

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: July 31, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (M. Brown) *MCB JSC*
Division of Economics (Ollila) *S.O. ED PD J.W.D*

RE: Docket No. 140123-EU – Joint petition for approval of territorial agreement in Franklin and Liberty Counties by Talquin Electric Cooperative, Inc. and Duke Energy Florida, Inc.

AGENDA: 08/12/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 9, 2014, Talquin Electric Cooperative, Inc. (Talquin) and Duke Energy Florida, Inc., (DEF) filed a joint petition for approval of a territorial agreement (Proposed Agreement) in Franklin and Liberty Counties. Talquin and DEF were parties to a prior territorial agreement (Prior Agreement) that expired on October 3, 2010.¹ In their joint petition Talquin and DEF assert that they continued to abide by the terms of the Prior Agreement as they negotiated the terms of the Proposed Agreement. During its evaluation of the joint petition, staff issued two data requests to the parties. The majority of the questions posed by staff were intended to clarify various new and modified provisions of the Proposed Agreement.

¹ Order No. PSC-95-1215-FOF-EU, issued October 3, 1995, in Docket No. 950785-EU, In re: Joint petition for approval of territorial agreement between Florida Power Corporation and Talquin Electric Cooperative, Inc.

Docket No. 140123-EU

Date: July 31, 2014

This recommendation addresses the parties' joint petition for approval of the Proposed Agreement, which is attached to this recommendation (Attachment A). Attachments B and C to this recommendation provide, respectively, the maps of the territorial boundary and the legal descriptions of the territory served by each utility in Franklin and Liberty counties. Pursuant to Rule 25-6.0440(1)(f), Florida Administrative Code (F.A.C.), Attachment D contains official Florida Department of Transportation General Highway County maps for Franklin and Liberty Counties depicting boundary lines established by the territorial agreement. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve Talquin and DEF's Proposed Agreement?

Recommendation: Yes, the Commission should approve the Proposed Agreement. (Ollila, M. Brown)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.6044(2), F.A.C., states that in approving territorial agreements, the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

The parties' Proposed Agreement maintains the same territorial boundaries as the Prior Agreement, and has a term of 30 years, to be effective when the Commission's approval is final and no longer subject to appeal. No customers or facilities will be transferred when the Proposed Agreement is implemented. Therefore, no customers were notified pursuant to Rule 25-6.0440(1), F.A.C., and there is no purchase price to consider pursuant to Rule 25-6.0440(2), F.A.C.

Although no customers will be transferred at this time, the Proposed Agreement contains new provisions intended to clarify the parties' service obligations in circumstances involving future transfers of customers and facilities, the provision of temporary service outside the established boundary line, and the provision of service to customers whose property traverses the established boundary line. The parties explained that those provisions "are intended to provide a degree of flexibility where exceptional circumstances so require without infringing on the Commission's regulatory oversight of territorial boundaries and agreements." In those instances where the territorial boundary traverses a customer's property, the party in whose service area the preponderance of the customer's electric energy usage is expected to occur shall be entitled to serve all of the customer's usage. In their responses to staff's data request, the parties affirmed that they would provide notice to the Commission when they implemented this provision to provide service to a new customer on a long-term basis.

Talquin and DEF assert that the Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest. They state that the Proposed Agreement will avoid duplication of services and wasteful expenditures, as well as protect the public health and safety from potentially hazardous conditions. Therefore, Talquin and DEF believe and represent that the Commission's approval of the Proposed Agreement is in the public interest.

After review of the petition, the Proposed Agreement, and the parties' responses to its data requests, staff believes that the Proposed Agreement is in the public interest and will enable

Talquin and DEF to better serve their current and future customers. It appears that the Agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, staff believes that the Proposed Agreement between Talquin and DEF will not cause a detriment to the public interest and recommends that the Commission approve it.

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, this docket should be closed upon the issuance of a consummating order. (M. Brown)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

TERRITORIAL AGREEMENT

Section 0.1: TALQUIN ELECTRIC COOPERATIVE, INC., ("Talquin"), and Duke Energy Florida, Inc. ("DEF") (collectively, the "Parties") enter into this Territorial Agreement (the "Agreement") on this 3rd day of June, 2014.

WITNESSETH:

Section 0.2: WHEREAS, Talquin and DEF are each authorized, empowered and obligated by their corporate charters and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas in Franklin and Liberty Counties; and

Section 0.3: WHEREAS, Talquin and DEF were parties to a territorial agreement ("Prior Agreement") delineating their respective service territories in Franklin and Liberty Counties which was approved by the Florida Public Service Commission ("Commission") in Order No. PSC-95-1215-FOF-EU, issued October 3, 1995 in Docket No. 950785-EU and expired on October 3, 2010.

Section 0.4: WHEREAS, the Parties desire to enter into a new agreement pertaining to Franklin and Liberty Counties in order to gain further operational efficiencies and customer service improvements in the aforesaid Counties, while continuing to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that territorial agreements are intended to avoid.

Section 0.5: WHEREAS, the Commission is empowered by the Florida legislature, pursuant to F.S. 366.04(2)(d), Florida Statutes, to approve territorial agreements and the Commission, as a matter of long-standing regulatory policy, has encouraged retail territorial agreements between electric utilities subject to its jurisdiction based on its findings that such agreements, when properly established and administered by the parties and actively supervised by the Commission, avoid uneconomic duplication of facilities, promote safe and efficient operations by utilities in rendering electric service provided to their customers, and therefore serve the public interest.

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

ARTICLE I

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary line(s) depicted on the maps attached hereto as Exhibit A which delineate and differentiate the Parties' respective Territorial Areas in Franklin and Liberty Counties. Additionally, pursuant to Rule 25-6.0440 (1)(a), a written description of the areas served by each Party is attached hereto as Exhibit B.

Section 1.2: Talquin Territorial Area. As used herein, the term "Talquin Territorial Area" shall mean the geographic areas in Franklin and Liberty Counties

allocated to Talquin as its retail service territory and labeled as "Talquin Territorial Area" or "Talquin" on the maps contained in Exhibit A.

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

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

Section 1.5: New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term 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: Commission. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.7: 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.

Section 1.8: Temporary Service Customers. As used herein, the term “Temporary Service Customers” shall mean customers who are being temporarily served under the temporary service provisions of the Agreement.

