rule 25-6.0440(2), F.A.C. Regarding paragraph (2)(a), staff notes that no purchase price was presented for staff to review. As a proxy, staff notes that the joint petitioners agreed to use an engineering cost estimation methodology to determine the value of facilities when the specific plans and technical drawings for implementing their Territorial Agreement are developed at a later time.²⁸ This methodology has been used by utility companies in the past, and has been approved by the Commission.²⁹

Pursuant to Rule 25-6.0440(2)(b), F.A.C., the joint petitioners' confirmed that the availability and reliability of service to existing or future customers will not be decreased for either petitioner.³⁰ Additionally, both utilities confirmed that the 2024 Territorial Agreement would help them gain further operational efficiencies and customer service improvements in their respective retail service areas. The joint petitioners stated that the transfer of the one customer from DEF to Ocala would have the greatest operational impact, because the current DEF facilities to serve the customer runs across multiple private properties and heavily wooded areas.³¹

Under the proposed 2024 Territorial Agreement, the joint petitioners have made good faith efforts to minimize existing or potential uneconomic duplication of facilities, as referenced in

²⁵ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 10.c and 11.c.

²⁶ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 10.c and 11.c.

²⁷ Docket No. 20240110-EU, In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC

²⁸ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 10.c and 11.c.

²⁹The joint petitioners have agreed to use a cost escalator, such as the Handy Whitman Index, or common engineering cost estimation methodology. See Docket No. 20240110-EU, *In re: Joint petition for approval of territorial agreement in Marion County, by City of Ocala and Duke Energy Florida, LLC*

³⁰ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 1.c.

³¹ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 3.b.

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Rule 25-6.0440(2)(c), F.A.C. Each joint petitioner provided tables and maps indicating the approximate distance between customer locations and primary facilities.³² The service address for the DEF customer subject to transfer to Ocala is about 200 feet from existing Ocala facilities, and when the transfer is implemented, the joint petitioners assert that about 550 feet of overhead facilities will no longer be needed and can be removed.³³ For the Ocala customers subject to transfer to DEF, the joint petitioners indicate DEF will serve these addresses via overhead and underground service lines. Three of the customer addresses are located about 1,700 feet from existing DEF facilities, and the other 3 are less than 1,000 feet from existing DEF facilities.³⁴

Issue 1

Rule 25-6.0440(2)(d), F.A.C., gives the Commission the discretion to address any other relevant concerns that are case-specific.³⁵ In this case, a disparity of rates (based on a July to August 2024) bill example) exists that would result in certain customers paying more for service.³⁶ Pursuant to the 2024 Territorial Agreement, the customer transferring from DEF to Ocala would be paying rates that are about 10 percent higher than they are currently. Conversely, the 3 residential customers transferring from Ocala to DEF will be paying rates that are about 10 percent lower than they are currently.³⁷ Although staff is cognizant of the rate impact on customers, the Commission has consistently adhered to the principle set forth in Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968), and reaffirmed in Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987), that no person has a right to compel service from a particular utility simply because he believes it to be to his advantage. The Court went on to say in *Lee County* that "larger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the Florida Public Service. Commission." *Lee County*, at 587. ³⁸

The joint petitioners are optimistic that with modern mapping resources and advancements in GIS technology, instances of inadvertent connection can be greatly reduced or eliminated.³⁹ Both parties have put in effort to correct certain errors made by both entities over a long period of time. Staff believes the 2024 Territorial Agreement is reasonable and a product of thoughtful negotiation.

Conclusion

Staff believes the Commission should approve the proposed 2024 Territorial Agreement between Ocala and DEF in Marion County, dated August 2, 2024, as consistent with the Standards for Approval pursuant to Rule 25-6.0440(2), F.A.C. The 2024 Territorial Agreement, as proposed, is

³² Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 10.a and 11.a.

³³ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 10.b.

³⁴ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 11.b.

³⁵ AmeriSteel Corp. v. Clark, 691 So. 2d 473, 480 (Fla. 1997). ("[T]he Commission was fully apprised of AmeriSteel's corporate interest in obtaining lower electricity rates before deciding to approve the JEA-FPL agreement.")

³⁶ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 12.c.

³⁷ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 12.c.

³⁸ See Order No. PSC-96-0755-FOF-EU, issued June 10, 1996, in Docket No. 19950307-EU, In re: Petition to resolve a territorial dispute with Florida Power & Light Company in St. Johns County, by Jacksonville Electric Authority.

³⁹ Document No. 08767-2024, joint petitioners' response to staff's first data request, No. 5.e and 8.b.

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consistent with the Standards for Approval pursuant to Rule 25-6.0440(2), F.A.C. The proposed territorial agreement amends the respective boundary between these utilities to more clearly delineate the service territory of while also resolving ongoing matters related to inadvertently served customers. Moreover, approval of the 2024 Territorial Agreement would help the joint petitioners to gain further operational efficiencies and customer service improvements in their respective retail service territories, and to address circumstances giving rise to uneconomic duplication of service facilities and hazardous situations.

Docket No. 20240110-EU Issue 2

Date: October 24, 2024

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. (Sandy)

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.

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ATTACHMENT 1

Territorial Agreement

The City of Ocala through the Ocala Electric Utility

and

Duke Energy Florida, LLC

Marion County

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TERRITORIAL AGREEMENT

THIS TERRITORIAL AGREEMENT ("Agreement"), made and entered into this <u>2nd</u> day of <u>August</u>, 2024, by and between the City of Ocala ("Ocala"), a Florida municipal corporation, and Duke Energy Florida, LLC, ("DEF"), a Florida corporation, each of which are corporations organized and existing under the laws of the State of Florida and that operate electric utilities as defined in, and whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which corporations are herein collectively called the "Parties;"

WITNESSETH:

WHEREAS, the City of Ocala, through the Ocala Electric Utility ("OEU"), by virtue of its Charter and legislative authority, is authorized and empowered to furnish electricity and power to its member, private individuals, corporations, and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Marion County, Florida; and

WHEREAS, DEF, is authorized, empowered and obligated by its corporate charter and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas in Marion County, Florida; and

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WHEREAS, OEU and DEF were parties to a territorial agreement delineating their respective service territories in Marion County, Florida, which was approved by the Florida Public Service Commission (the "Commission") in Order No. PSC-09-0485-CO-EU, issued July 6, 2009, in Docket No. 080724-EU (the "Expired Agreement"). The Expired Agreement had a ten (10) year term until July 6, 2019; and

WHEREAS, the Parties desire to enter into a new Agreement to better serve their interests and the interests of their customers in realizing the planning, operational, and customer service benefits provided to their respective electric systems by a properly constructed, approved, and supervised territorial agreement; and

WHEREAS, the respective areas of retail service of the Parties hereto are contiguous in many places with the result that duplication of service facilities may occur in the future unless such duplication is precluded by virtue of this Agreement; and

WHEREAS, the Parties desire to clearly delineate the territorial boundaries in Marion County, Florida, in their entirety through this Agreement in order to gain further operational efficiencies and customer service improvements, while continuing to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations.

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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 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 fulfilment of the purposes and desired aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to the Agreement as follows:

ARTICLE I

DEFINITIONS

Section 1.0: Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" 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 Marion County.¹

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¹ A written description of the territorial boundaries is included in Exhibit B as required by Rule 25-6.0440(1)(a), F.A.C.

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Section 1.1: OEU Territorial Area. As used herein, the term "OEU Territorial Area" shall mean the geographic areas in Marion County, Florida, allocated to Ocala as its retail service territory and labeled "OEU Territorial"

Area" or "OEU" on the maps contained in Exhibit A.

Section 1.2: DEF Territorial Area. As used herein, the term "DEF

Territorial Area" shall mean the geographic areas in Marion County, Florida,

allocated to DEF as its retail service territory and labeled as "DEF Territorial

Area" or "DEF" on the maps contained in Exhibit A.

Section 1.3: 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 electric service under this Agreement, irrespective of where

the customer's point of delivery or metering is located. The point of use

and not the point of connect or metering shall be determinative as to who

shall be the provider of the electric service under this Agreement.

Section 1.4: Transmission and Distribution Lines. As used herein, the

term "Transmission Lines" shall mean all electric lines of either Party having

a rating of 69 kV or greater. As used herein, the term "Distribution Lines"

shall mean all electric lines of either Party having a rating up to but not

including 69 kV.

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<u>Section 1.5: New Customers.</u> As used herein, the term "New Customers" shall mean all customers applying for retail electric service after the Effective Date of this Agreement at a Point of Use in the Territorial Area

of either Party which has not previously been served by either utility.

Section 1.6: Existing Customer. As used herein, the term "Existing Customer" shall mean any customer receiving electric service from either

OEU or DEF at the location for which the service is existent on the Effective

Date of this Agreement.

Section 1.7: Extra-Territorial Customers. As used herein, the term

"Extra-Territorial Customers" shall mean those customers whose point of

use is located within the Territorial Area of one Party but which are receiving

electrical service from the other Party on the Effective Date of this

Agreement.

Section 1.8: Temporary Service Customers. As used herein, the term

"Temporary Service Customers" shall mean those customers who are being

temporarily served under the temporary service provisions of the

Agreement.

Section 1.9: Commission. As used herein, the term "Commission" shall

mean the Florida Public Service Commission.

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Section 1.10: 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

RETAIL ELECTRIC SERVICE

Section 2.0: In General. Except as otherwise specifically provided herein, OEU shall have the exclusive authority to furnish retail electric service within the OEU 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 OEU or DEF Territorial Area, through annexation or otherwise, unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.1: 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 2.2 below.

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There are instances where the Territorial Boundary Line will traverse the property of a New Customer. The Parties recognize that in some instances, the information needed to locate the New Customer's various points of use in relation to the Territorial Boundary Line with reasonable certainty may be unavailable or difficult to determine, and agree that in such event, the Party with the greater portion of the New Customer's property in its Territorial Area, including where the preponderance of the Customer's electric energy usage is expected to occur, shall be entitled to serve all of the New Customer's usage.

Section 2.2: 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 permanently 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

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service and that the other Party will ultimately serve the New Customer. Such temporary service shall be discontinued upon written notice from the requesting Party of its intent to provide service. In conjunction with such discontinuance, the Party providing temporary service hereunder shall be compensated by the requesting Party in accordance with Section 3.3 for its distribution facilities used exclusively to provide such service. However, 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.

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.

Section 2.3: Referral of Service Request. In the event that a 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 Agreement as approved by the Commission and shall refer the New Customer to the other Party.

<u>Section 2.4: Correction of Inadvertent Service Errors.</u> If any situation is discovered during the term of this Agreement in which either Party is

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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 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 2.2 above.

ARTICLE III

TRANSFER OF CUSTOMERS AND FACILITIES

Section 3.0: In General. In order to achieve the operational efficiencies and other benefits contemplated by this Agreement in a timely manner, all Extra-Territorial Customers shall be transferred to the Party in whose Territorial Area such customers are located at the earliest practical time, consistent with sound utility practices and reasonable customer notice. The Parties expect the transfer of any Extra-Territorial Customers to be completed within thirty-six (36) months of the Effective Date and will notify the Commission in writing if circumstances require additional time to complete the transfer.

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The Extra-Territorial Customers currently served by DEF and subject to transfer to OEU pursuant to this Agreement are listed by the service address and/or other identifying factor in Exhibit C, attached hereto.

The Extra-Territorial Customers currently served by OEU and subject to transfer to DEF pursuant to this Agreement are listed by the service address and/or other identifying factor in Exhibit D, attached hereto.

In accordance with Rule 25-6.0440(1)(d), F.A.C., the affected 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 E.

Section 3.1: Reallocated Area. In the event 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 Territorial Area of the other Party, the Parties shall jointly petition the Commission for approval of a modification of the Territorial Boundary Line. If approved by the Commission, this modification would place the area(s) in question ("Reallocated Area") within the Territorial Area of the other Party and the transfer of the customers located in the Reallocated Area to the other Party.

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Section 3.3 below.

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Section 3.2: Transfer of Related Service Facilities. In conjunction with the transfer of Extra-Territorial Customers pursuant to Section 3.0 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 determined in accordance with

Section 3.3: Compensation for Transferred Facilities. If service facilities are transferred pursuant to Section 3.2 above, the receiving Party shall compensate the transferring Party 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, and the cost to the transferring Party for reintegration of its remaining system to the extent such reintegration costs are reasonably required by sound utility practices. The replacement cost shall be determined by applying a cost escalator 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 escalation method.

<u>Section 3.4: Transfer Closings.</u> The Parties shall mutually agree on a closing date for each transfer, 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

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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.

Section 3.5: 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.

ARTICLE IV

OPERATION AND MAINTENANCE

Section 4.0: 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 4.1: OEU Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of OEU to serve any OEU or City of Ocala facility located in a DEF Territorial Area which

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

Section 4.2: 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 DEF facility located in the OEU 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 OEU in the OEU Territorial Area.

Section 4.3: Retail Service at Facility Sites. Where either Party serves any of its facilities located in the Territorial Area of the other Party pursuant to Sections 4.1 or 4.2 above, such Party may provide limited retail service on the site of the facility to prevent potential safety hazards or unsound operating conditions that would result from the construction and maintenance of lines and related facilities by the other Party to provide retail service at the site. As used in this section, limited retail service shall mean no more than three separate retail accounts with a combined load of 25 kW or less at any such site.

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ARTICLE V

PREREQUISITE APPROVAL

Section 5.0: Commission Approval. The provisions and the Parties

performance of this Agreement are subject to the regulatory authority of

the Commission, and appropriate approval by the Commission of this

Agreement in its entirety shall be an absolute condition precedent to the

validity, enforceability and applicability hereof. This Agreement shall have

no effect whatsoever until Commission approval has been obtained, and the

date of the Commission's final Order shall be deemed to be the effective

date of this Agreement ("Effective Date'). 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

hereunder.

Section 5.1: Liability in the Event of Disapproval. In the event

approval of the Commission pursuant to Section 5.0 is not obtained, neither

Party will have any claim against the other arising under this Agreement.

Section 5.2: Supersedes Prior Agreements. Upon approval by the

Commission, this Agreement shall be deemed to specifically supersede all

prior agreements between the Parties regarding their respective retail

service areas in Marion County.

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ARTICLE VI

DURATION

Section 6.0: Term. This Agreement shall continue and remain in effect for a period of twenty (20) years from the Effective Date. After expiration of the twenty (20) year term provided herein, this Agreement shall remain in effect thereinafter unless either Party provides written notice of Termination at least twelve (12) months prior to the termination of the agreement as contemplated by Section 8.2.

ARTICLE VII

CONSTRUCTION OF AGREEMENT

Section 7.0: Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the right of either Party to furnish retail electric service with any other electric utility that is not a party to this Agreement. The Parties understand that OEU 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 OEU or DEF from designating any portion of its Territorial Area under this Agreement as the retail service area of such other electric utility.

