

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: November 23, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *JGH*
Office of the General Counsel (Sandy, Crawford) *JSC*

RE: Docket No. 20210160-EU – Joint petition for approval of modification to territorial agreement in Orange County, by City of Winter Park and Duke Energy Florida, LLC.

AGENDA: 12/07/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 27, 2021, the City of Winter Park (Winter Park or City) and Duke Energy Florida, LLC (DEF) filed a joint petition for approval of an amendment (First Amendment) to their currently effective territorial agreement in Orange County. In 2005, the City of Winter Park purchased DEF's facilities and established a municipal utility to provide service within the City.¹ In 2014, the Commission approved the joint petitioners' currently effective territorial agreement.² The proposed First Amendment to the agreement seeks to further redefine the

¹ Order No. PSC-05-0453-PAA-EI, issued April 28, 2005, in Docket No. 20050117-EI, *In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 366.03 and 366.04, F.S.*

² Order No. PSC-14-0108-PAA-EU, issued February 24, 2014, in Docket No. 20130267-EU, *In re: Joint petition for approval of territorial agreement in Orange County by the City of Winter Park and Duke Energy Florida, Inc.*

parties' specific service areas in Winter Park. The proposed First Amendment and associated maps indicating the service area revisions are included in Attachment A to this recommendation.

During the review process, staff issued two data requests to the joint petitioners, to which the responses were received on October 26 and on November 9, 2021. On November 17, 2021, DEF provided an email, which has been placed in the docket file, with additional clarifications on the process leading up to the proposed First Amendment.³ On November 19, 2021, staff had an informal conference call meeting with the joint petitioners to obtain further clarifications related to the proposed First Amendment. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

³ Document No. 12808-2021.

Discussion of Issues

Issue 1: Should the Commission approve the proposed First Amendment to the current territorial agreement in Orange County between Winter Park and DEF?

Recommendation: Yes, the Commission should approve the proposed First Amendment to the current territorial agreement in Orange County between Winter Park and DEF. The approval of this amendment will not be a detriment to the public interest and will enable Winter Park and DEF to redefine specific service areas in the City of Winter Park. (Guffey, Sandy)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the Agreement will cause a detriment to the public interest, the Agreement should be approved.⁴

The Proposed First Amendment to the Territorial Agreement

Through this proposed First Amendment, the joint petitioners desire to redraw certain small sections of the territorial boundaries in Winter Park. The joint petitioners explained, that after the separation of the City from DEF and the 2014 territorial agreement, DEF continued to serve certain small areas within the City. The proposed First Amendment addresses those areas still served by DEF within the City and would eliminate potential duplicate facilities, create contiguous boundaries, and address certain parcels that were split by the current territorial boundaries. Pursuant to Paragraph 3 of the First Amendment, 11 DEF customers (nine commercial and two residential) will be transferred to Winter Park. Revised Exhibit F, as shown on Page 19 of 26 in Attachment A to the recommendation, clarified that of the 11 customers to be transferred to the City, seven are existing customers and four are vacant parcels.⁵ No customers will be transferred from the City to DEF.

During the November 19, 2021 conference call meeting with staff, the joint petitioners stated that in an effort to have a more contiguous boundary, and avoid duplication of service, DEF approached the City, after a review of its service territory, regarding the transfer of certain parcels within the City's boundary that are currently served by DEF. The joint petitioners agreed to transfer seven existing DEF customers and four vacant lots within DEF's service area to the City of Winter Park. In addition, the joint petitioners agreed to transfer the service of the land parcel which includes the City's wastewater treatment plant, which has been temporarily served by DEF for many years, to DEF as the City has no facilities nearby to economically extend service to the wastewater treatment plant.

The proposed amendment will eliminate uneconomic duplication of service facilities and resolve split parcels due to annexation and create cohesive boundaries. The proposed First Amendment does not contemplate transfer or purchase of any facilities by either utility and the joint petitioners assert that the proposed amendment will not cause a decrease in service reliability to

⁴ *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

⁵ Document No. 12593-2021, Response 1 and Revised Exhibit F to Staff's Second Data Request.

their existing or future customers. The currently effective agreement approved in 2014, shall remain effective for a term of 20 years, pursuant to Section 6.1 of the agreement and the proposed First Amendment does not modify the term of the agreement.

The petitioners, in their response to staff's first data request, stated that in accordance with Rule 25-6.0440(1)(d), F.A.C., the customers to be transferred from DEF to Winter Park pursuant to this agreement were notified by mail and a description of the difference between DEF's and Winter Park's electric rates was provided.⁶ Since the initial notification, the rates have changed. As of October 2021, DEF's residential rate for 1,000 kilowatt-hours (kWh) is \$132.24 and commercial rate for 1,500 kWh is \$207.60. For the same month, Winter Park residential rate for 1,000 kWh is \$121.27 and commercial rate for 1,500 kWh is \$202.54.⁷ The customer notice states that DEF will apply customers' deposits to their last electric bill and will directly refund any surplus.⁸ With regard to the degree of acceptance by affected customers, the petitioners, in their response to staff's first data request, stated that DEF has not received any comments from customers subject to the transfer and will notify the Commission if any comments or questions are received. The joint petitioners intend to transfer the 11 customers by end of 2022.

Conclusion

After review of the joint petition, the proposed First Amendment to the territorial agreement, and responses to staff's data requests, staff believes the First Amendment to the territorial agreement will not cause a detriment to the public interest, will eliminate any potential uneconomic duplication of facilities and will not cause a decrease in reliability of electric service to the present or future customers of Winter Park or DEF. Therefore, staff recommends that the Commission should approve the proposed First Amendment to the territorial agreement between Winter Park and DEF in Orange County.

⁶ In August 2021, DEF's residential rate for 1,000 kWh was \$132.21 and commercial rate for 1,500 kWh was \$207.72. For the same month, Winter Park residential rate for 1,000 kWh was \$115.30 and commercial rate for 1,500 kWh was \$183.57.

⁷ Document No. 12404-2021, Response 2 in Staff's First Data Request.