ARTICLE II

RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, Talquin shall have the exclusive authority to furnish retail electric service within the Talquin 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 Talquin Territorial Area or the DEF Territorial Area, through annexation or otherwise, unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.2: Service to New Customers. The Parties agree that neither will knowingly serve nor attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other party, except as specifically provided in this Section 2.3 below. However, in those instances where the Territorial Boundary Line traverses the property of an individual New Customer or prospective New Customer, the Party in whose service area the preponderance of the customer’s electric energy usage is expected to occur shall be entitled to serve all of the customer’s usage. With respect to new residential customers, however, the Parties recognize that in some

instances the information needed to locate the various points of the New Customer's usage 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 service area shall be entitled to serve all of the New Customer's usage.

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

Temporary Service, nor shall the Party providing Temporary Service be required to pay the other party any going concern value.

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

Section 2.5: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Agreement in which either Party has begun to inadvertently provide retail electric service to a customer's Point of Use located within the Territorial Area of the other Party, after the date of this Agreement, service to such customer will be transferred to such other Party at the earliest practical time, but in any event within 12 months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be Temporary Service provided and governed in accordance with Section 2.3 above.

Section 2.6: REA and CFC Approval. Any property transfer from Talquin to DEF is subject to approval by the United States of America Department of Agriculture, Rural Utilities Services and the Cooperative Financing Corporation.

Section 2.7: Preservation of Tax Exempt Status. Notwithstanding the previous sections of Article II, it is understood that Talquin must furnish its service mainly to its

members in order to preserve its tax exempt status. Therefore, unless the proposed recipient of electric service will join Talquin, Talquin may decline to provide electric service, when in the judgment of Talquin, the income produced thereby would cause non-member income to exceed the percentage of gross income which Talquin may accept from non-members and maintain its tax exempt status.

ARTICLE III

TRANSFER OF CUSTOMERS AND FACILITIES

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

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 service territory of the other Party, the Parties shall jointly petition the Commission for approval of a modification of the Territorial Boundary line that places the area in question (the "Reallocated Area") within the Territorial Area of the other Party and transfer of the customers located in the Reallocated Area to the other Party.

ARTICLE IV

OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. Other than as expressly provided for herein, no generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder; provided, however, that each Party

shall operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other Party.

Section 4.2: Talquin Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of Talquin to serve any facility of Talquin located in the DEF Territorial Area which is used exclusively in connection with Talquin business as an electric utility; provided, however, that Talquin 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 4.3: DEF Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of DEF to serve any DEF facility located in the Talquin 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 Talquin in the Talquin Territorial Area.

ARTICLE V

PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by 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. 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.

Upon approval of the Commission, this Agreement shall be deemed to specifically supersede the Prior Agreement between Parties regarding their respective retail service areas in Franklin and Liberty Counties.

ARTICLE VI

DURATION

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of 30 years from the Effective Date.

ARTICLE VII

CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Agreement is intended to define, establish, or affect in any manner, the rights of either Party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service, but not limited to, the service territory of either Party. The Parties understand that Talquin 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 Talquin or DEF from designating any portion of its Territorial Area under this Agreement as the retail service area of such other electric utility.

Section 7.2: 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. Bulk Power for Resale shall be construed as defined in the Final Judgment dated August 19, 1971 in United States of America v. Florida Power Corporation and Tampa Electric Company, United States for the Middle District of Florida, Case No. 68-297 Civ T (“the Final Judgment”).

Section 7.3: 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.

ARTICLE VIII

MISCELLANEOUS

Section 8.1: Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this 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 or the Parties hereto unless agreed to in writing by both Parties, and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this 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 assigns.

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

To TALQUIN:	To DEF:
Mal Greene, President	Alex Glenn, State President
Talquin Electric Cooperative, Inc.	Duke Energy Florida, Inc.
Post Office Box 1679	Post Office Box 14042
Quincy, Florida 32353	St. Petersburg, Florida 33733
Facsimile: 850-627-2553	Facsimile: 727-820-5044

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

IN WITNESS WHEREOF, the Parties 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.

TALQUIN ELECTRIC COOPERATIVE, INC.

By Mal Green
President

ATTEST:

[Signature]
Secretary

(SEAL)

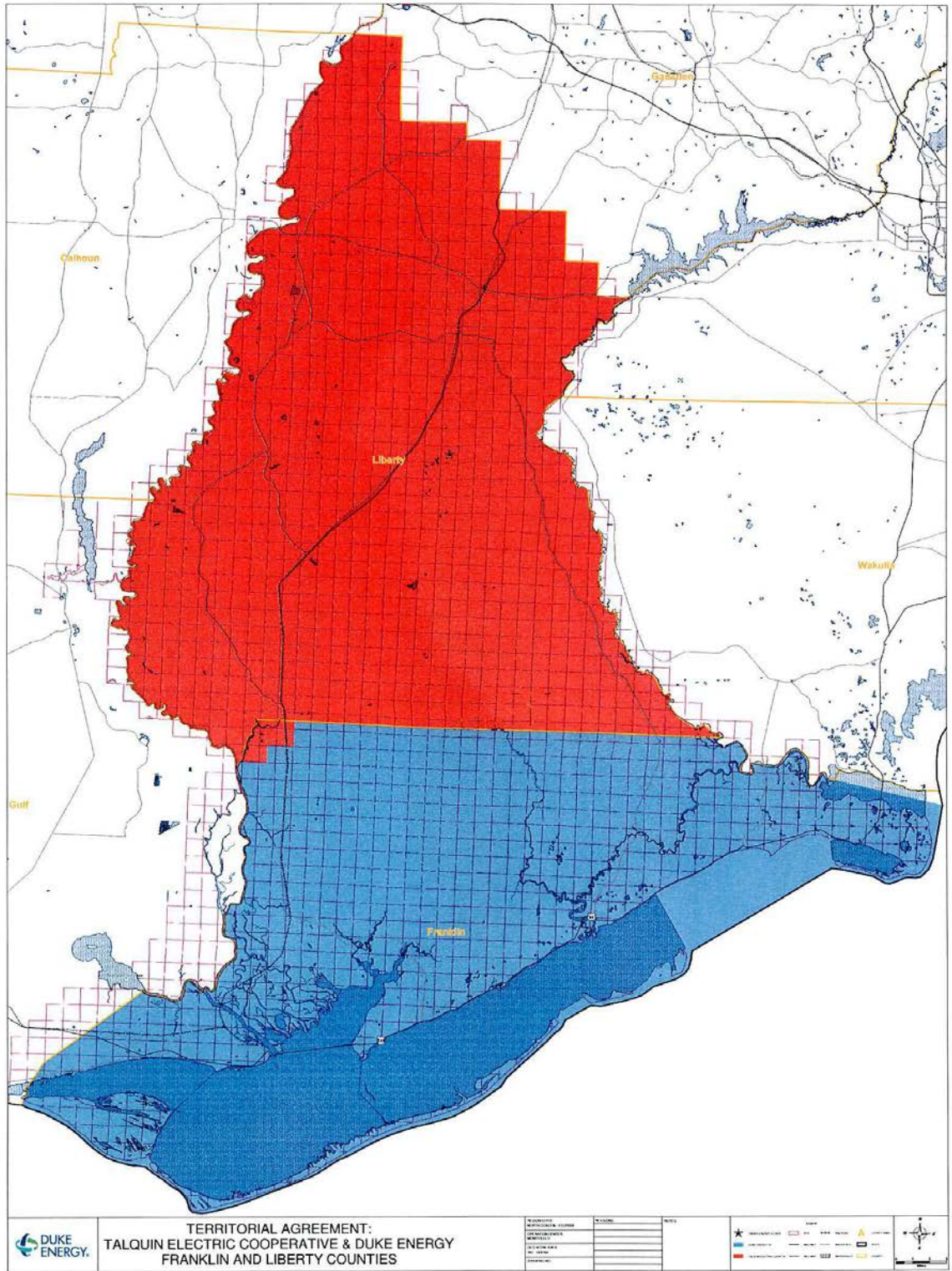
DUKE ENERGY FLORIDA, INC.