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Section 7.1: Bulk Power for Resale. Nothing herein shall be construed

to prevent either Party from providing a bulk power supply for resale

purposes, 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.

Section 7.2: 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 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.

Section 7.3: Public Records Law. DEF acknowledges Ocala's obligations

under Article I, Section 24, Florida Constitution and Chapter 119, Florida

Statutes, to release public records to members of the public upon request.

DEF acknowledges that Ocala is required to comply with Article I, Section

24, Florida Constitution and Chapter 119, Florida Statutes, in the handling

of the materials created under this Agreement and that said statute controls

over the terms of this Agreement.

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Section 7.4: Statutory Liability Cap. Nothing herein is intended to act as a waiver of Ocala's sovereign immunity or the limits of liability set forth in Section 768.28 of the Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence,

product liability or otherwise.

ARTICLE VIII

MISCELLANEOUS

Section 8.0: 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 and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties

unless agreed to in writing by both Parties and approved by the Commission.

Section 8.1: Successors and Assigns. Nothing in this 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 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

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assigns.

Section 8.2: 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, or by confirmed facsimile transmittal, as follows:

To DEF: To City of Ocala:

> Melissa Seixas, State President Duke Energy Florida, LLC

Director Electric Utility City of Ocala

1805 NE 30th Avenue Bldg 400 Ocala, Florida 34470

with copy to:

City Attorney City of Ocala 110 SE Watula Avenune Ocala, Florida 34471

P.O. Box 14042 St. Petersburg, Florida 33733

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 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.

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	CITY OF OCALA, FLORIDA, a Florida municipal corporation	
	By: Bary Mafall 550E4A5AC2B44F7. City Council President	, as
ATTEST:		
Docus Ign toy: Angel Blacols BY31574C2985MGEL JACOBS City Clerk	5, as	
APPROVED AS TO FO	RM AND LEGALITY:	
William E. Supton By: William E. Supton City Attorney	XTON, as	
	DUKE ENERGY FLORIDA,	LLC
	By: Melissa Seixas, State Presid	_, as dent
	Duke Energy Florida,	LLC
ATTEST: /s/ Stephanie Cuello		
STEPHANIE CUELLO, Senior Counsel Duke Energy Florida		

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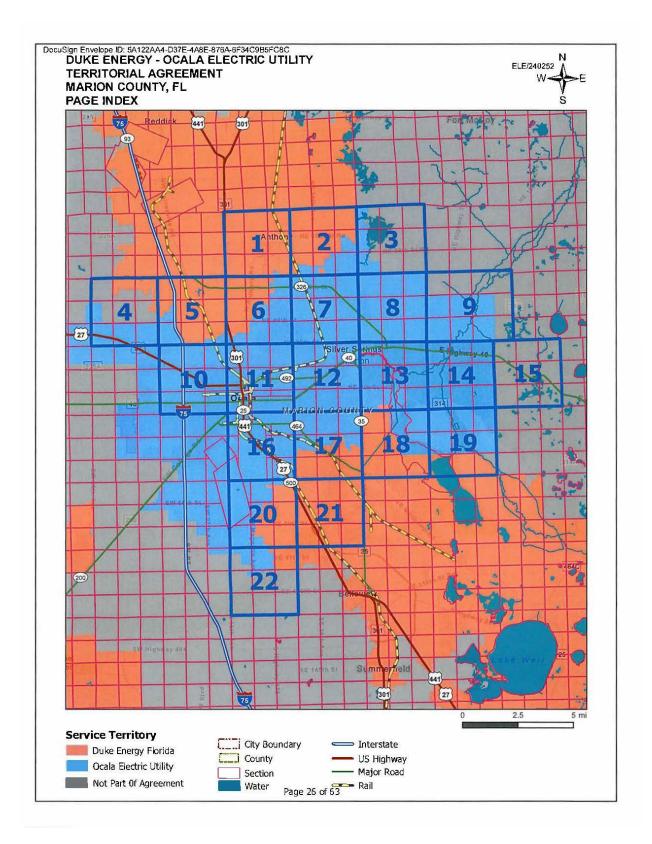
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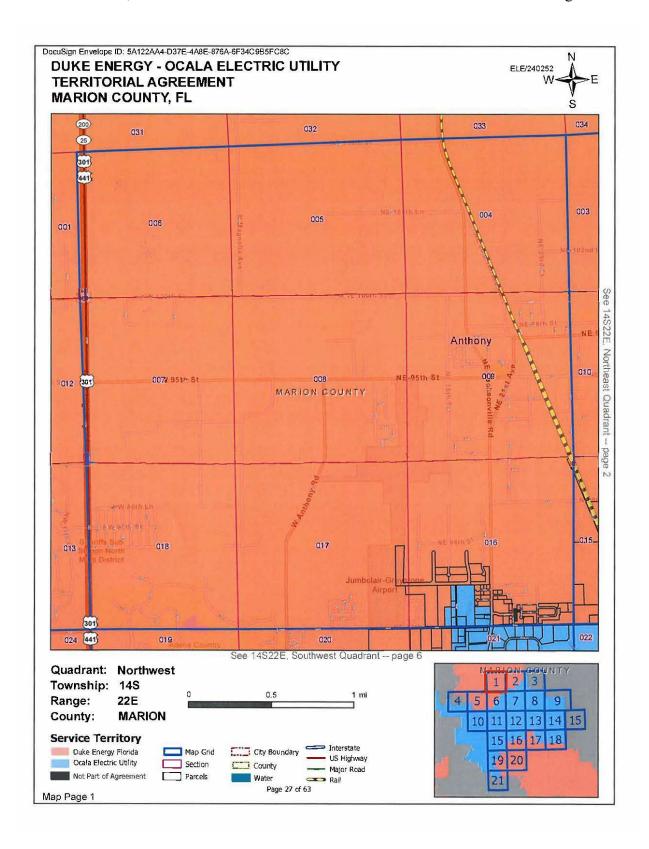
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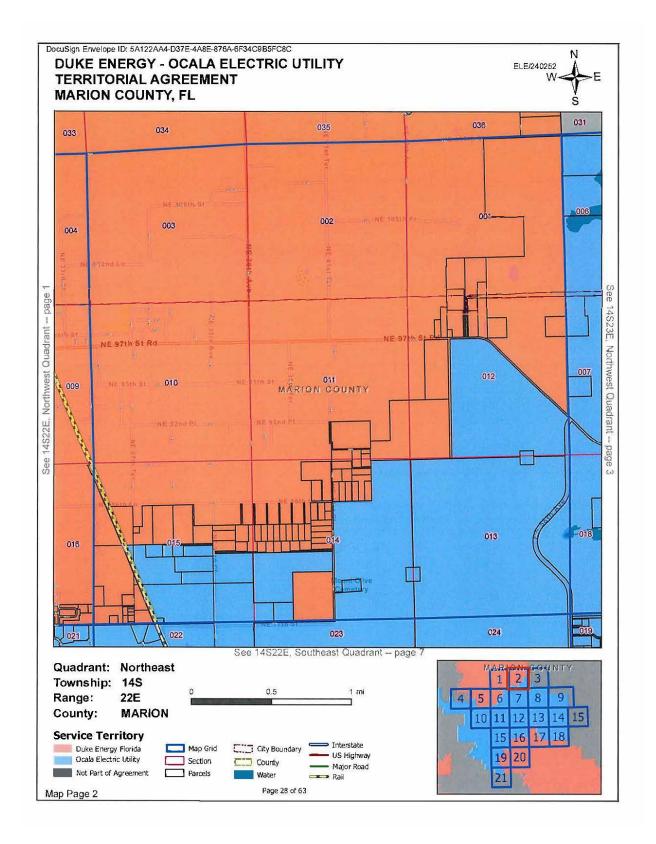
EXHIBIT A

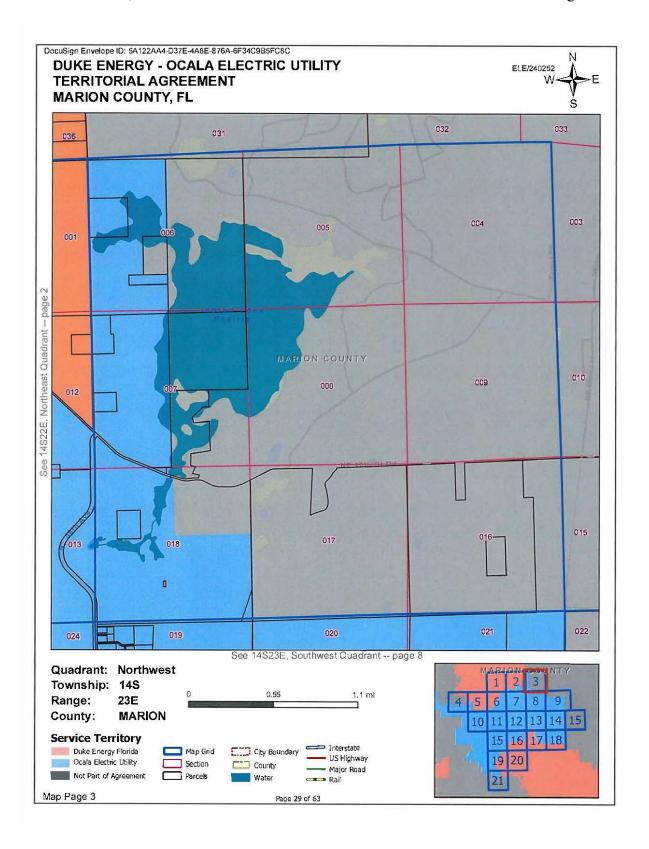
MAPS DEPICTING THE TERRITORIAL BOUNDARY LINES AND SERVICE TERRITORIES OF THE CITY OF OCALA & DUKE ENERGY FLORIDA IN MARION COUNTY

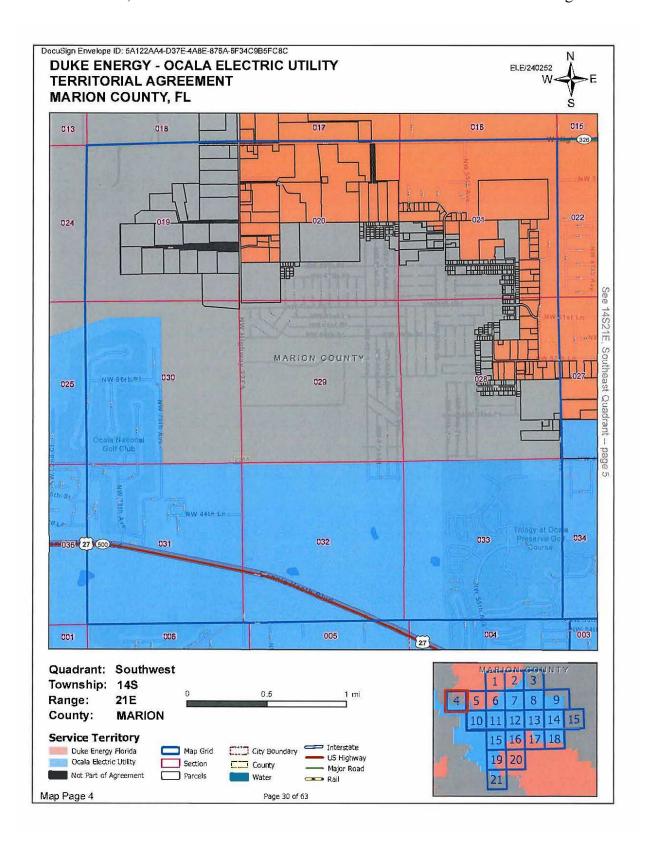
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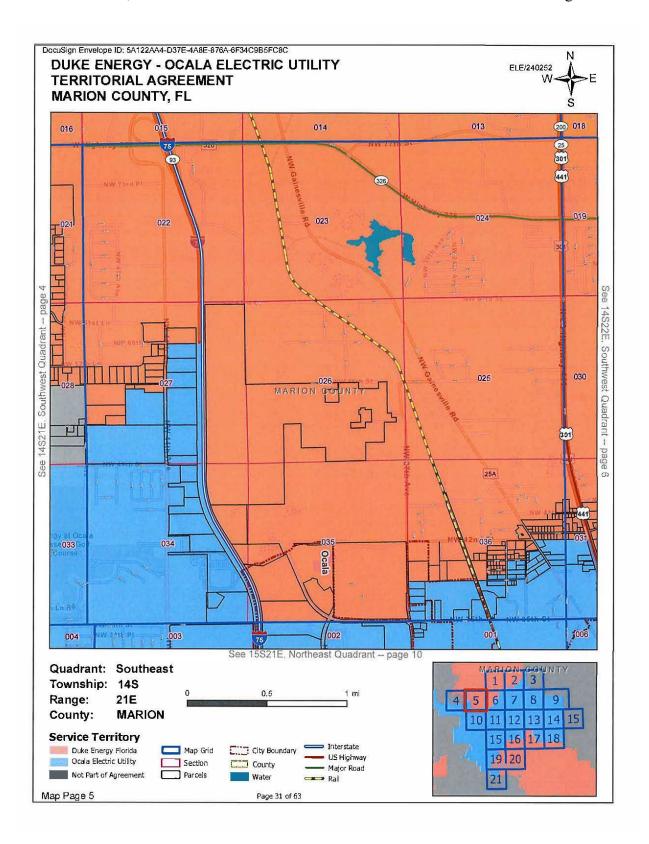