⁸ Document No. 12404-2021, Response 2 and Attachment A to Staff's First Data Request.

Issue 2: Should this docket be closed?

Recommendation: Yes. 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 the 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 the Consummating Order.

EXHIBIT A

**FIRST AMENDMENT
TO THE TERRITORIAL AGREEMENT
BETWEEN
THE CITY OF WINTER PARK
AND
DUKE ENERGY FLORIDA, LLC**

**FIRST AMENDMENT TO THE TERRITORIAL AGREEMENT
BETWEEN
THE CITY OF WINTER PARK
AND
DUKE ENERGY FLORIDA, LLC**

THIS FIRST AMENDMENT TO THE TERRITORIAL AGREEMENT ("First Amendment"), by and between The City of Winter Park (Winter Park) and Duke Energy Florida, LLC (DEF) (collectively, "Parties," or individually a "Party"), is subject to the approval of the Florida Public Service Commission (the "Commission").

WHEREAS, Winter Park and DEF are Parties to an existing territorial agreement ("Current Agreement") delineating their respective service territories in Orange County approved by the Commission in Order No. PSC-14-0138-CO-EU, issued March 21, 2014, in Docket No. 130267-EU; and

WHEREAS, the Parties desire, pursuant to Article II, Retail Electric Service, to modify the territorial boundaries.

NOW THEREFORE, the Parties agree as follows:

1. The territorial boundary modifications are set forth in Attachment 1.
2. Attachment 1 includes updated versions of the following exhibits and shall replace the existing exhibits in the Current Agreement:
 - a. Exhibit A – Maps Depicting The Territorial Boundary Lines And Service Territories of Winter Park and DEF.
 - i. A map demonstrating the proposed boundary modification is provided in a new Exhibit H.
 - b. Exhibit B – Location Of All Extra-Territorial Customers Including Customers Listed On Exhibit C and Exhibit D.
 - c. Exhibit E – Location Of Exhibit C Extra-Territorial Customers

3. In this boundary modification, there are eleven customers (nine commercial and two residential) to be transferred from DEF to Winter Park. These customers are set forth in a new Exhibit F.
4. There are no customers to be transferred from Winter Park to DEF in this First Amendment.
5. The Parties agree, based on sound economic considerations, these boundary modifications will eliminate the uneconomic duplication of facilities, will resolve split parcels due to annexation, as well as create more cohesive boundaries, and will not cause a decrease in reliability to existing or future customers of either Party.
6. Pursuant to Section 6.1: Term, this Current Agreement shall continue and remain in effect for a period of twenty (20) years from the Effective Date. Additionally, the Parties desire that after the expiration of the initial term that this Current Agreement shall remain in effect thereafter unless either Party provides written notice of Termination at least 12 months prior to the termination of the Current Agreement as contemplated by Section 8.3.
7. Upon approval by the Commission, this First Amendment to the Territorial Agreement shall be amended herein.

IN WITNESS WHEREOF, each Party hereto has executed this First Amendment by their duly authorized representative on this 27th day of September, 2021.

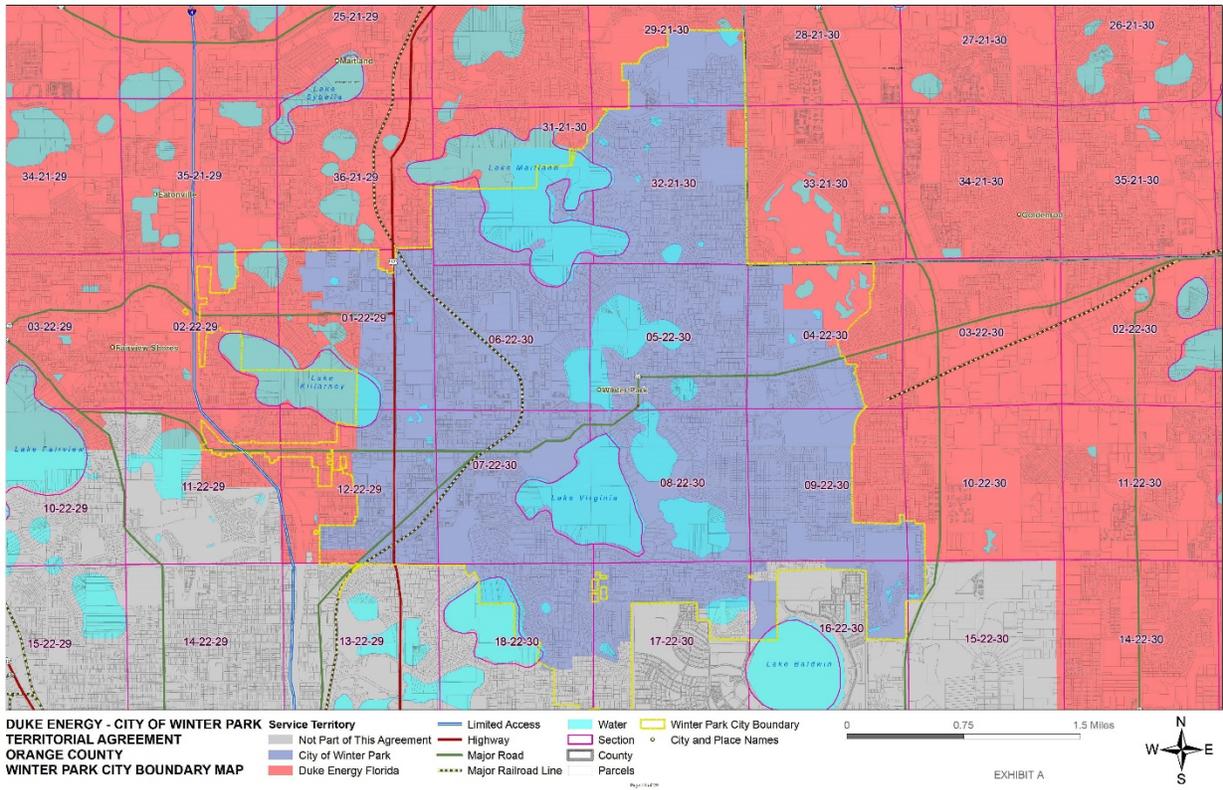
The City of Winter Park	Duke Energy Florida, LLC
<u><i>Randy Knight</i></u>	<u><i>Melissa Seixas</i></u> Melissa Seixas
City Manager	State President
ATTEST: City of Winter Park <u>/s/ Jennifer Maier</u> Jennifer Maier Procurement Manager	Duke Energy Florida, LLC ATTEST: <u>/s/ Matthew R. Bernier</u> Matthew R. Bernier Associate General Counsel Attorney for Duke Energy Florida, LLC