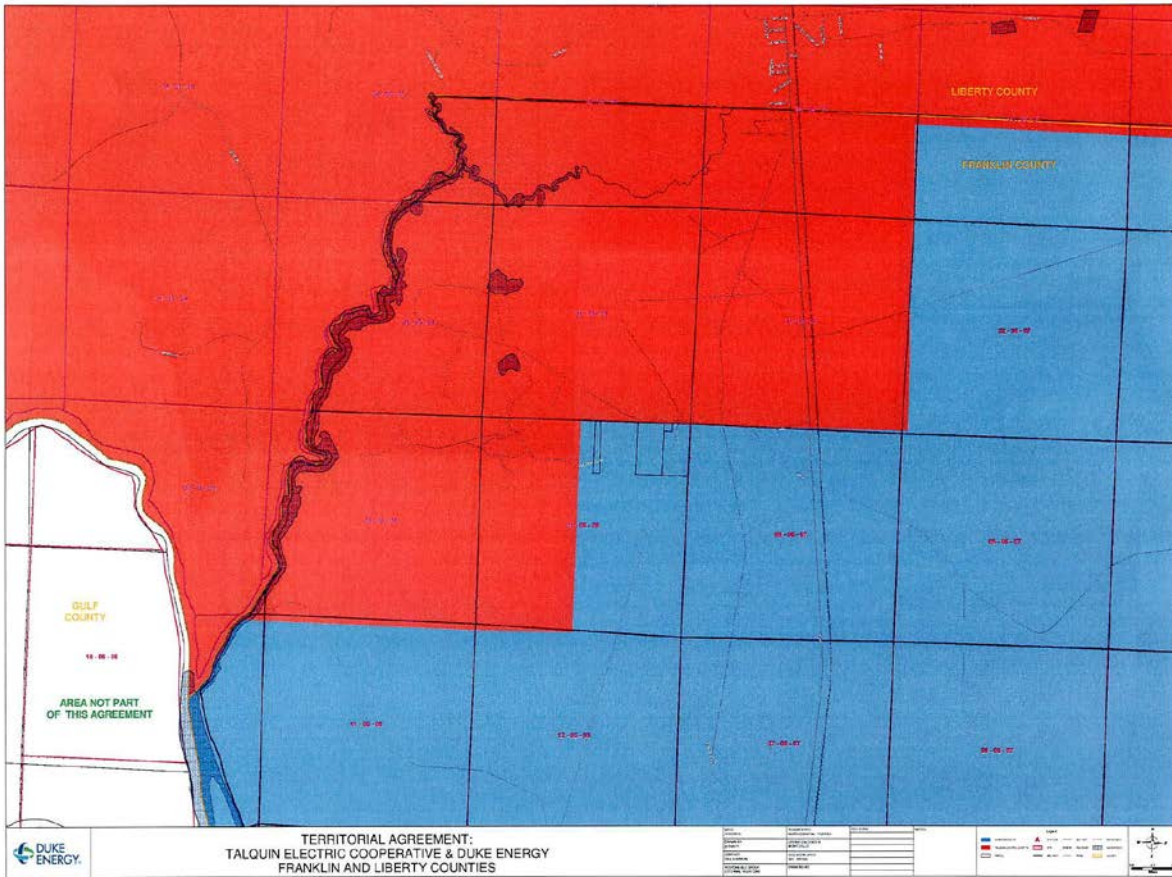
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State President