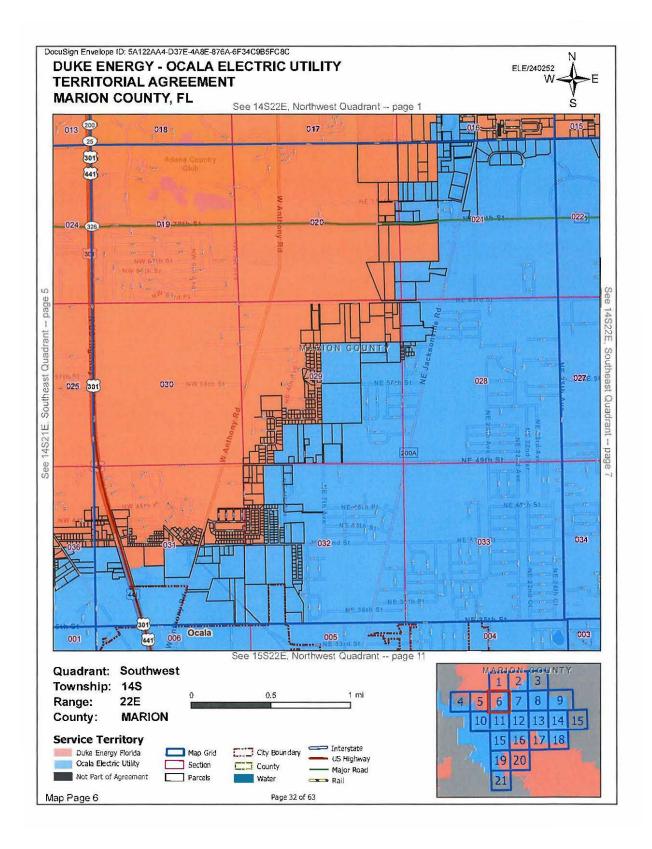


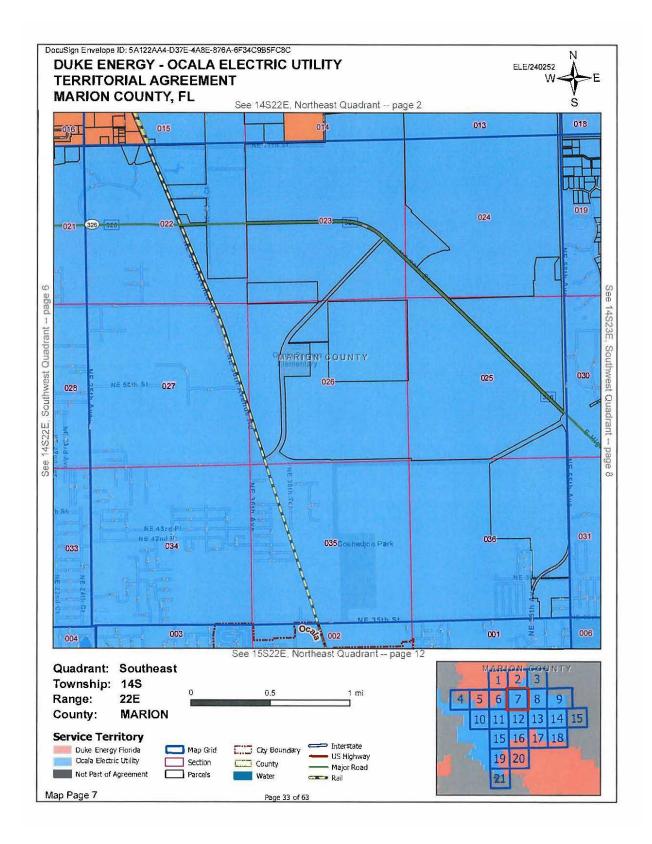


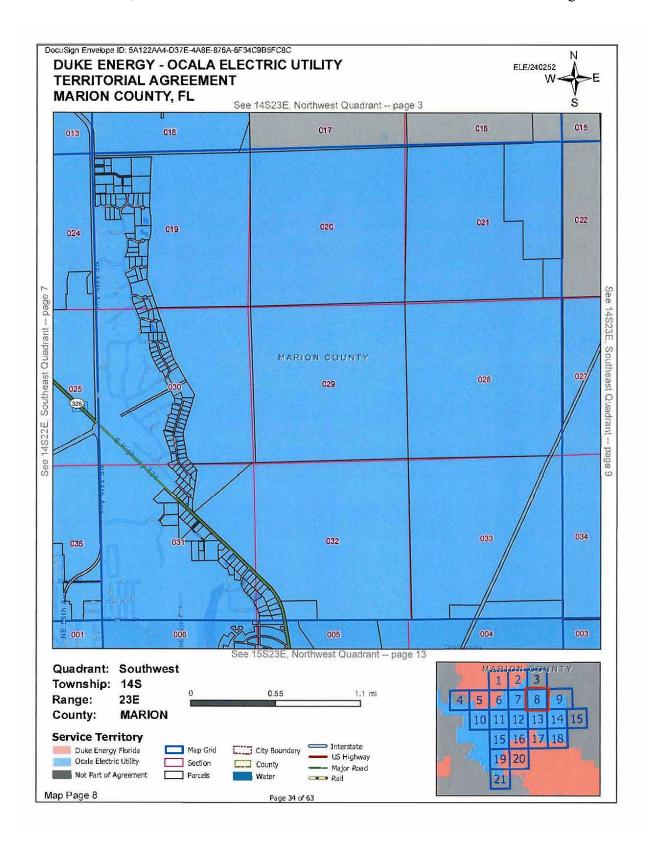


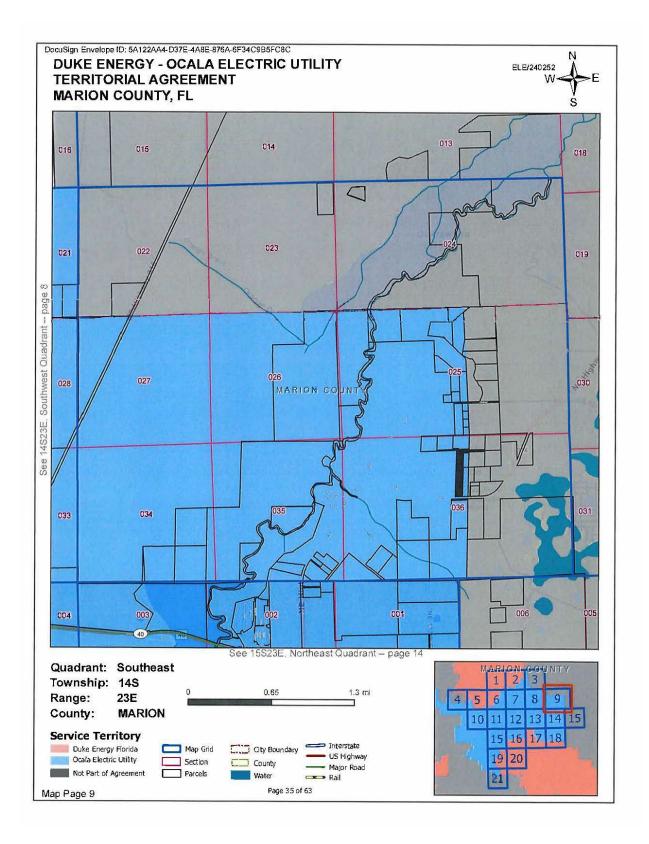


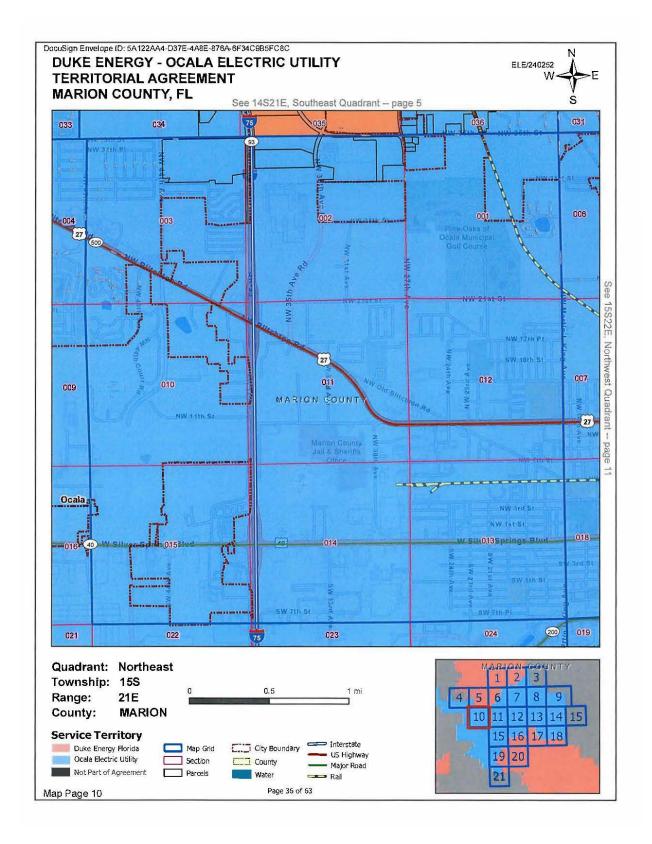


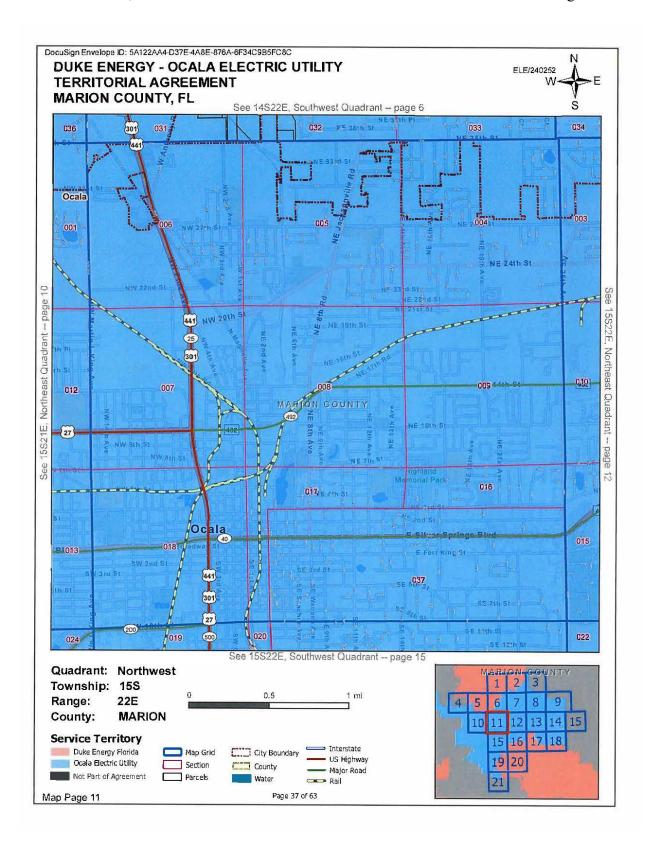


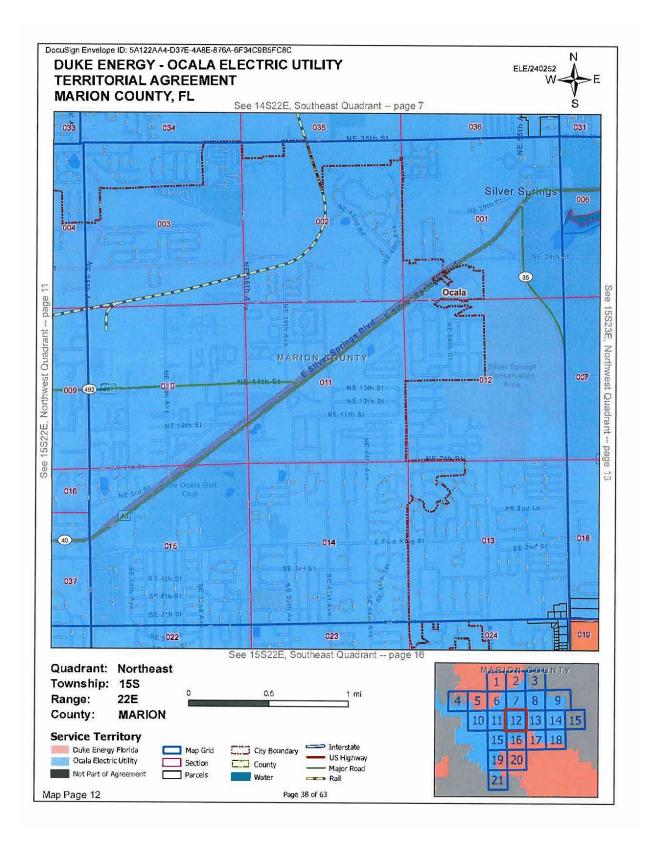


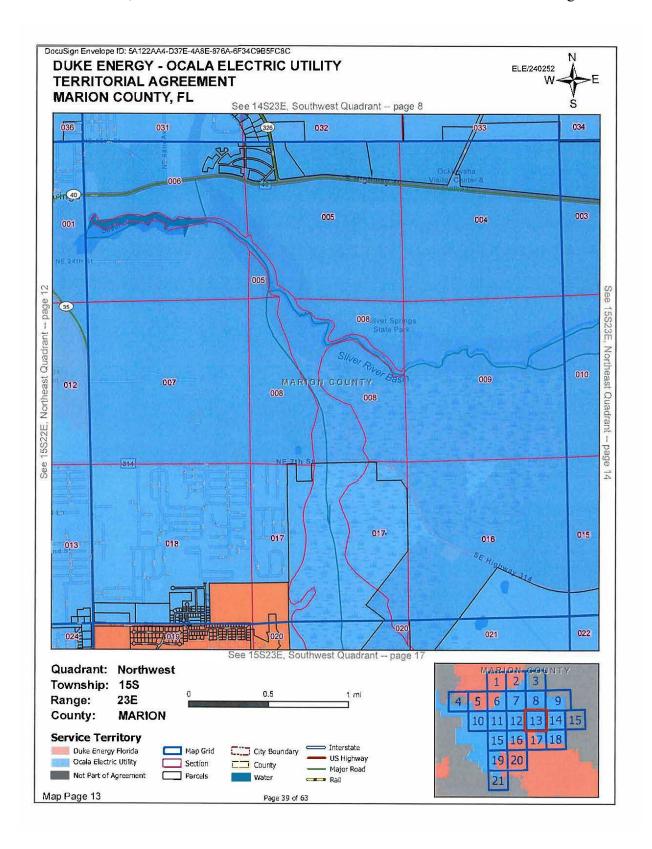


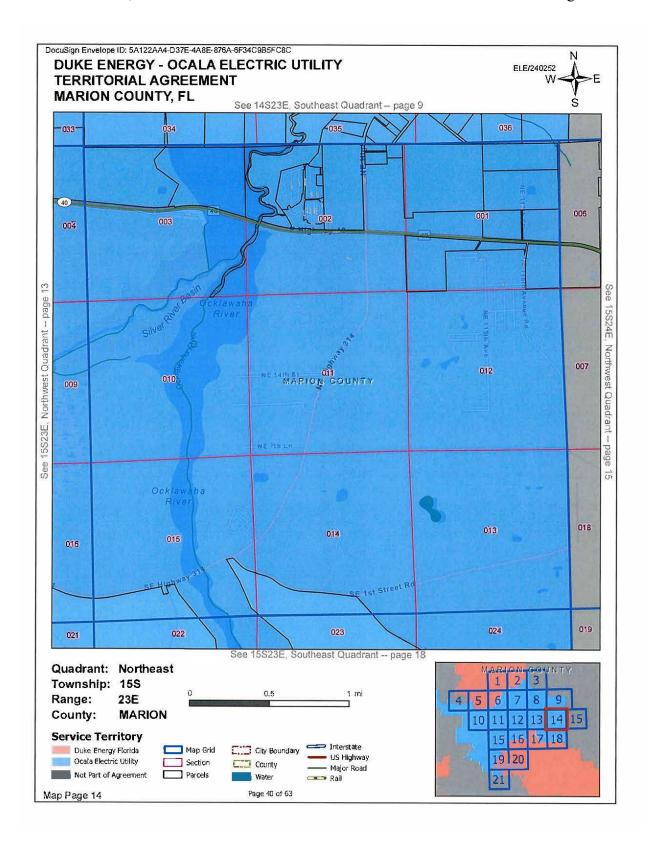


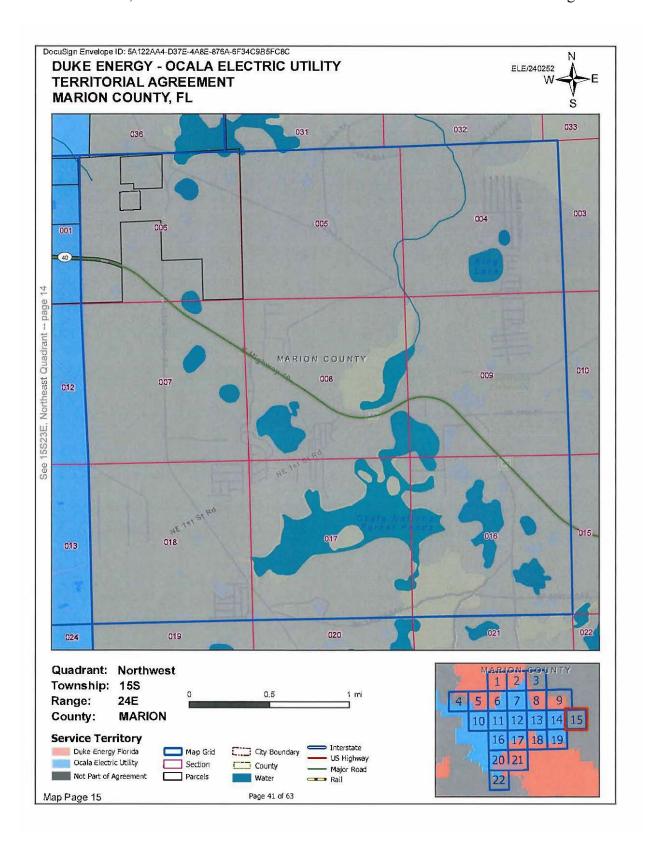


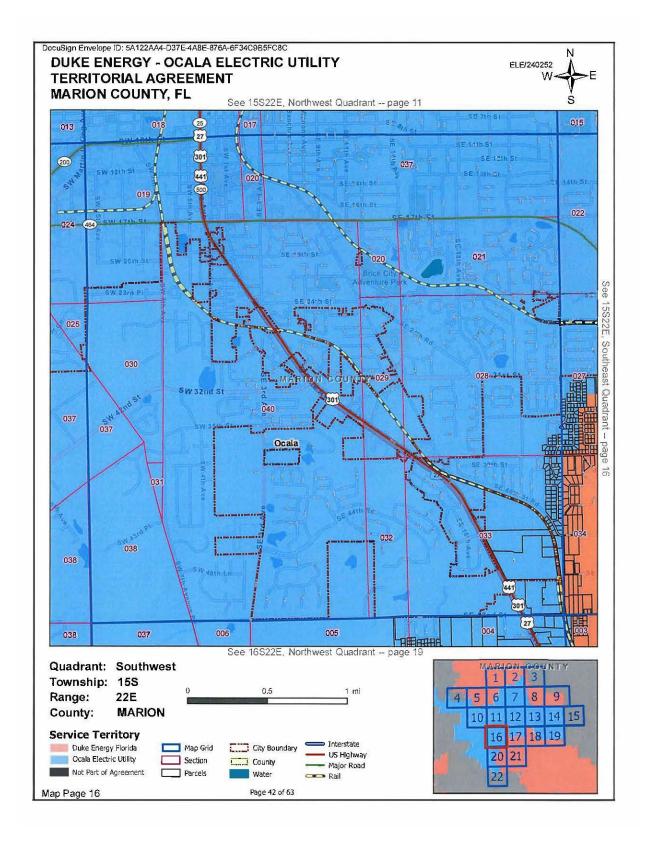


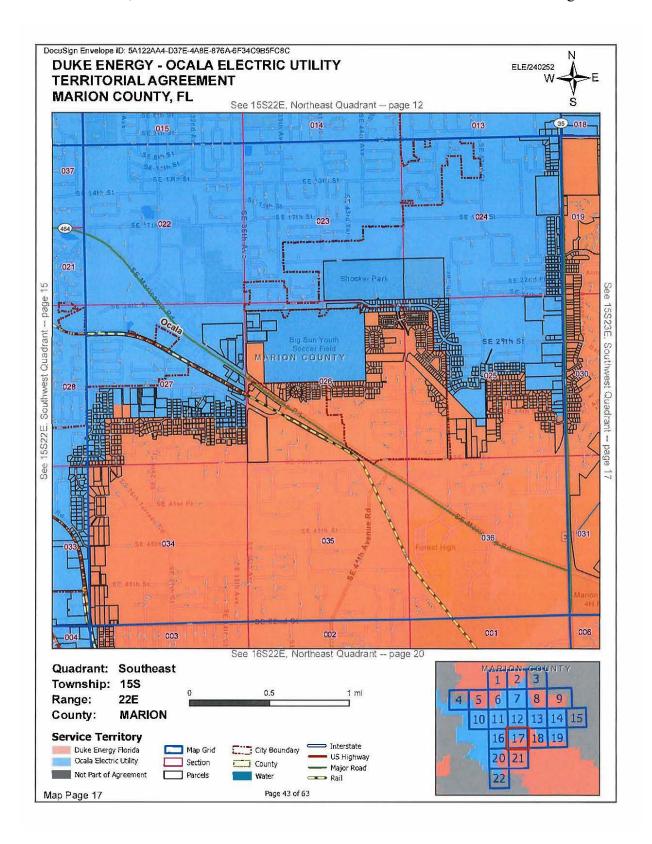