ATTACHMENT 1

EXHIBIT A
EXHIBIT B
EXHIBIT E
EXHIBIT F
EXHIBIT H

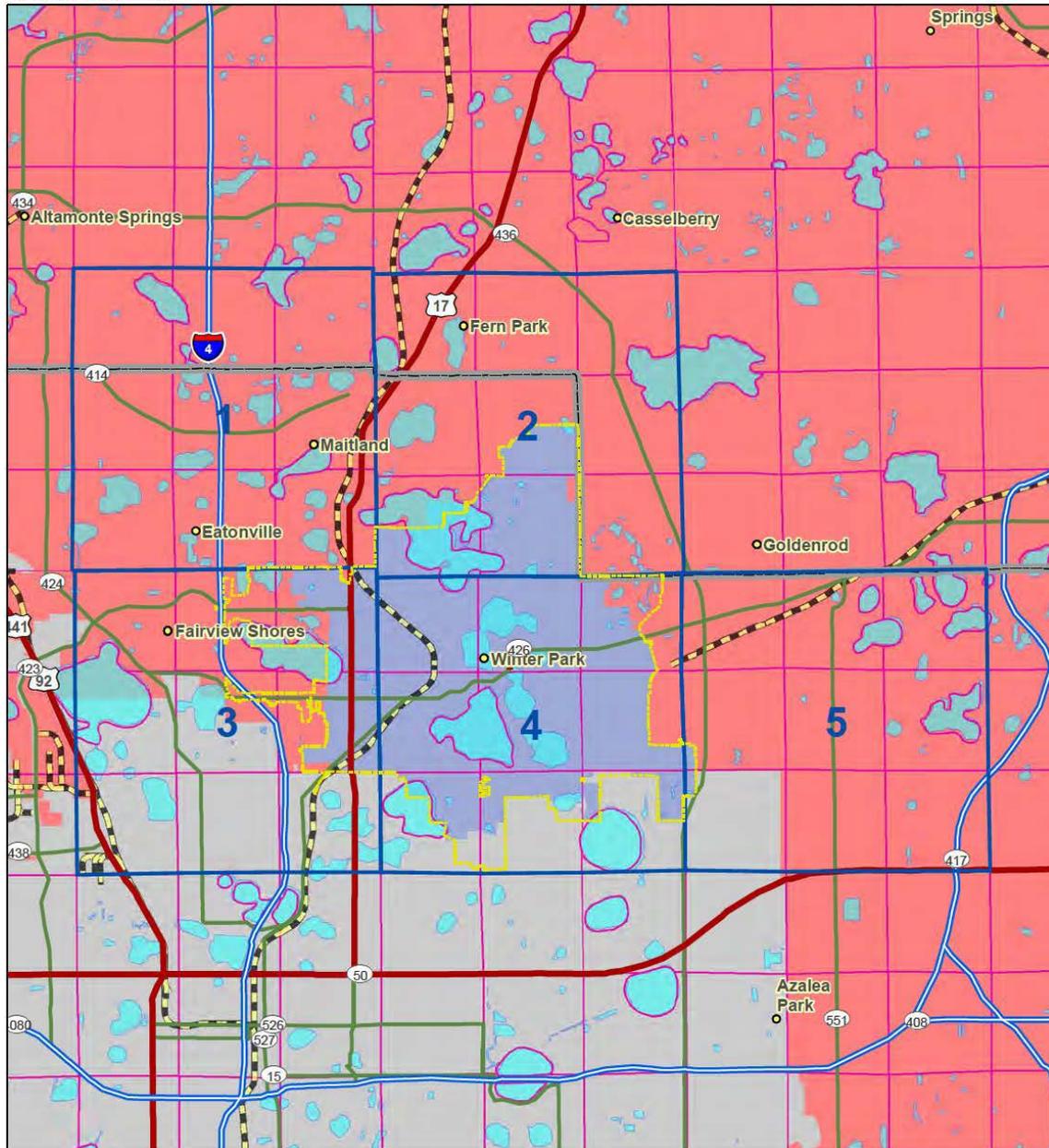
EXHIBIT A

**MAPS DEPICTING THE
TERRITORIAL BOUNDARY LINES
AND SERVICE TERRITORIES OF
WINTER PARK AND DEF**



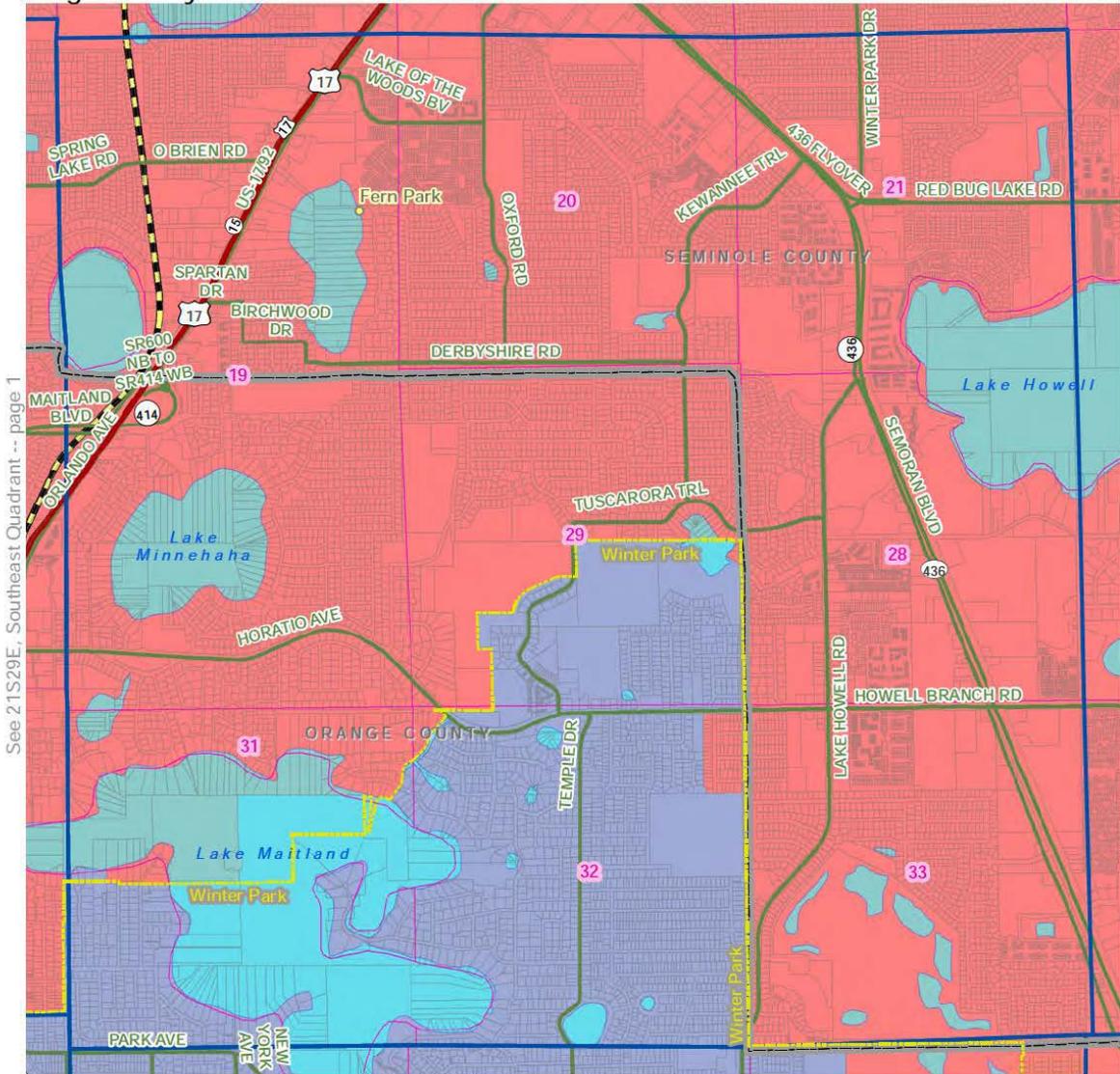
**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 ORANGE COUNTY
 PAGE INDEX**

EXHIBIT A



**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 Orange County**

EXHIBIT A

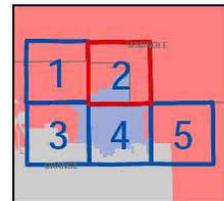


See 21S29E, Southeast Quadrant -- page 1

See 22S30E, Northwest Quadrant -- page 4