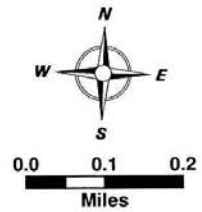
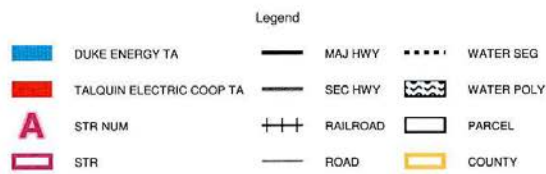
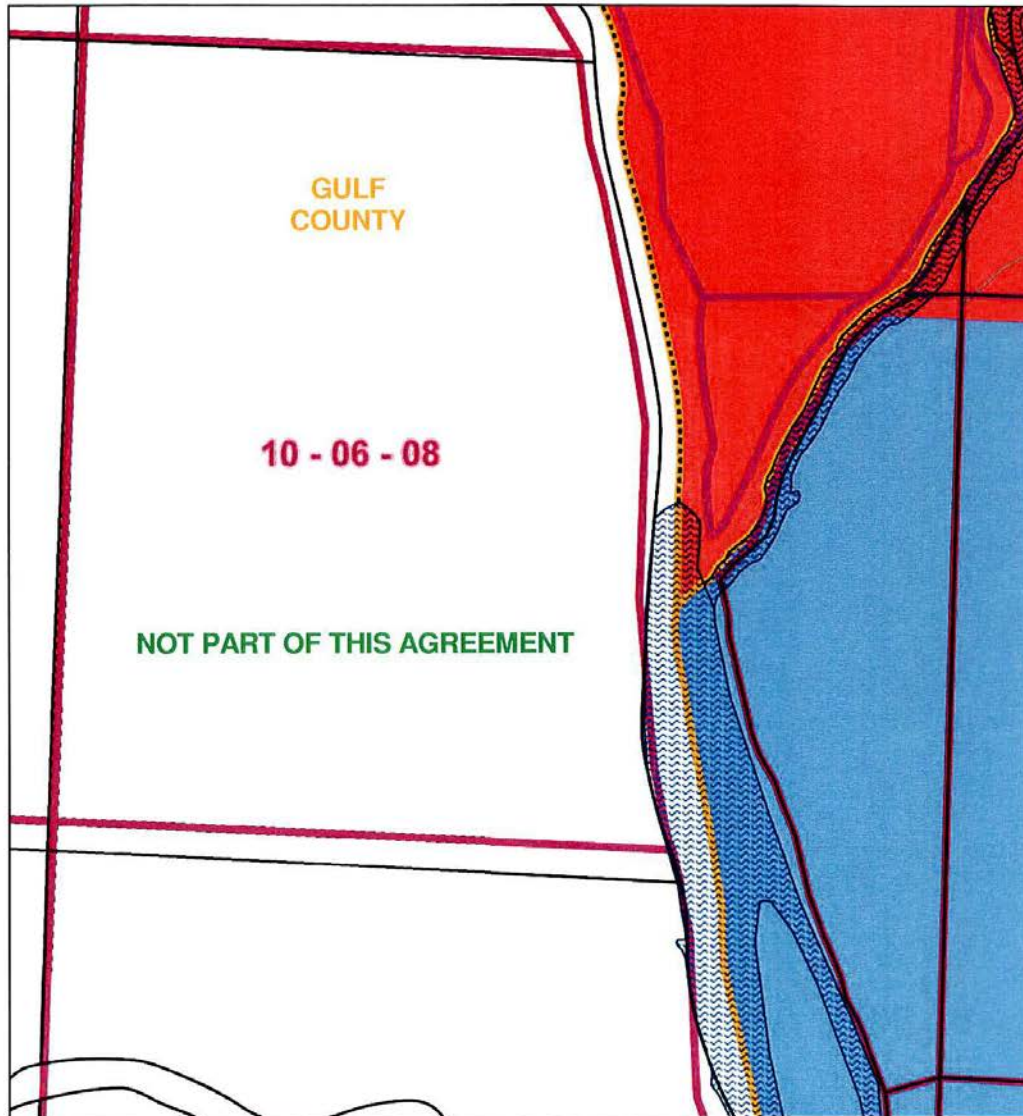
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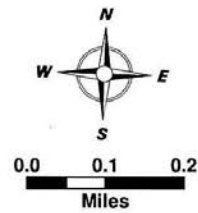
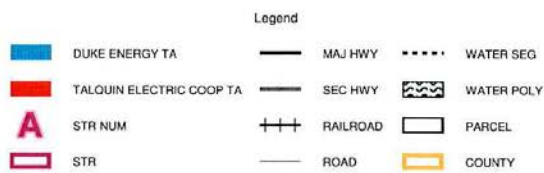
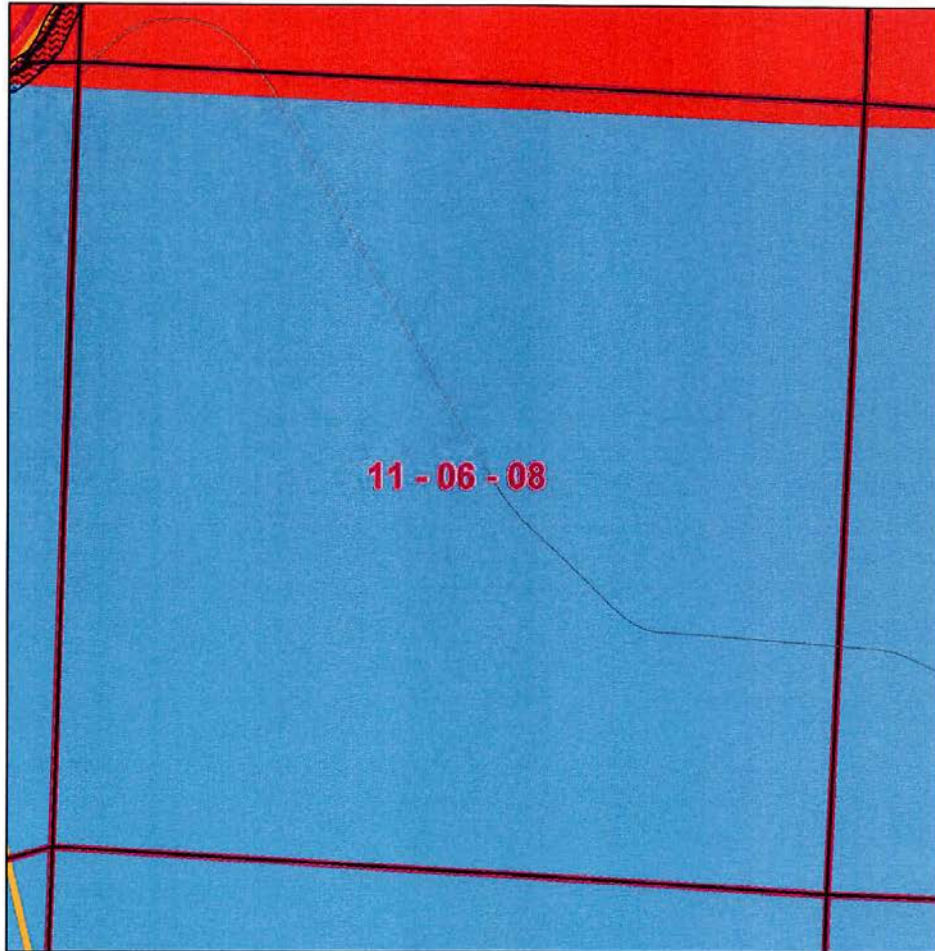
[Signature]
Associate General Counsel