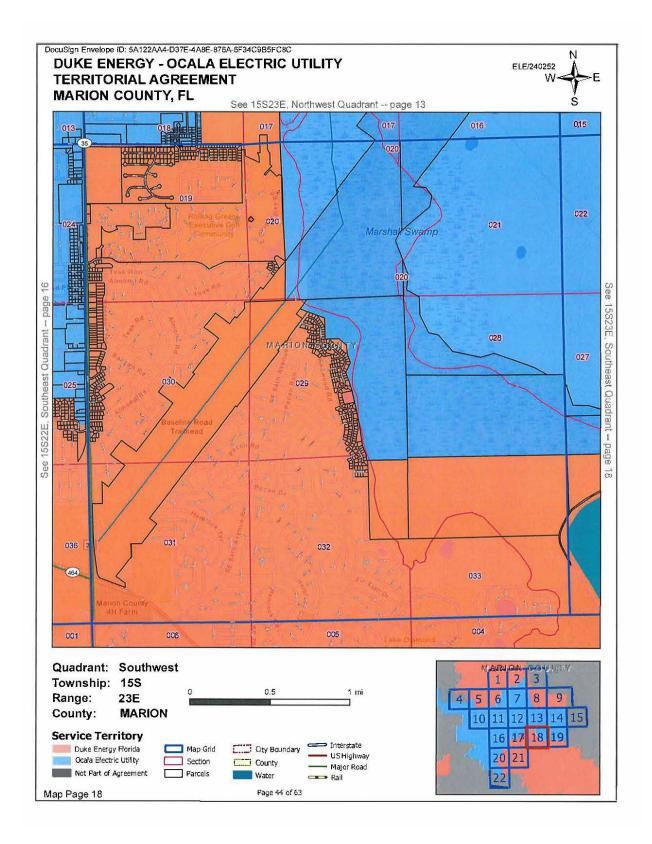


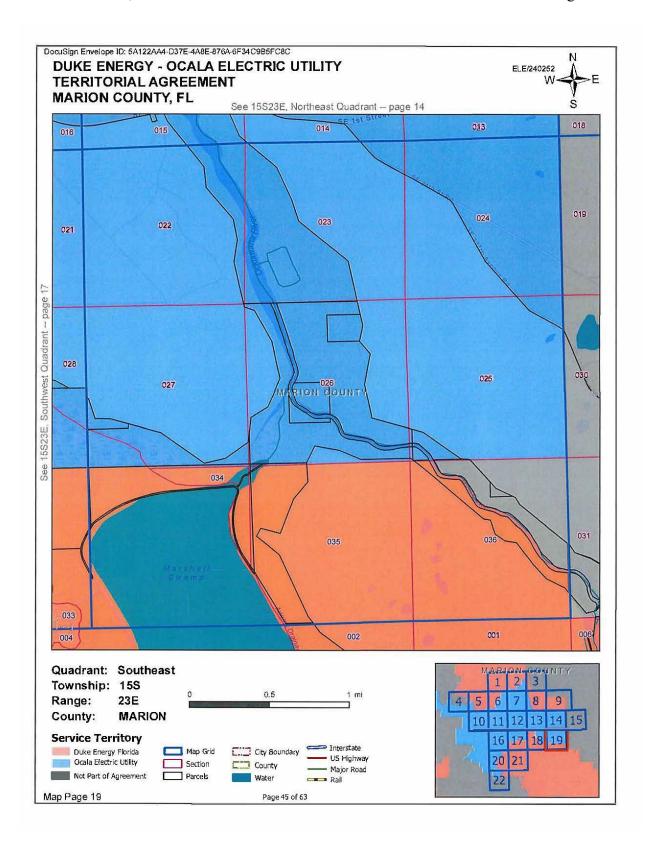


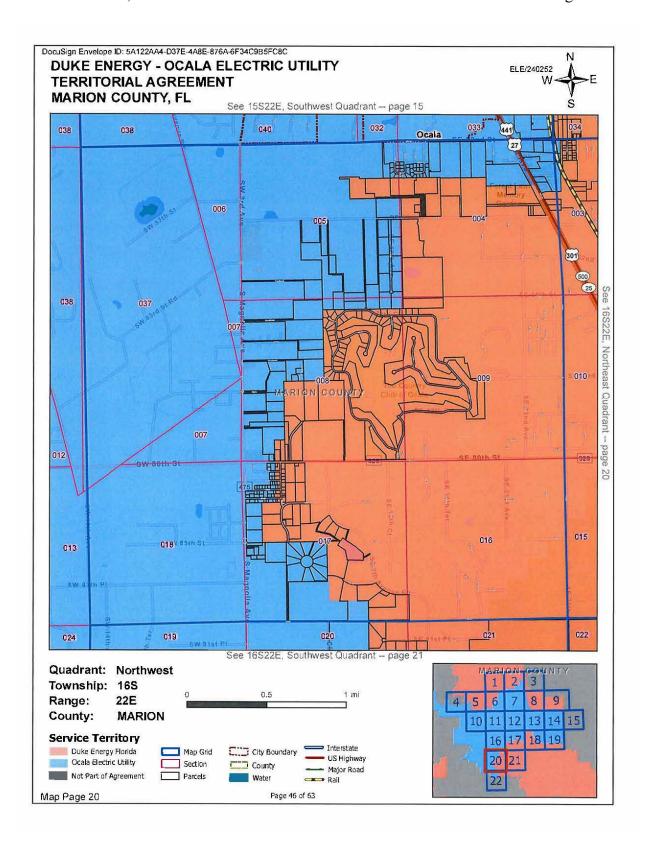


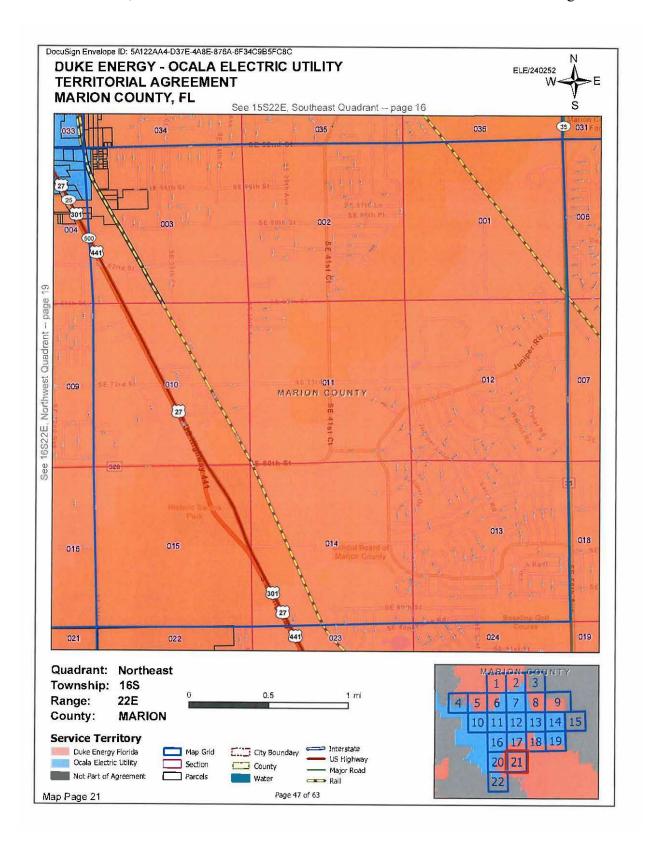


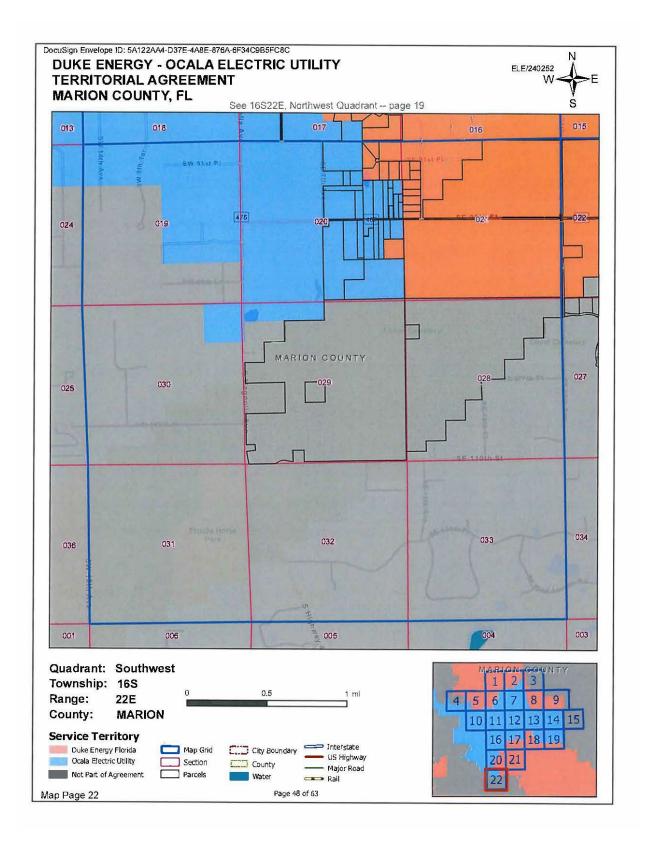




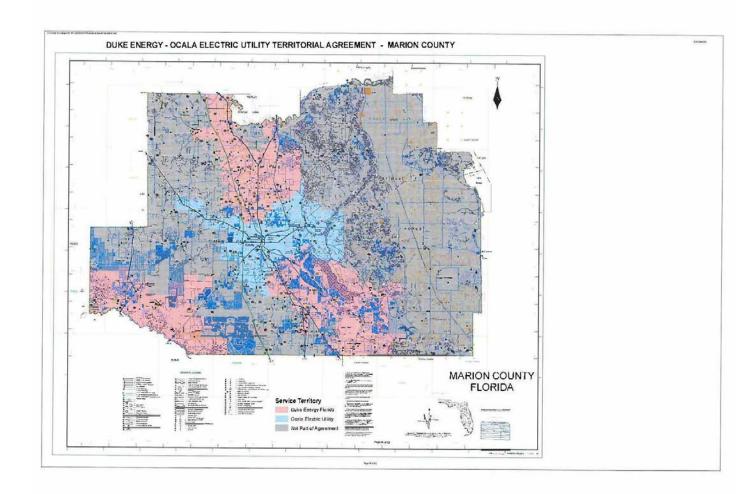








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EXHIBIT B

WRITTEN DESCRIPTIONS OF THE TERRITORIAL AREAS SERVED IN MARION COUNTY

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Written Description of the Territorial Boundary Lines*