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|----------------------------|-----------------------|---------|---------------------------|
| Service Territory | — Limited Access | Water | County |
| Not Part of This Agreement | — Highway | Section | Winter Park City Boundary |
| City of Winter Park | — Major Road | Parcels | City and Place Names |
| Duke Energy Florida | — Major Railroad Line | | |

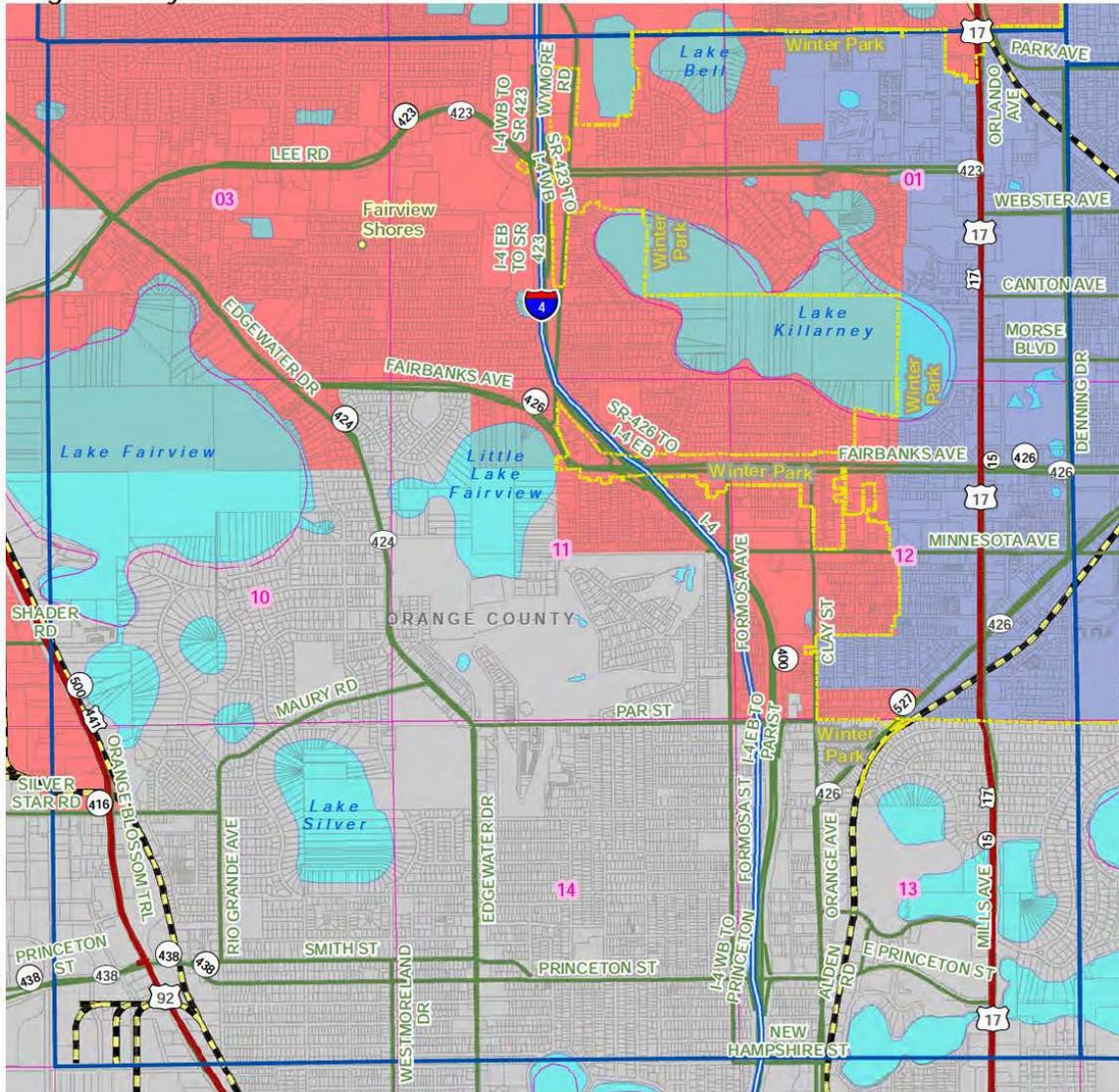
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 Township: 21S
 Range: 30E
 County: Orange County