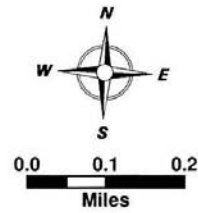
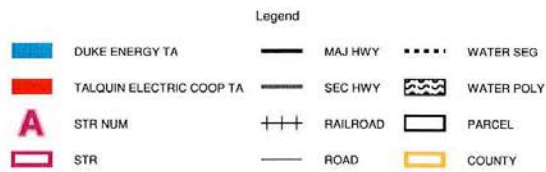
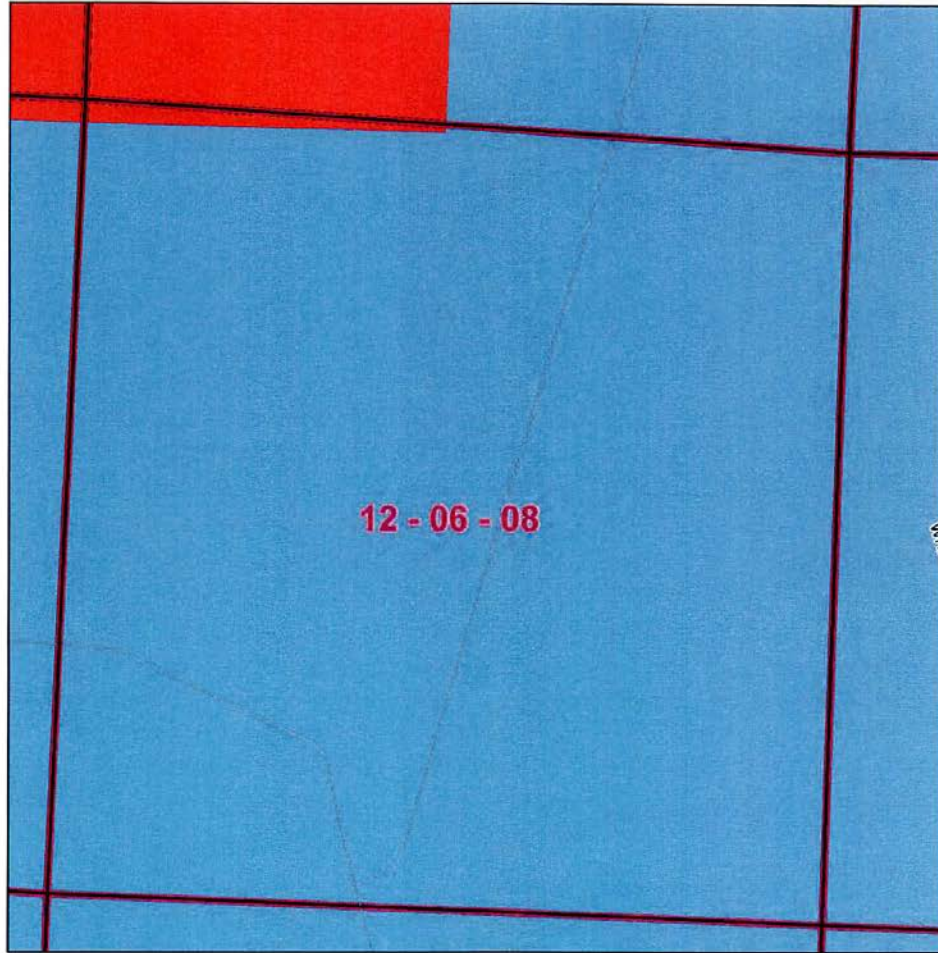
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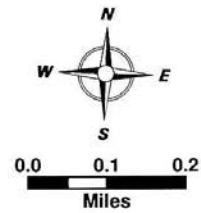
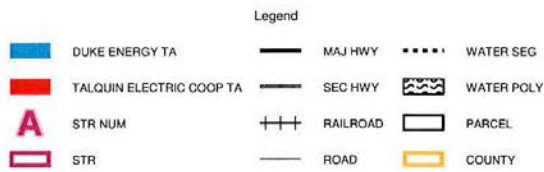
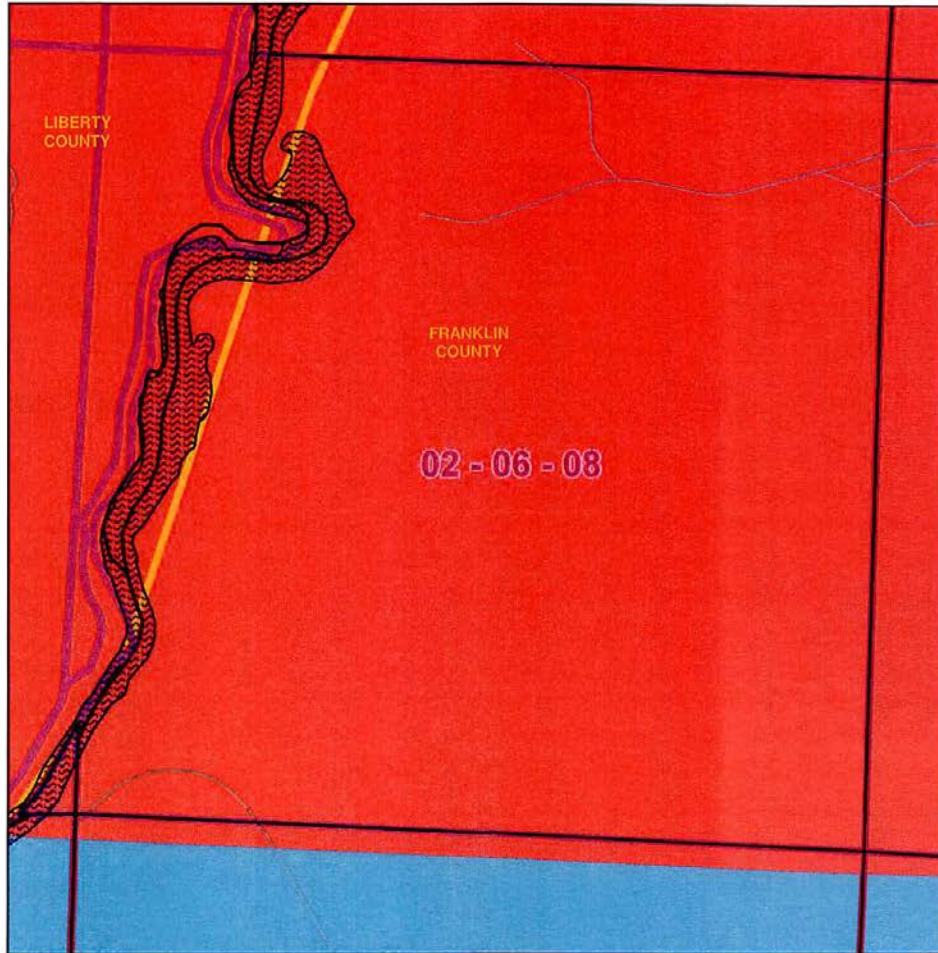