ELE/240252 EXHIBIT D

Map Page	County	Township/ Range	Section(s)	Description/Notes	
1	Marion	T14S, R22E	4, 5, 6, 7, 8, 9, 16, 17, 18	The entire section is served by DEF. No areas are served by OEU.	
2	Marion	T14S, R22E	1, 2, 3, 10, 11	The entire section is served by DEF. No areas are served by OEU.	
2	Marion	T14S, R22E	12	OEU serves the large rectangular parcel in the section. The remainder of the section is served by DEF.	
2	Marion	T14S, R22E	13	The entire section is served by OEU. No areas are served by DEF.	
2	Marion	T14S, R22E	14	OEU serves three parcels in the southwestern quarter of the section. OEU also serves three parcels in the eastern half of the section. DEF serves the northwest quarter of the section as well as one parcel in the southwestern quarter. DEF also serves the northwestern quarter of the eastern half of the section.	
2	Marion	T14S, R22E	15	DEF serves west of the railroad. DEF also serves the northern half of the section. OEU serves the southern half of the section east of the railroad.	
3	Marion	T14S, R23E	4, 5, 6, 7, 8, 9, 16, 17, 18	This section is Not Part of this Agreement.	
4	Marion	T14S, R21E	19	This section is Not Part of this Agreement.	
4	Marion	T14S, R21E	20, 21, 28	DEF serves all areas that Part of this Agreement. No areas are served by OEU.	
4	Marion	T14S, R21E	29	This section is Not Part of this Agreement.	
4	Marion	T14S, R21E	30	OEU serves all areas that Part of this Agreement. No areas are served by DEF.	
4	Marion	T14S, R21E	31, 32, 33	The entire section is served by OEU. No areas are served by DEF.	

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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Written Description of the Territorial Boundary Lines*

ELE/240252 EXHIBIT D

5	Marion	T14S, R21E	22, 23, 24, 25, 26	The entire section is served by DEF. No areas are served by OEU.	
5	Marion	T145, R21E	27	OEU serves six parcels adjacent to the west side of Interstate 75. OEU also serves two parcels in the southern half of the section. DEF serves the remainder of the section.	
5	Marion	T145, R21E	34	OEU serves west of Interstate 75. DEF serves east of Interstate 75.	
5	Marion	T14S, R21E	35	The entire section is served by DEF except for the portion of the section west of Interstate 75	
5	Marion	T14S, R21E	36	DEF serves the northern half of the section. DEF also serves west of the railroad tracks in the northwestern half of the southern half of the section. DEF also serves thirty-six parcels in the northe half of the southern half of the section, east of the railroad tracks. OEU serves the remainder of the section, including the southern half of the southern half west of the railroad tracks and east of 500.	
6	Marion	T14S, R22E	19	The entire section is served by DEF. No areas are served by OEU.	
6	Marion	T14S, R22E	20	DEF serves the entire section except for the four parcels adjacent to the eastern section line that are served by OEU.	
6	Marion	T14S, R22E	21	DEF serves the entire section except for the six parcels in the northwestern quarter of the section and the large parcel adjacent to the western section line in the southern half of the section that are serve by OEU.	
6	Marion	T14S, R22E	28	The entire section is served by OEU. No areas are served by DEF.	
6	Marion	T14S, R22E	29	DEF serves the northern half of the northern half of the section. DEF also serves the western half of section except for the seven parcels that are served by OEU. OEU also serves the eastern half of the section except where DEF serves in the northern half of the northern half.	
6	Marion	T14S, R22E	30	The entire section is served by DEF. No areas are served by OEU.	
6	Marion	T14S, R22E	31	DEF serves the northern half of the section as well as two parcels in the southern half of the section. OEU serves the southern half of the section except for the two parcels that are served by OEU.	

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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6	Marion	T14S, R22E	32	The entire section is served by OEU except for the parcels in the northwestern quarter of the section that are served by DEF.	
6	Marion	T14S, R22E	33	The entire section is served by OEU. No areas are served by DEF.	
7	Marion	T14S, R22E	22, 23, 24, 25, 26, 27, 34, 35, 36	The entire section is served by OEU. No areas are served by DEF.	
8	Marion	T14S, R23E	19	OEU serves the western half of the section except for the eleven parcels in the northwestern quarter of the section that are served by DEF. DEF serves the eastern half of the section.	
8	Marion	T14S, R23E	20, 21, 28, 29, 30, 31, 32, 33	The entire section is served by OEU. No areas are served by DEF.	
9	Marion	T14S, R23E	22, 23, 24, 25, 26, 27, 34, 35, 36	OEU serves all areas that Part of this Agreement. No areas are served by DEF.	
10	Marion	T15S, R21E	1, 2, 3, 10, 11, 12, 13, 14, 15	The entire section is served by OEU. No areas are served by DEF.	
11	Marion	T14S, R22E	4, 5, 6, 7, 8, 9, 16, 17, 18	The entire section is served by OEU. No areas are served by DEF.	
12	Marion	T15S, R22E	1, 2, 3, 10, 11, 12, 13, 14, 15	The entire section is served by OEU. No areas are served by DEF.	
13	Marion	T15S, R23E	4, 5, 6, 7, 8, 9, 16	The entire section is served by OEU. No areas are served by DEF.	
13	Marion	T15S, R23E	17	OEU serves the entire section except for the two parcels in the southwestern corner that are served been perfectly of the southwestern corner that are served to the southwestern corner than the southwestern corn	
13	Marion	T15S, R23E	18	OEU serves the entire section except for the parcel in the southeastern corner that is served by DEF.	
14	Marion	T15S, R23E	1, 2, 3, 10, 11, 12, 13, 14, 15	The entire section is served by OEU. No areas are served by DEF.	
15	Marion	T15S, R24E	4, 5, 6, 7, 8, 9, 16, 17, 18	This section is Not Part of this Agreement.	

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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Written Description of the Territorial Boundary Lines*

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16	Marion	T15S, R22E	19, 20, 21, 28, 29, 30, 31, 32, 33, 37, 38, 40	, The entire section is served by OEU. No areas are served by DEF.	
17	Marion	T15S, R22E	22, 23, 24	The entire section is served by OEU. No areas are served by DEF.	
17	Marion	T15S, R22E	25	OEU serves the northern half of the section except for the development in the western half of the western half of the section that is served by DEF. OEU also serves @ thirty-two parcels in the eastern half of the southwestern half of the section. OEU also serves nine parcels in the eastern half of the southeastern half of the section. The remainder of the section is served by DEF.	
17	Marion	T15S, R22E	26	OEU serves the northwestern half of the section except for one parcel that is served by DEF. OEU also serves the western half of the northwestern half of the section. The remainder of the section is served by DEF.	
17	Marion	T15S, R22E	27	OEU serves the northern half of the section except for two parcels that are served by DEF. DEF serves the southern half of the section except for the southwestern quarter that is served by OEU. OEU also serves eighteen parcels in the southeastern quarter of the section.	
17	Marion	T15S, R22E	34, 35, 36	The entire section is served by DEF. No areas are served by OEU.	
18	Marion	T15S, R23E	19	The entire section is served by DEF. No areas are served by OEU.	
18	Marion	T15S, R23E	20	DEF serves the western half of the western half of the section. OEU serves the eastern half of the western half of the section.	
18	Marion	T15S, R23E	21, 28	The entire section is served by OEU. No areas are served by DEF.	
18	Marion	T15S, R23E	29	DEF serves the western half of the section. OEU serves the eastern half of the section.	
18	Marion	T15S, R23E	30, 31, 32, 33	The entire section is served by DEF. No areas are served by OEU.	
19	Marion	T15S, R23E	22, 23, 24, 25, 26, 27	The entire section is served by OEU. No areas are served by DEF.	

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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19	Marion	T15S, R23E	34, 35	The entire section is served by DEF. No areas are served by OEU.		
19	Marion	T15S, R23E	36	DEF serves all areas that Part of this Agreement. No areas are served by OEU.		
20	Marion	T16S, R22E	4	OEU serves the northern half of the northern half of the section. DEF serves the southern half of the northern half of the section.		
20	Marion	T16S, R22E	5	OEU serves the entire section except for the three parcels in the northeastern quadrant that are se by DEF.		
20	Marion	T16S, R22E	6, 7	The entire section is served by OEU. No areas are served by DEF.		
20	Marion	T16S, R22E	8	OEU serves the western half of the section except for ten parcels that are served by DEF. DEF also serves the eastern half of the section.		
20	Marion	T16S, R22E	9, 16	The entire section is served by DEF. No areas are served by OEU.		
20	Marion	T16S, R22E	17	DEF serves the northern half of the section except for the parcels in the northwestern quarter that a served by OEU as well as the parcels adjacent to the western section line. OEU also serves the southwestern half of the section as well as one parcel in the southeastern section. The remainder of the section is served by DEF.		
20	Marion	T16S, R22E	18	The entire section is served by DEF. No areas are served by OEU.		
21	Marion	T165, R22E	1, 2, 3, 10, 11, 12, 13, 14, 15	The entire section is served by DEF. No areas are served by OEU.		
22	Marion	T16S, R22E	19	OEU serves all areas that Part of this Agreement. No areas are served by DEF.		
22	Marion	T16S, R22E	20	OEU serves the entire section except for the seven parcels that are served by DEF.		
22	Marion	T16S, R22E	21	The entire section is served by DEF. No areas are served by OEU.		

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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22	Marion	T16S, R22E	28	This section is Not Part of this Agreement.
22	Marion	T16S, R22E	29, 30	OEU serves all areas that Part of this Agreement. No areas are served by DEF.
22	Marion	T16S, R22E	31, 32, 33	This section is Not Part of this Agreement.

If there are any discrepancies between Exhibit A and Exhibit D, then the territorial boundary maps in Exhibit A shall prevail.

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ELE/240252

EXHIBIT C

SERVED BY DUKE ENERGY FLORIDA AND SUBJECT TO TRANSFER TO THE CITY OF OCALA

Page 57 of 63

Docket No. 20240110-EU Attachment A
Date: October 24, 2024 Page 54 of 68

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ELE/240252 **EXHIBIT C**

EXTRA-TERRITORIAL CUSTOMERS SERVED BY DUKE ENERGY AND SUBJECT TO TRANSFER TO THE CITY OF OCALA

No.	Premise Address	Customer Type	County	Premise No.
1.	390 NE 42 ND STREET, OCALA, FL 34479	RESIDENTIAL	MARION	5204500651

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Date: October 24, 2024 Page 55 of 68

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ELE/240252

EXHIBIT D

SERVED BY THE CITY OF OCALA AND SUBJECT TO TRANSFER TO DUKE ENERGY FLORIDA

Page 59 of 63

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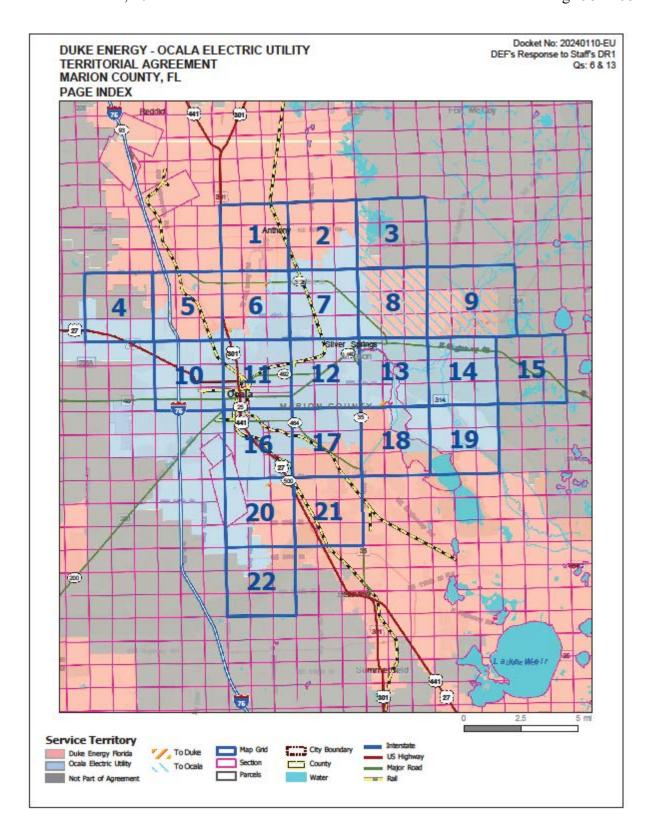
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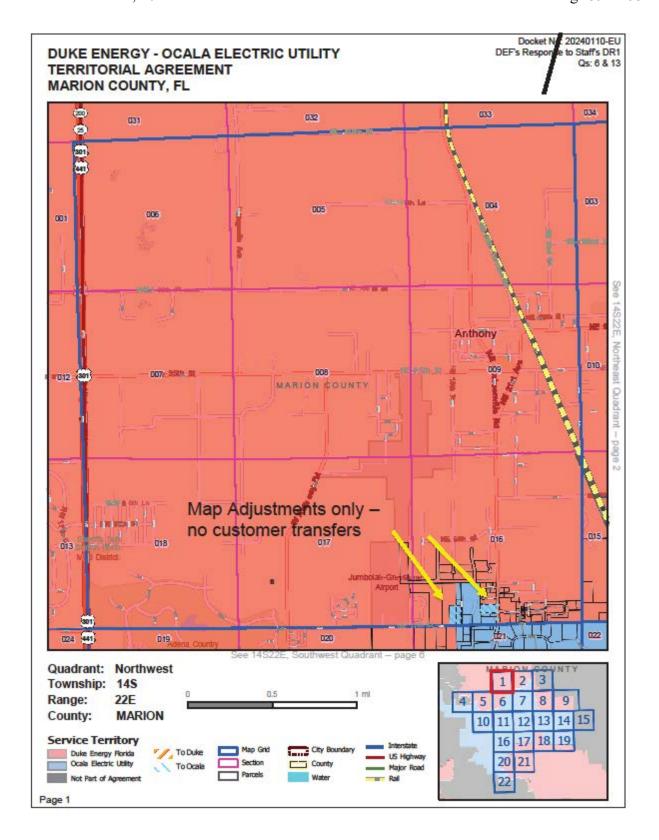
EXHIBIT D