**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 Orange County**

EXHIBIT A

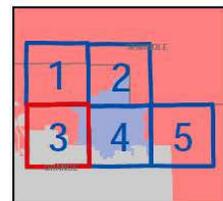
See 21S29E, Southeast Quadrant -- page 1



See 22S30E, Northwest Quadrant -- page 4

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| City of Winter Park | — Major Road | Parcels | City and Place Names |
| Duke Energy Florida | — Major Railroad Line | | |

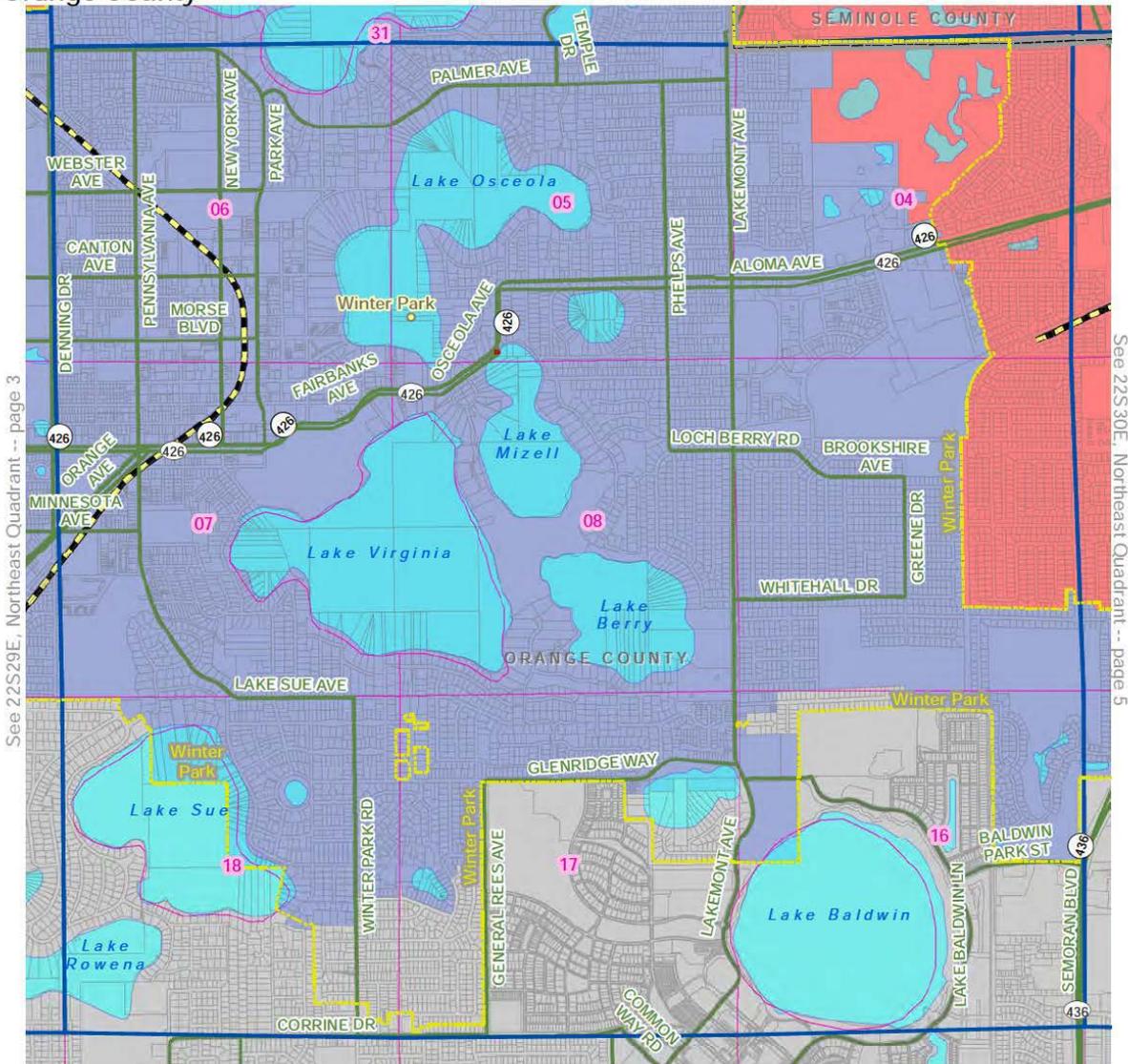
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 Township: 22S
 Range: 29E
 County: Orange County