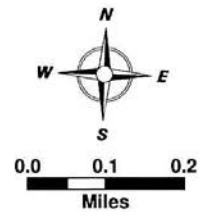
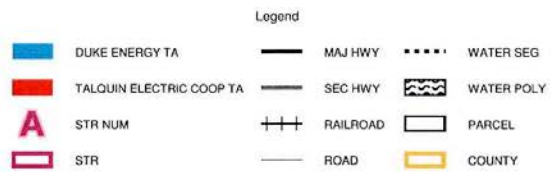


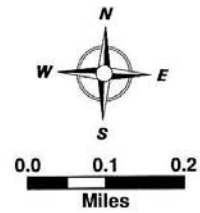
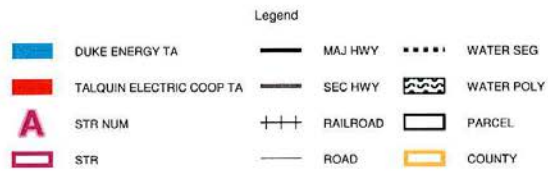
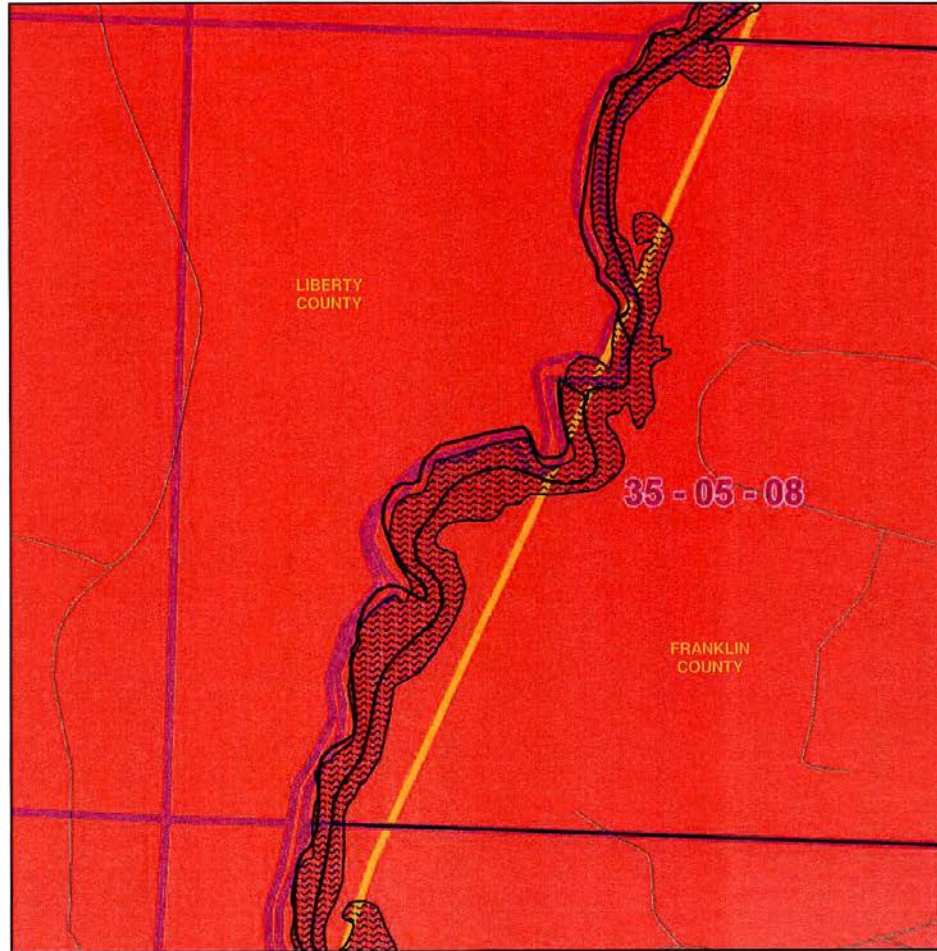


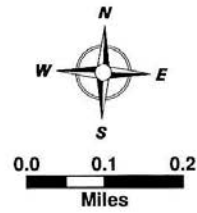
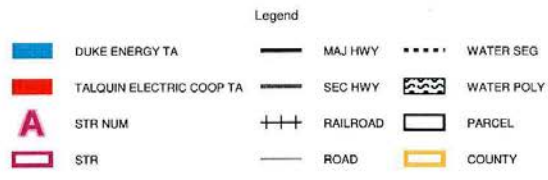
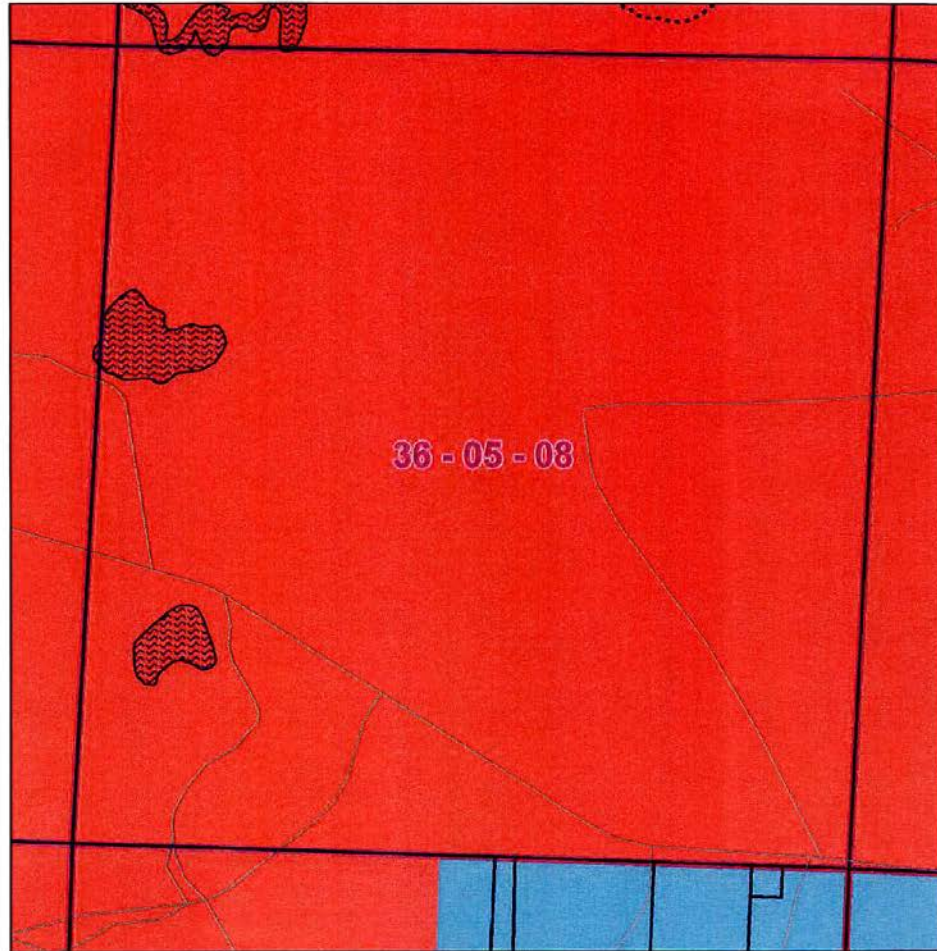