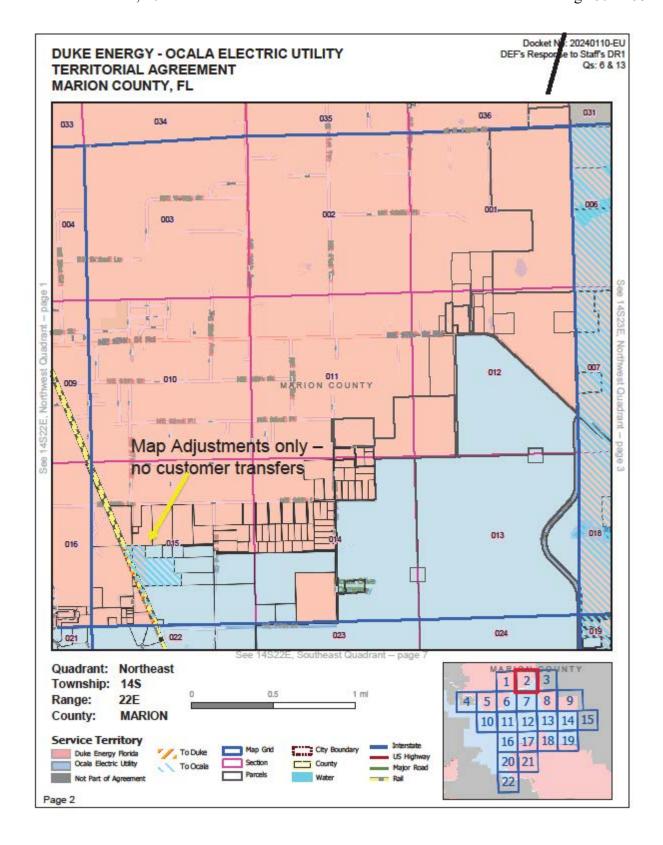
EXTRA-TERRITORIAL CUSTOMERS SERVED BY THE CITY OF OCALA AND SUBJECT TO TRANSFER TO DUKE ENERGY

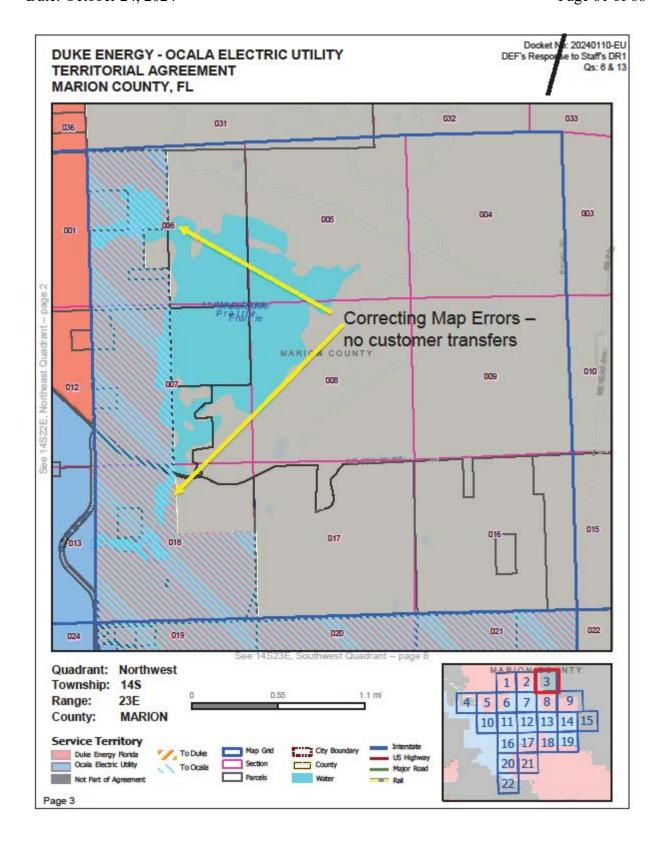
No	Premise Address	Customer Type	County	ID
1.	1274 NE 70 TH STREET, OCALA, FL 34479	COMMERCIAL	MARION	556357
2.	1274 NE 70 TH STREET, OCALA, FL 34479	COMMERCIAL	MARION	511028
3.	1672 NE 70TH STREET, OCALA, FL 34479	RESIDENTIAL	MARION	529275 (114002)
4.	1672 NE 70TH STREET, OCALA, FL 34479	RESIDENTIAL	MARION	529275 (117404)
5.	1672 NE 70TH STREET, OCALA, FL 34479	RESIDENTIAL	MARION	529275 (329128)
6.	3400 NW 35th STREET ROAD, OCALA, FL 34479	COMMERCIAL	MARION	512419

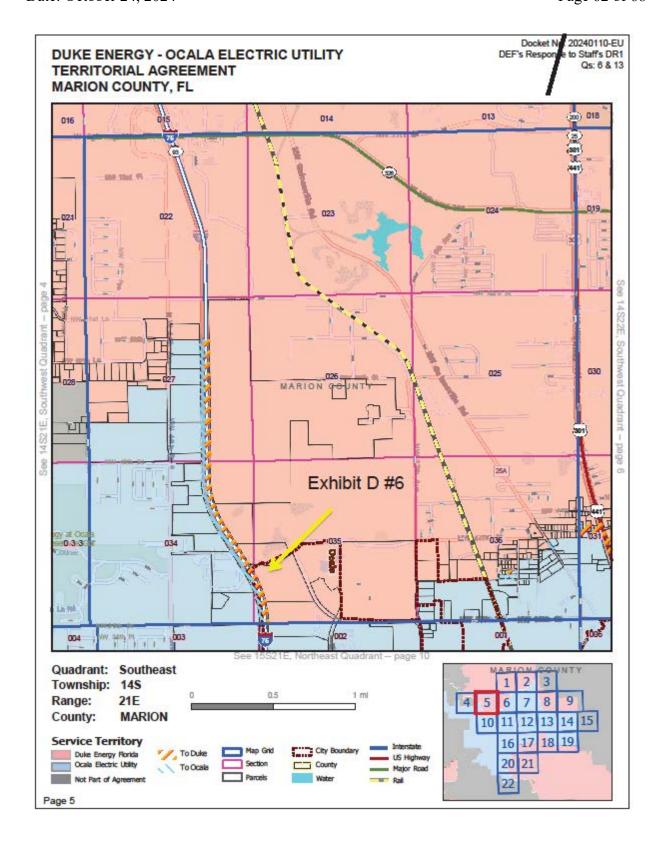
Informational Maps Depicting The **Territorial Boundary Line** Changes