**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 Orange County**

EXHIBIT A

See 21S30E, Southwest Quadrant -- page 2

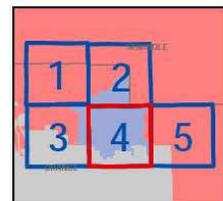
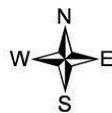


See 22S29E, Northeast Quadrant -- page 3

See 22S30E, Northeast Quadrant -- page 5

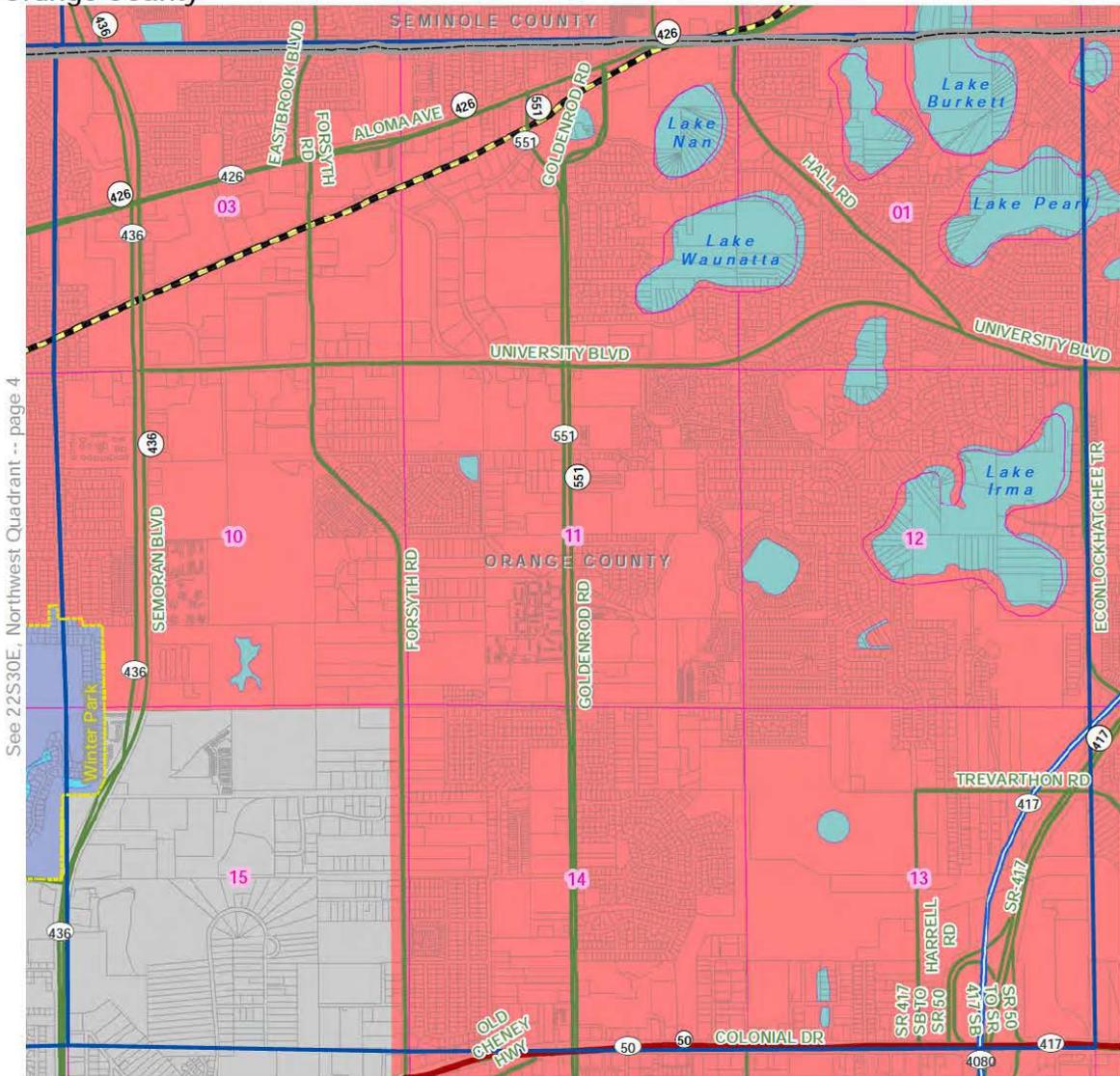
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| Service Territory | — Limited Access | Water | County |
| Not Part of This Agreement | Highway | Section | Winter Park City Boundary |
| City of Winter Park | Major Road | Parcels | City and Place Names |
| Duke Energy Florida | Major Railroad Line | | |

Quadrant: Northwest
 Township: 22S
 Range: 30E
 County: Orange County



**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 Orange County**

EXHIBIT A



See 22S30E, Northwest Quadrant -- page 4

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Quadrant: Northeast
 Township: 22S
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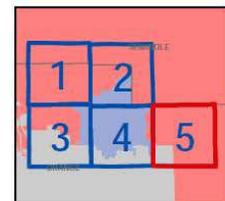