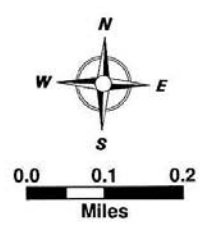
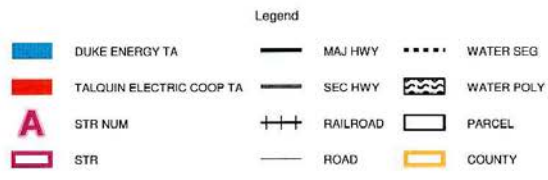


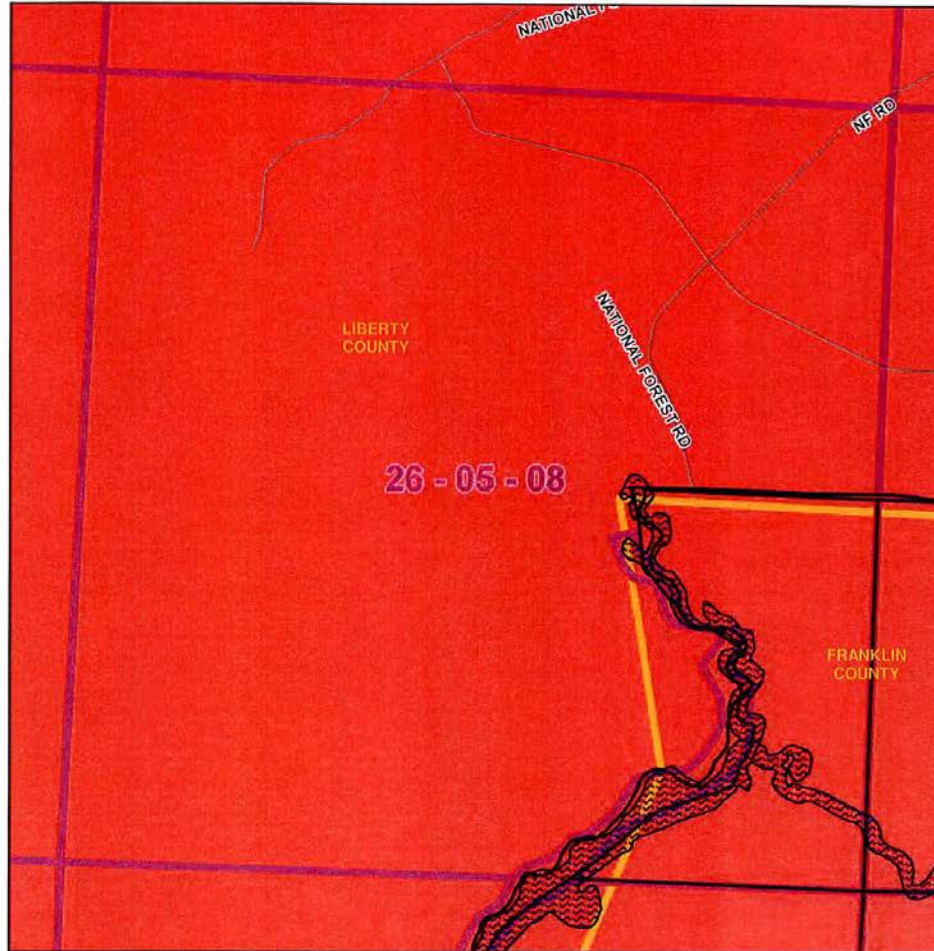


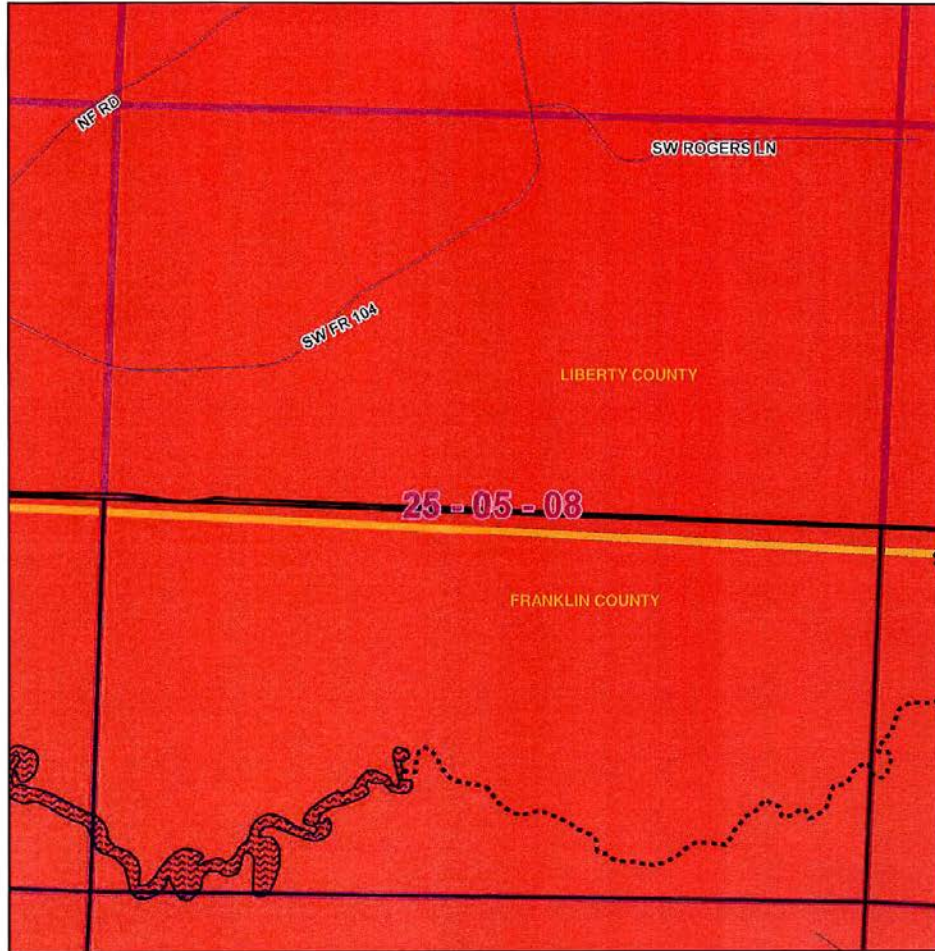
















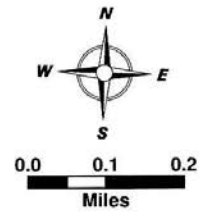






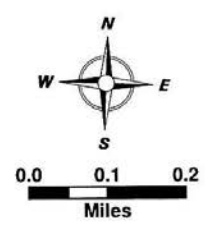


Legend			
	DUKE ENERGY TA		WATER SEG
	TALQUIN ELECTRIC COOP TA		WATER POLY
	STR NUM		RAILROAD
	STR		ROAD
			MAJ HWY
			SEC HWY
			PARCEL
			COUNTY





Legend					
	DUKE ENERGY TA		MAJ HWY		WATER SEG
	TALQUIN ELECTRIC COOP TA		SEC HWY		WATER POLY
	STR NUM		RAILROAD		PARCEL
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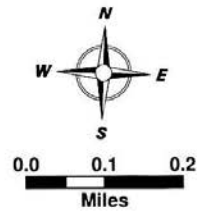
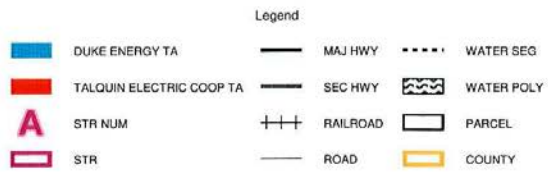
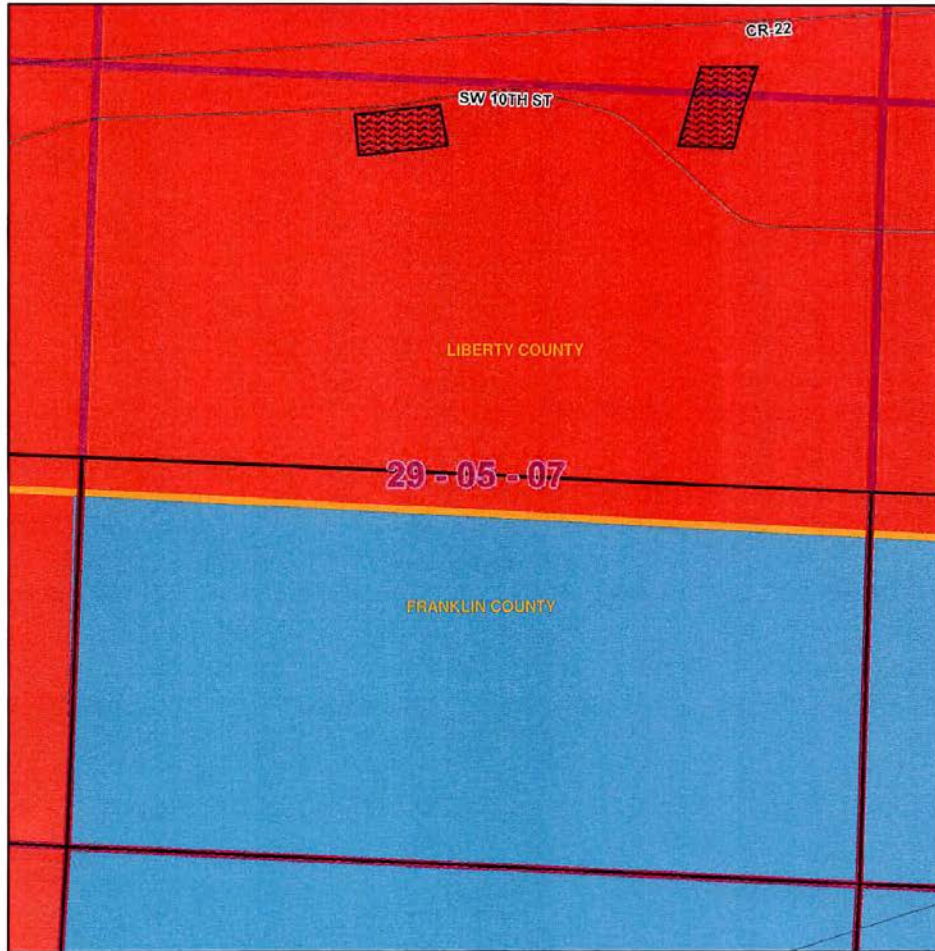


EXHIBIT B – Written Description of the Territorial Areas Served – Franklin and Liberty Counties*

Map Page	County	Township/Range	Section(s)	Description/Notes
1	Franklin	T06S, R08W	10	The entire part of the section north of the Apalachicola River is served by Talquin. The entire part of the section south of the Apalachicola River is served by Duke.
2	Franklin	T06S, R08W	11	The entire section is served by DEF except for the areas directly adjacent to the northern section line which are served by Talquin.
3	Franklin	T06S, R08W	12	The entire section is served by DEF except for the areas directly adjacent to the northern section line in the northwestern corner which are served by Talquin.