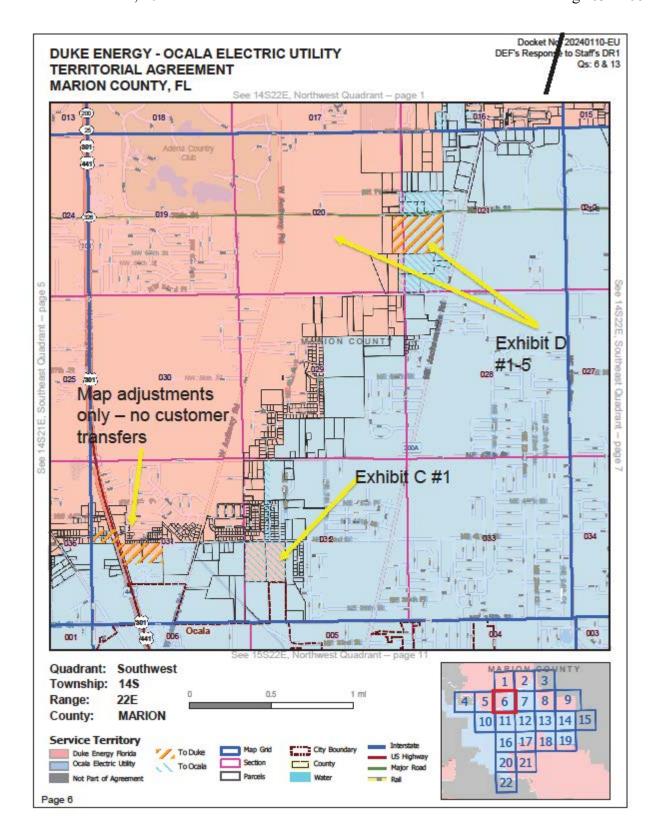


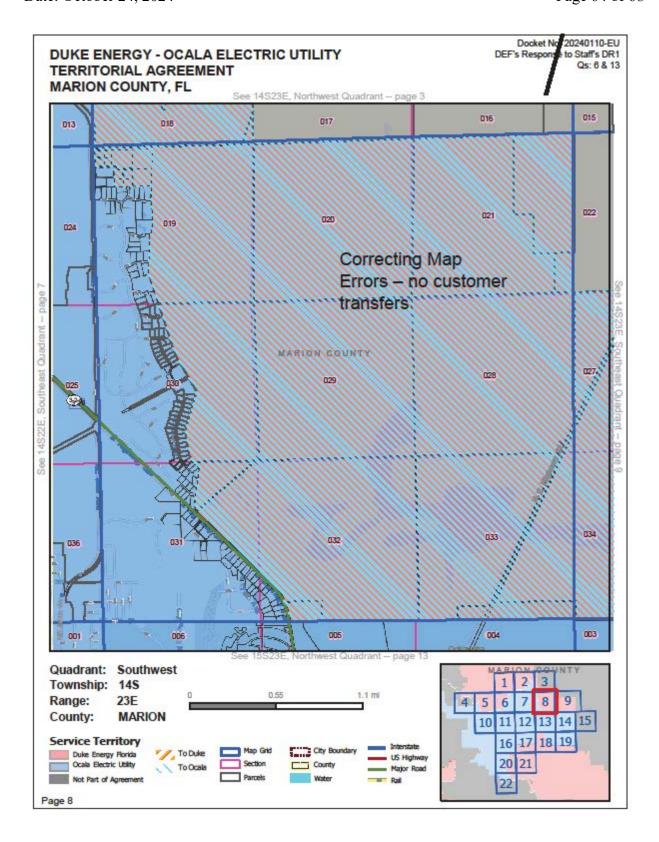


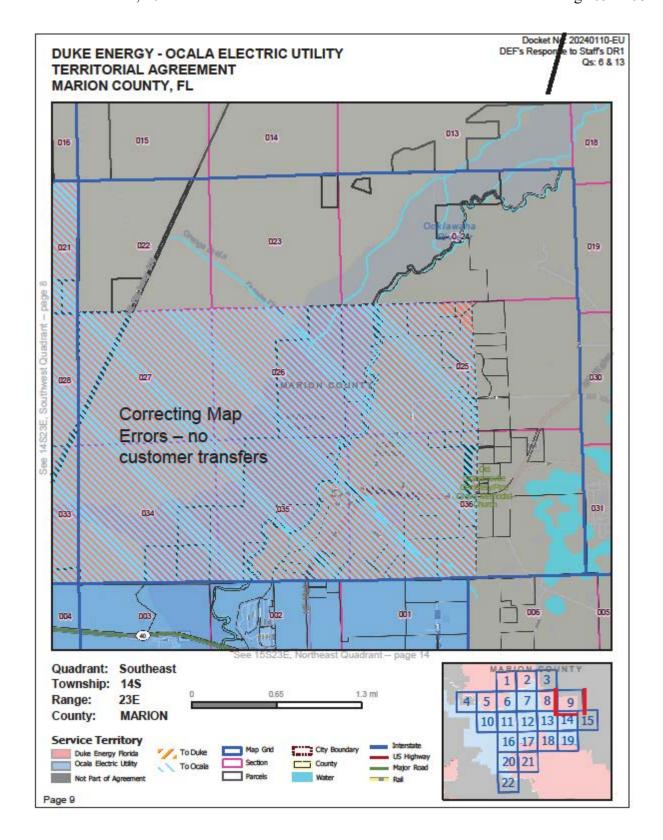


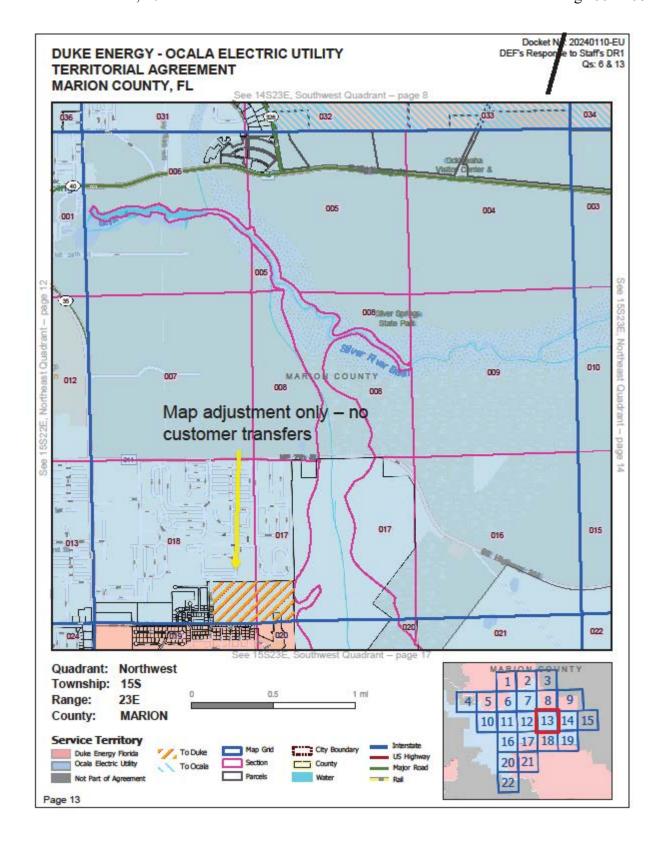


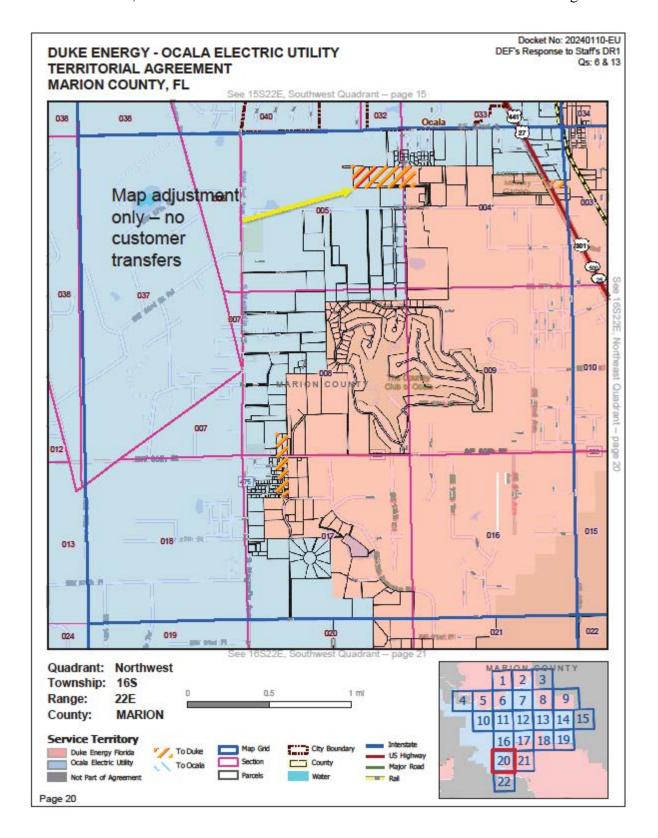




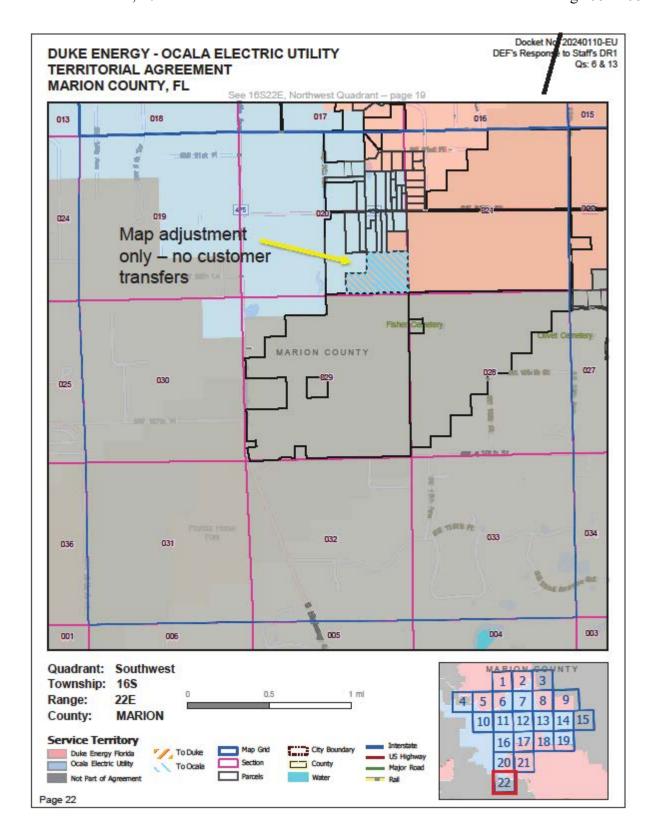








Docket No. 20240110-EU Date: October 24, 2024



Item 5

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (McClelland, Hampson)

Office of the General Counsel (Sandy)

RE: Docket No. 20240135-GU – Petition for approval of swing service rider, by

Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of

Chesapeake Utilities Corporation.

AGENDA: 11/05/24 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 05/02/25 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 3, 2024, Florida Public Utilities Company (FPUC or utility) filed a petition for approval of revised swing service rider rates and associated tariffs for the period January through December 2025. The swing service rider is a cents per therm charge that is included in the monthly gas bill of transportation customers, who purchase gas from third party marketers, and therefore do not pay the Purchased Gas Adjustment (PGA) charge. FPUC is a local natural gas distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes (F.S.).

The Commission first approved FPUC's swing service rider tariff by Order No. PSC-16-0422-TRF-GU (2016 Order) and the initial swing service rider rates were in effect for the period

¹ The PGA charge is set by the Commission in the annual PGA cost recovery clause proceeding.

Docket No. 20240135-GU Date: October 24, 2024

March through December 2017.² The swing service rider requires FPUC to file an annual petition to recalculate the swing service rider rates based on the utility's actual interstate capacity costs and the most recent 12 months of usage data. Furthermore, the swing service order requires FPUC to incorporate the calculated revenues from the swing service rider as a credit to the PGA proceeding for the concurrent year. The January through December 2024 swing service rider rates were approved in Order No. PSC-2023-0358-TRF-GU.³ The proposed modifications to the swing service rider rate schedule are indicated on Attachment A, with the proposed 2025 swing service rider tariffs on Attachment B.

By Order No. PSC-2024-0454-PCO-GU, issued October 17, 2024, the Commission suspended the proposed swing service rider tariffs for further review by staff. During evaluation of the petition, staff issued a data request to the utility for which responses were received October 3, 2024. This is staff's recommendation to approve the proposed 2025 swing service rider rates and associated tariffs. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.04, 366.05, and 366.06, F.S.

² Order No. PSC-16-0422-TRF-GU, issued October 3, 2016, in Docket No. 160085-GU, *In re: Joint petition for approval of swing service rider, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*³ Order No. PSC-2023-0358-TRF-GU, issued November 28, 2023, Docket No. 20230096-GU, *In re: Petition for approval of swing service rider rates for January through December 2024, by Florida Public Utilities Company.*

Discussion of Issues

Issue 1: Should the Commission approve the utility's proposed swing service rider rates and associated tariffs for the period January through December 2025?

Recommendation: Yes, the Commission should approve the proposed swing service rider rates in Attachment B for the period January through December 2025. FPUC's proposed swing service rider reflects the updated cost of swing service for transportation customers. Staff reviewed the total projected intrastate capacity costs and verified that the costs included are appropriate. Furthermore, the methodology for calculating the swing service rider rates is consistent with the 2016 Order. (McClelland)

Staff Analysis: The utility incurs intrastate capacity costs when it transports natural gas on intrastate pipelines (i.e., pipelines operating within Florida only). The utility has two types of natural gas customers: sales and transportation. Sales customers are primarily residential and small commercial customers that purchase natural gas from an LDC and receive allocations of intrastate capacity costs through the PGA charge. Transportation customers receive natural gas from third party marketers, known as shippers and, therefore, do not pay the PGA charge to the LDC. The swing service rider allows FPUC to recover allocations of intrastate capacity costs from transportation customers.

Updated 2025 Swing Service Rider Rates

The updated 2025 swing service rider rates were calculated based on the same methodology approved in the 2016 Order. As stated in paragraph 7 of FPUC's petition, the total intrastate capacity costs for the period July 2023 through June 2024 are \$30,003,382, compared to \$31,941,095 for the period July 2022 through June 2023. The total intrastate capacity costs reflect payments by FPUC to intrastate pipelines for the transportation of natural gas, pursuant to Commission-approved transportation agreements.

In response to staff's first data request, FPUC clarified some costs included in the intrastate pipeline cost total, in Schedule D of the petition. Upon staff's review, there appeared to be significant changes to some costs, which FPUC clarified were due to a change in the methods of organizing and classifying costs, and not a material change in costs themselves.⁵ In previous years, the company had listed individual pipeline contracts on Schedule D. However, the 2025 filing combined all contracts under one line item, labeled "Peninsula Pipeline." FPUC stated this was done for confidentiality purposes.⁶ FPUC further stated there was a year-over-year increase of \$1,518,270 to overall Peninsula Pipeline costs due to new projects becoming operational. ⁷ FPUC's other intrastate capacity costs include payments associated with legal and consulting fees, software to manage forecasting, usage tracking, and market tracking.

In 2016, the initial order approving the swing service rider excluded Interruptible (COM-INTT) and Natural Gas Vehicle (COM-NGVT) transportation service because of the nature of their

⁴ The Commission does not regulate the shippers or their charges for the gas commodity.

⁵ FPUC's Responses to Staff's First Data Requests, No. 6a.

⁶ FPUC's Responses to Staff's First Data Requests, No. 6a.

⁷ FPUC's Responses to Staff's First Data Requests, No. 6b.

services. The utility explained, in its responses to staff's first data request, that COM-INTT and COM-NGVT transportation customers were wrongly included in the 2024 swing service rider due to a change of personnel.⁸ FPUC states they collected \$150,891 from COM-INTT customers and \$15,076 from COM-NGVT customers via the swing service rider. FPUC has refunded the affected customers and has corrected the 2025 swing service rider to remove the COM-INTT and COM-NGVT customer classes.⁹

Of the intrastate pipeline costs, \$7,367,169 will be billed directly to certain large special contract customers. The remaining costs of \$22,636,213 will be recovered during the period January 1, 2025 through December 31, 2025.

The utility used actual therm usage data for the period July 2023 through June 2024 to allocate the intrastate capacity costs. Based on the usage data, staff agrees that the appropriate split for allocating the cost is 69.96 percent or \$15,837,062 to transportation customers and 30.04 percent or \$6,799,151 to sales customers, as demonstrated on page 4 of FPUC's petition. The transportation customers' share of \$15,837,062 is further allocated to the various transportation rate schedules in proportion with each rate schedule's share of the utility's total throughput. The sales customers' share of the cost of \$6,799,151 is embedded in the PGA.

To calculate the swing service rider rates, the transportation customers' share of the cost is allocated to each transportation customer class and then divided by the customer class' number of therms. The swing service revenues the utility has projected to receive in 2025 totals to \$15,837,062.

Credit to the PGA

The total intrastate capacity costs are embedded in the PGA with the projected 2025 swing service rider revenues incorporated as a credit in the calculation of the 2025 PGA. The amount credited to the 2025 PGA is \$15,837,062 plus \$7,367,169 received from special contract customers, for a total of \$23,204,231. 10

Conclusion

After reviewing the information provided in the petition and in response to staff's data request, staff recommends that the Commission should approve the proposed swing service rider rates in Attachment B for the period January through December 2025. FPUC's proposed swing service rider reflects the updated cost of swing service for transportation customers. Staff reviewed the total projected intrastate capacity costs and verified that the costs included are appropriate. Furthermore, the methodology for calculating the swing service rider rates is consistent with the 2016 Order.

⁸ FPUC's Responses to Staff's First Data Requests, No. 4a.

⁹ FPUC's Responses to Staff's First Data Requests, No. 4d.

¹⁰ See direct testimony of witness Stacey K. Laster on behalf of FPUC, filed on August 6, 2024, Document No. 08262-2024, in Docket No. 20240003-GU, Exhibit SKL-1, Schedule E-1, line 8 on page 1, and the direct testimony of Stacey K. Laster, page 3, line 21, through page 4, line 7, included in the petition.

Docket No. 20240135-GU Issue 2

Date: October 24, 2024

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Sandy)

Staff Analysis: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

Attachment A
Page 1 of 1

Docket No. 20240135-GU Date: October 24, 2024

Florida Public Utilities Company

FPSC Tariff Original Volume No. 2 SecondFirst Revised Sheet No. 7.407 Cancels FirstOriginal Sheet No. 7.407

SWING SERVICE RIDER

Applicability:

The bill for Transportation Service supplied to a Customer in any Billing Period shall be adjusted as follows:

The Swing Service factors for the period from the first billing cycle for each Company Operating Unit for the period of January 20254 through the last billing cycle for December 20254 are as follows:

Rate Schedule	Rates per Therm
REST-1	\$0.19522041
REST-2	\$0.20002185
REST-3	\$0.23212328
GTS-1	\$0.17381371
GTS-2	\$0.17801804
GTS-3	\$0.1773796
GTS-4	\$0.1783801
GTS-5	\$0.176849
GTS-6	\$0.1661714
GTS-7	\$0.16945
GTS-8A	\$0.1568693
GTS-8B	\$0.1 <u>571714</u>
GTS-8C	\$0.163448
GTS-8D	\$0.163956
COM-INTT	\$0.1662
COM-NGVT	\$0.1646
COM-OLT	\$0.1367

Definitions

This surcharge allocates a fair portion of Upstream Capacity Costs and expenses associated with the provision of Swing Service to transportation Customers in accordance with FPSC approval.

Issued by: Jeffrey Sylvester, Chief Operating Officer

Florida Public Utilities Company

Effective: January 1, 2024

Docket No. 20240135-GU Attachment B
Date: October 24, 2024 Page 1 of 1

Florida Public Utilities Company FPSC Tariff

Second Revised Sheet No. 7.407 Cancels First Sheet No. 7.407

Original Volume No. 2

SWING SERVICE RIDER

Applicability:

The bill for Transportation Service supplied to a Customer in any Billing Period shall be adjusted as follows:

The Swing Service factors for the period from the first billing cycle for each Company Operating Unit for the period of January 2025 through the last billing cycle for December 2025 are as follows:

Rate Schedule	Rates per Therm
REST-1	\$0.1952
REST-2	\$0.2000
REST-3	\$0.2321
GTS-1	\$0.1738
GTS-2	\$0.1780
GTS-3	\$0.1773
GTS-4	\$0.1783
GTS-5	\$0.1768
GTS-6	\$0.1661
GTS-7	\$0.1694
GTS-8A	\$0.1568
GTS-8B	\$0.1571
GTS-8C	\$0.1634
GTS-8D	\$0.1639
COM-OLT	\$0.1367

Definitions

This surcharge allocates a fair portion of Upstream Capacity Costs and expenses associated with the provision of Swing Service to transportation Customers in accordance with FPSC approval.

Issued by: Jeffrey Sylvester, Chief Operating Officer

Florida Public Utilities Company

Effective:

Item 6

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: October 24, 2024

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Bethea, Bruce)

Division of Engineering (Watts) 78

Office of the General Counsel (Dose, Crawford)

RE: Docket No. 20240106-WU – Application for a revenue-neutral uniform water rate

restructuring limited proceeding in Alachua, Duval, Leon, Okaloosa, and

Washington Counties, by North Florida Community Water Systems, Inc.

AGENDA: 11/05/24 – Regular Agenda – Proposed Agency Action - Interested Persons May

Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fav

CRITICAL DATES: 90-day statutory deadline waived until 11/05/24

SPECIAL INSTRUCTIONS: None

Case Background

On July 25, 2024, North Florida Community Water Systems, Inc. (NFCWS) filed an application for a revenue-neutral uniform water rate restructuring limited proceeding for the six water utilities it owns in Alachua, Duval, Leon, Okaloosa, and Washington Counties. NFCWS is seeking a rule waiver to use the limited proceeding rule, Rule 25-30.445, Florida Administrative Code (F.A.C.), to consolidate these systems for ratemaking purposes.

The six water systems at issue here are Duval Water System (Duval); Gator Water System (Gator); Lake Talquin Water System (Lake Talquin); Okaloosa Water System (Okaloosa); Seminole Water System; and Sunny Hills Water System (Sunny Hills). Of these systems, Duval and Sunny Hills have wastewater systems. By Order No. PSC-2023-0097-FOF-WS, the

Docket No. 20240106-WU Date: October 24, 2024

Commission acknowledged the corporate reorganization and name change of these systems to NFCWS. The corporate reorganization resulted in no change in the ownership or control of the utilities, and each NFCWS system continues to charge its own respective Commission-approved rates and charges.