EXHIBIT B

**LOCATION OF ALL EXTRA-TERRITORIAL
CUSTOMERS INCLUDING CUSTOMERS
LISTED ON EXHIBIT C AND EXHIBIT D**

**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 ORANGE COUNTY
 EXHIBIT B**

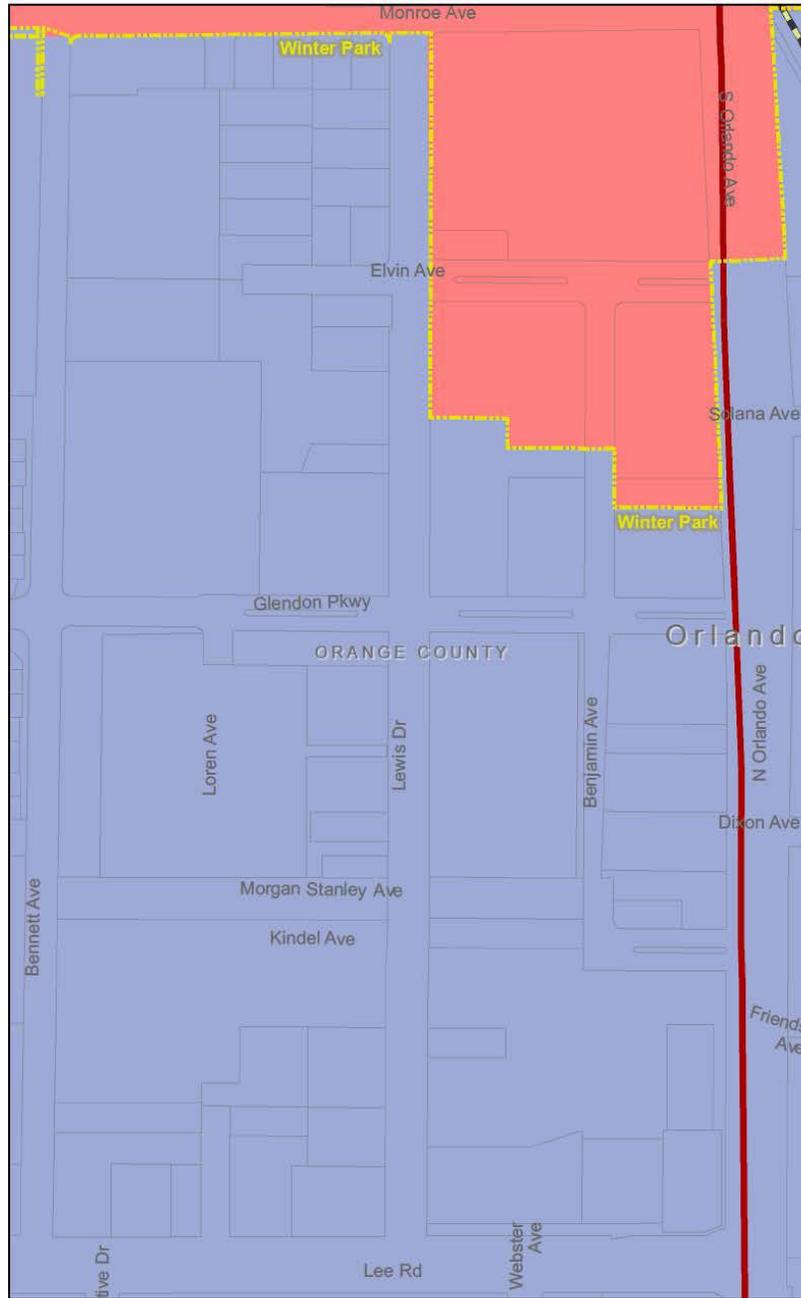


EXHIBIT E

**LOCATION OF EXHIBIT C
EXTRA-TERRITORIAL
CUSTOMERS**

**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 ORANGE COUNTY
 EXHIBIT E**

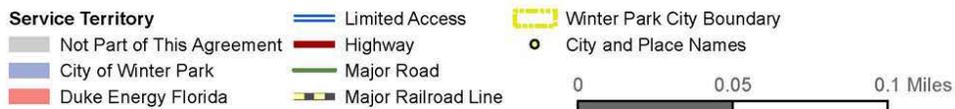
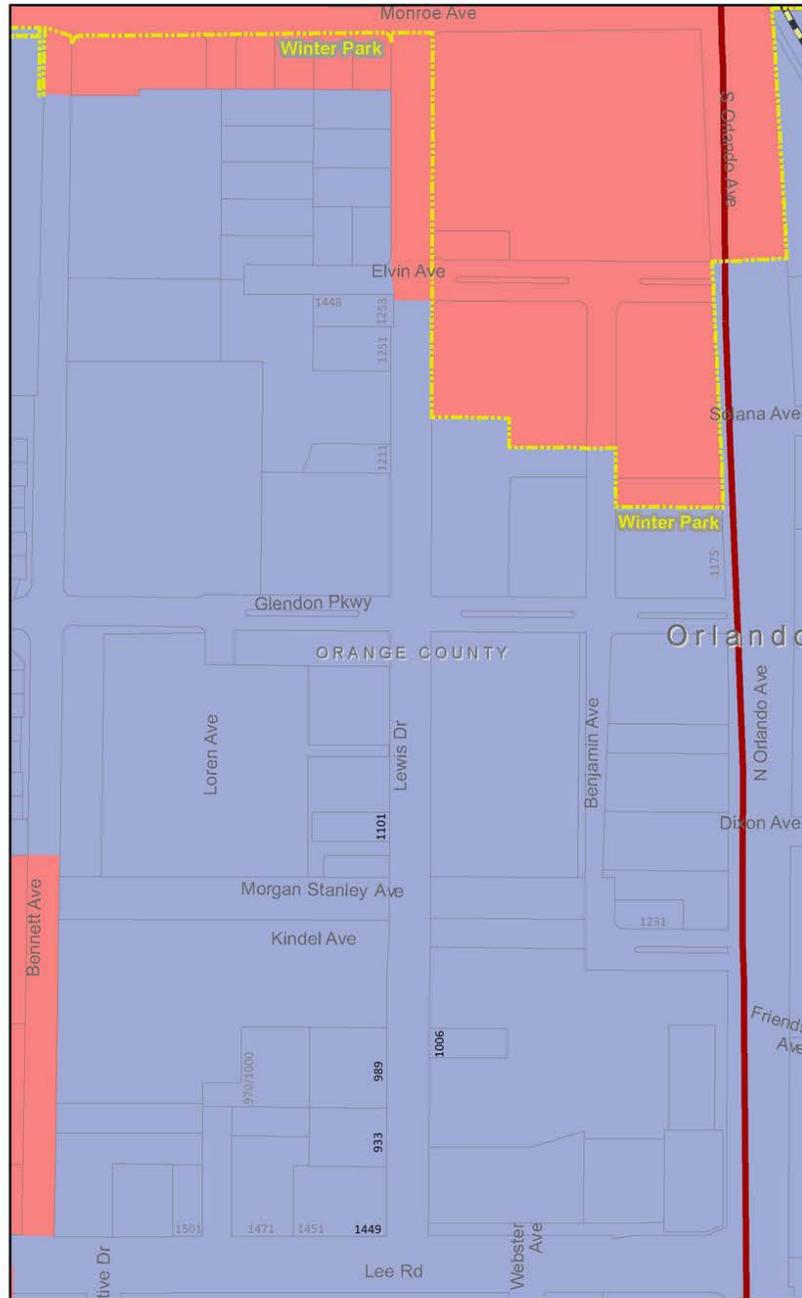