4	Franklin	T06S, R08W	02	The entire section is served by Talquin. No areas are served by DEF.
5	Franklin	T06S, R08W	01	Talquin serves the western half of the section. DEF serves the eastern half of the section, which includes Hickory Lane Road.
6	Franklin Liberty	T05S, R08W	35	The entire section is served by Talquin. No areas are served by DEF. This section is located in both Franklin and Liberty counties.
7	Franklin	T05S, R08W	36	The entire section is served by Talquin. No areas are served by DEF.
8	Franklin	T05S, R07W	31	The entire section is served by Talquin. No areas are served by DEF.
9	Franklin Liberty	T05S, R08W	26	The entire section is served by Talquin. No areas are served by DEF. This section is located in both Franklin and Liberty counties.
10	Franklin Liberty	T05S, R08W	25	The entire section is served by Talquin. No areas are served by DEF. This section is located in both Franklin and Liberty counties.
11	Franklin Liberty	T05S, R07W	30	The entire section is served by Talquin. No areas are served by DEF. This section is located in both Franklin and Liberty counties.
12	Franklin Liberty	T05S, R07W	29	Talquin serves the northern half of the section which includes SW 10 th Street. DEF serves the southern half of the section.
*The written descriptions explain the shared boundaries lines within a S-T-R between Talquin and DEF.				