In its July 23, 2024, petition for limited proceeding, NFCWS seeks uniform rates for these systems. NFCWS states that the various rates charged by each system are widely disparate. Uniform rates, if granted, would result in a reduction in typical residential bills, except for the Gator and Okaloosa water systems which would see a minimal increase in rates. NFCWS states that the requested rates will provide significant relief to approximately seventy-four percent of the residential customers and that for Okaloosa, customers will benefit by a less stringent and more meaningful, understandable rate structure. NFCWS also states that conservation-oriented rates will be implemented for Lake Talquin.

On September 13, 2024, the Office of Public Counsel (OPC) filed a letter providing concerns regarding NFCWS's petition for partial variance or waiver of the requirements of Rule 25-30.445, F.A.C. In its letter, OPC stated that NFCWS does not appear to qualify for a waiver or for a limited proceeding in the instant docket. OPC requests that the Commission deny NCFWS's request for partial variance or waiver of Rule 25-30.445, F.A.C. NFCWS responded to OPC's letter on September 16, 2024, to which OPC filed a second letter still in opposition on October 11, 2024.²

The Commission has broad authority to conduct limited proceedings under Section 367.0822(1), Florida Statutes (F.S.). Rule 25-30.445, F.A.C., which the Commission adopted to implement Section 367.0822, F.S., restricts the ability of water and wastewater systems to use the limited proceeding process. Rule 25-30.445(6), F.A.C., provides that a limited proceeding will not be allowed if:

- (a) The utility's filing includes more than six separate projects for which recovery is sought. Corresponding adjustments for a given project are not subject to the above limitation;
- (b) The requested rate increase exceeds 30 percent;
- (c) The utility has not had a rate case within seven years of the date the petition for limited proceeding is filed with the Commission; or
- (d) The limited proceeding is filed as the result of the complete elimination of either the water or wastewater treatment process.

NFCWS argues that Rule 25-30.445, F.A.C., seems to contemplate a petition for limited proceeding that is predicated upon a rate increase. However, NFCWS is requesting a revenue-

-

¹ Issued February 22, 2023, in Docket No. 20220199-WS, In re: Joint application for acknowledgement of corporate reorganization and approval of name changes on Certificate Nos. 641-W and 551-S in Duval County, Certificate No. 555-W in Alachua County, Certificate Nos. 678-W and 672-W in Leon County, Certificate No. 676-W in Okaloosa County, and Certificate Nos. 501-W and 435-S in Washington County from Duval Waterworks, Inc., Gator Waterworks, Inc., Lake Talquin Waterworks, Inc., Seminole Waterworks, Inc., Okaloosa Waterworks, Inc., and Sunny Hills Utility Company to North Florida Community Water Services, Inc.

² Respectively, DNs 08999-2024, 09023-2024, and 09481-2024.

Docket No. 20240106-WU Date: October 24, 2024

neutral rate restructuring based upon existing historical revenues, not a revenue increase. Further, NFCWS recognizes that not all of its systems meet the seven-year rate case requirement of Rule 25-30.445(6)(c), F.A.C. Consequently, on August 2, 2024, NFCWS filed a request for a partial variance from, or waiver of, the requirements of the rule governing limited proceedings.

Florida law allows agencies to waive or provide other relief (variances) to persons subject to regulation where the strict application of uniformly applicable rule requirements leads to "unreasonable, unfair, and unintended results in particular instances." Section 120.542(1), F.S. Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. Section 120.542(2), F.S.

On August 12, 2024, the Commission filed a Florida Administrative Register notice acknowledging receipt of NFCWS's rule waiver petition. The time for filing comments, provided by Rule 28-104.003, F.A.C., expired on August 27, 2024; no customer comments as to NFCWS's rule waiver petition were received. On September 11, 2024, NFCWS waived the 90-day deadline for the Commission to grant or deny its petition, pursuant to Section 120.542(8), F.S., through the November 5, 2024, Commission Agenda Conference.

This recommendation addresses NFCWS's petition for rule waiver only. If the Commission approves NFCWS's request for rule waiver, a subsequent recommendation addressing the merits of NFCWS's application for a rate restructuring will be presented at a subsequent Agenda Conference. The Commission has jurisdiction under Sections 120.542, 367.0822, and 367.121, F.S.

Docket No. 20240106-WU Issue 1

Date: October 24, 2024

Discussion of Issues

Issue 1: Should the Commission grant NFCWS's petition for a waiver of Rule 25-30.445(6), F.A.C.?

Recommendation: Yes. NFCWS has demonstrated that the purpose of the underlying statute is being achieved and that strict application of the rule violates principles of fairness to its customers. (Dose)

Staff Analysis:

NFCWS's Position

In its July 23, 2024, petition for limited proceeding, NFCWS states that the various rates reflect a wide disparity among its systems. NFCWS believes that implementation of uniform rates will result in a more equitable disbursement of operating costs among the water customer group and that it would be more efficient to have a uniform water rate structure for all of its water systems. NFCWS states that it is not seeking an increase in revenues or recovery of capital items or operating expenses in this docket. In support of its position, NFCWS cited Order No. PSC-2010-0219-PAA-WS, where the Commission found that "a revenue-neutral rate restructuring for a Class B utility is tantamount to a limited proceeding rate case with no revenue increase."

NFCWS states that the revenue neutral water rate restructuring represents a significant reduction in rates and water bills to approximately seventy-four percent of the water residential customers. NFCWS acknowledges that four of the six water systems have not had a rate case in the past seven years as required by the rule. However, NFCWS states that if it were required to obtain outside legal counsel and file six sets of Minimum Filing Requirements (MFRs), any reduction in rates would be diminished due to the additional costs involved.

NFCWS contends that the purpose of the statute is to afford the Commission broad discretion as to matters that are appropriate for a limited proceeding in order to alleviate the time and expense of full rate proceedings. As to the requirement that a utility can avail itself to a limited proceeding only if it has had a rate case within the last seven years, NFCWS states that although there is "nothing magic" about seven years, it was intended to assure that when a limited proceeding rate increase was considered, the utility's overall financial information had been vetted in recent years by the Commission. NFCWS argues that when the limited proceeding does not seek a revenue increase (other than for rate case expense), that vetting is not necessary. Further, NFCWS believes the underlying purpose of the statute would be achieved if a waiver or variance is granted because the Commission would retain its right to obtain information required to achieve the appropriate rate consolidation, including conducting an audit, if necessary.

OPC's Position

In its September 13, 2024, letter of concerns regarding NFCWS's petition for partial variance or waiver of Rule 25-30.445, F.A.C., OPC raises several objections to NFCWS's positions. First, OPC distinguishes the instant case from that cited by NFCWS to support a limited proceeding in this case. OPC notes that Order No. PSC-2010-0219-PAA-WS concerned the revenue-neutral

rate restructuring of a utility operating one water system and one wastewater system in a single county, whereas NFCWS is proposing consolidated rates for six water systems across five counties.

Issue 1

Second, OPC states that, within the last seven years, the Commission has only established base rates and cost of service in rate proceedings for Gator and Sunny Hills. OPC believes that only these two are eligible for a limited proceeding and that the other four water systems must come in for a rate proceeding. OPC disagrees with NFCWS's position that overall financial information vetting is not necessary in this case and would like the Commission to review the revenue requirements of all six water systems. OPC fears that without this, inaccurate subsidy levels and unsupported rate increases will result in future proceedings.

Lastly, OPC states that NFCWS's assertion of substantial hardship and additional costs of going through multiple rate proceedings may be without merit. OPC asserts that the rate case expense for a limited proceeding versus a rate case are virtually the same and include costs for customer notices, travel for customer meeting and agenda, and filing fee, excluding any legal fees. OPC asserts that other additional costs are already embedded through affiliate contractual services, such as contractual services provided by U.S. Water Services Corporation which would prepare the MFRs for the utilities whether they are one consolidated set of MFRs or six separate sets of MFRs.

In response to OPC's position, NFCWS responded by letter dated September 16, 2024, stating that in a similar request for waiver of the rule from NFCWS's sister affiliated utility, Florida Community Water Systems, OPC was an interested party but raised no objection despite very similar circumstances to the present request. OPC responded by letter dated October 11, 2024, countering that its decision to not raise an objection in a factually distinct docket should not bar the Commission's consideration of an objection in the instant docket.

Requirements of Section 120.542, F.S.

Section 120.542(2), F.S., provides a two-pronged test for determining when waivers of and variances from agency rules shall be granted:

... when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Purpose of the Underlying Statute

Rule 25-30.445, F.A.C., primarily implements Section 367.0822, F.S.,³ which authorizes the Commission to "conduct limited proceedings to consider, and act upon, any matter within its jurisdiction . . ." Rule 25-30.445(6), F.A.C., serves to limit the matters that the Commission may take up via a limited proceeding. The Commission has previously opined as to the underlying purpose of Section 367.0822, F.S.:

We believe that the purpose of the Legislature in enacting Section 367.0822, Florida Statutes (1985), was to provide a narrow exception to Section 367.081, Florida Statutes (1985), which requires the Commission to consider a broad range of ratemaking components. The purpose of a limited proceeding is to permit review of generally singular topics, or a few well-defined issues, to the exclusion of all others. The limited applicability of such a proceeding mandates that the burden must rest on the utility to prove that Section 367.0822, Florida Statutes (1985)[,] should, in fact, be utilized with regard to a specific case.⁴

While the Commission has approved prior rate consolidations in the context of full rate case proceedings,⁵ there is no statutory requirement that rate consolidations must be conducted under Section 367.081, F.S., versus a Section 367.0822, F.S., proceeding. Further, the Commission has allowed revenue-neutral rate restructuring through a limited proceeding on prior occasions.⁶

The limitations set out under Rule 25-30.445, F.A.C., are unique to the water and wastewater industry. Section 366.076, F.S., provides for petitions for limited proceedings by electric and gas companies, and its associated Rule 25-6.0431, F.A.C., does not contain the same limiting provisions as Rule 25-30.455, F.A.C. The purpose of Section 367.0822, F.S. – to allow the Commission to review the singular issue of a revenue-neutral consolidation of the NFCWS systems' rates – is met if Rule 25-30.445(6), F.A.C., is waived. As acknowledged by NFCWS, the Commission would retain its authority to solicit any information needed to process the requested rate consolidation, including conducting an audit if necessary, as well as continue regulatory oversight and earnings' surveillance through NFCWS's annual reports. Staff therefore recommends that NFCWS has demonstrated that the purpose of the underlying statute would be achieved if the requirements of Rule 25-30.445(6), F.A.C., are waived.

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³ Rule 25-30.445, F.A.C., also implements Sections 367.081, 367.0812, 367.121(1)(a), and 367.145(2), F.S.

⁴ Order No. 16670, issued October 2, 1986, in Docket No. 861056-SU, *In re: Petition of Betmar Utilities for Limited Proceeding for Adjustment in Sewer Rate Base in Pasco County* and PSC-2010-0219-PAA-WS.

⁵ See, e.g., Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.

⁶ Order Nos. PSC-2023-0300-PAA-WS, issued October 2, 2023, in Docket No. 20220201-WS, *In re: Request by Florida Community Water Systems, Inc. for a revenue-neutral rate restructuring in Brevard, Lake, and Sumter Counties*, PSC-95-0967-FOF-SU, issued August 8, 1995, in Docket No. 19941270-SU, *In re: Application for revenue neutral wastewater rate restructuring in Lee county by Forest Utilities, Inc.* and PSC-10-0219-PAA-WS, issued April 6, 2010, in Docket No. 20080295-WS, *In re: Request by Sun Communities Finance, LLC d/b/a Water Oak Utility for a revenue-neutral rate restructuring to implement conservation rates in Lake County.*

Docket No. 20240106-WU Issue 1

Date: October 24, 2024

Substantial Hardship or Principles of Fairness

The second prong of the rule waiver test is met if strict application of the rule either (1) creates a substantial hardship or (2) would violate the principles of fundamental fairness. The utility may meet the second prong through either path and is not required to show both.

In its petition, NFCWS argues that denying the rule waiver would result in an economic hardship as it would require NFCWS to file for a full rate case in order to achieve consolidation of its systems' rates. A full rate case would involve compiling and filing six separate sets of MFRs and retaining outside legal counsel, the costs of which would reduce or obviate any customer savings as a result of the rate restructuring. While the costs of a full rate proceeding may be substantial, staff is not persuaded that such costs per se constitute an "economic hardship" to the utility sufficient to support waiver of the rule. While customers might pay substantially more for rate consolidation effected under a Section 367.081, F.S., rate proceeding, subsection 367.081(7), F.S., permits the utility to recover its reasonable rate case expense through rates paid by its customers.

However, the second prong of the rule waiver statute may also be met when application of the rule would violate principles of fairness. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), F.S.

Allowing NFCWS to pursue a revenue-neutral rate restructuring and consolidate its systems' rates through a limited proceeding is expected to allow the majority of NFCWS's customers to benefit from lower and more simplified rates at a minimal increase to customers in Gator and Okaloosa. Requiring NFCWS to pursue these goals through a full base rate proceeding would unfairly minimize or obviate the benefits of consolidation by adding the additional time and rate case expense required to process an application pursuant to Section 367.081, F.S.

Staff recommends that a limited proceeding will allow the Commission to maintain appropriate regulatory oversight of the proposed rate consolidation to the benefit of the utility and its customers. The potential benefits to the utility and its customers stand to be lost if NFCWS is not permitted to pursue the proposed revenue-neutral rate restructuring as a limited proceeding. Therefore, staff recommends that strict application of the rule would violate the principles of fairness.

Conclusion

Section 120.542(1), F.S., acknowledges that strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Commission must waive a rule if the utility can show both that the purpose of the underlying statute is achieved by other means and that the principles of fairness are violated if the rule is strictly applied. This case presents a situation wherein the strict application of the rule affects NFCWS differently than it would another utility because strict application of the rule would obviate the benefits of consolidation, and the petition meets both prongs of the test. Therefore, staff recommends the Commission grant the petition for waiver of Rule 25-30.445(6), F.A.C.

Docket No. 20240106-WU Issue 2

Date: October 24, 2024

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. If the utility's petition for a rule waiver is granted, then the docket should remain open pending the Commission's decision regarding NFCWS's petition for a limited proceeding. However, if the utility's petition for a rule waiver is denied, then the docket should be closed upon the issuance of the consummating order. (Dose, Crawford)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. If the utility's petition for a rule waiver is granted, then the docket should remain open pending the Commission's decision regarding NFCWS's petition for a limited proceeding. However, if the utility's petition for a rule waiver is denied, then the docket should be closed upon the issuance of the consummating order.