EXHIBIT F

**EXTRA-TERRITORIAL CUSTOMERS
SUBJECT TO TRANSFER
FROM
DEF TO THE
CITY OF WINTER PARK**

EXHIBIT F

**EXTRA-TERRITORIAL CUSTOMERS
SUBJECT TO TRANSFER FROM
DEF TO THE CITY OF WINTER PARK**

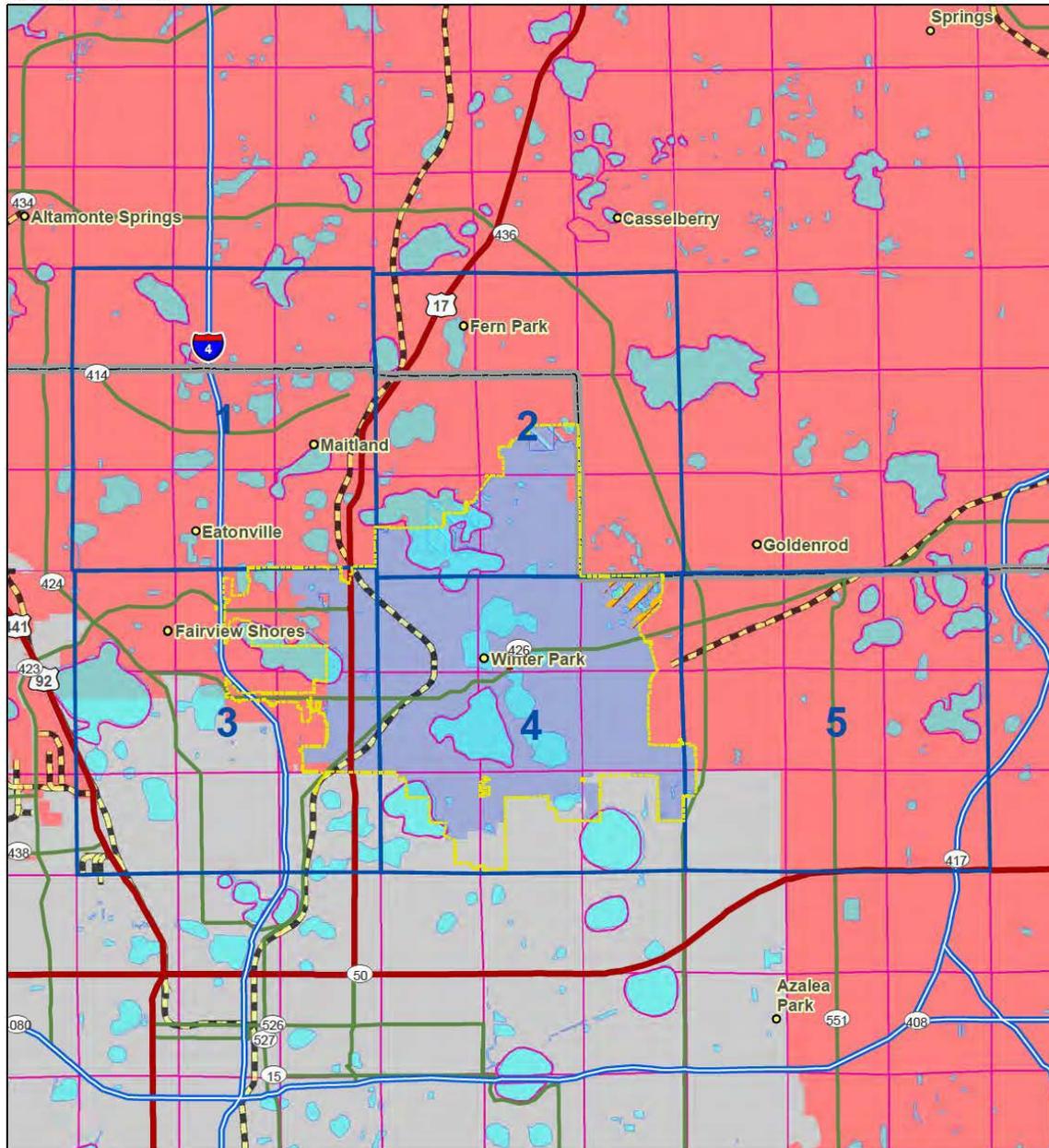
No.	Premise Address	Customer Type	Premise No.
1	1601 LEE RD, WINTER PARK, FL 32789	COMMERCIAL	474644884
2	1601 LEE RD, WINTER PARK, FL 32789	COMMERCIAL	504587468
3	1601 LEE RD *TWR, WINTER PARK, FL 32789	COMMERCIAL	172232941
4	933 BENNETT AVE *TWR, WINTER PARK, FL 32789	COMMERCIAL	97419148
5	1492 W FAIRBANKS AVENUE, WINTER PARK, FL 32789	COMMERCIAL	713211129
6	650 NICOLET AVENUE, WINTER PARK, FL 32789	COMMERCIAL	55965792
7	1500 INDIANA AVENUE, WINTER PARK, FL 32789	RESIDENTIAL	615296703
8	Vacant Parcel (no customer at premise)	TBD	TBD
9	Vacant Parcel (no customer at premise)	TBD	TBD
10	Vacant Parcel (no customer at premise)	TBD	TBD
11	Vacant Parcel (no customer at premise)	TBD	TBD

EXHIBIT H

MAPS DEMONSTRATING THE PROPOSED BOUNDARY MODIFICATIONS

**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 ORANGE COUNTY
 PAGE INDEX**

EXHIBIT H



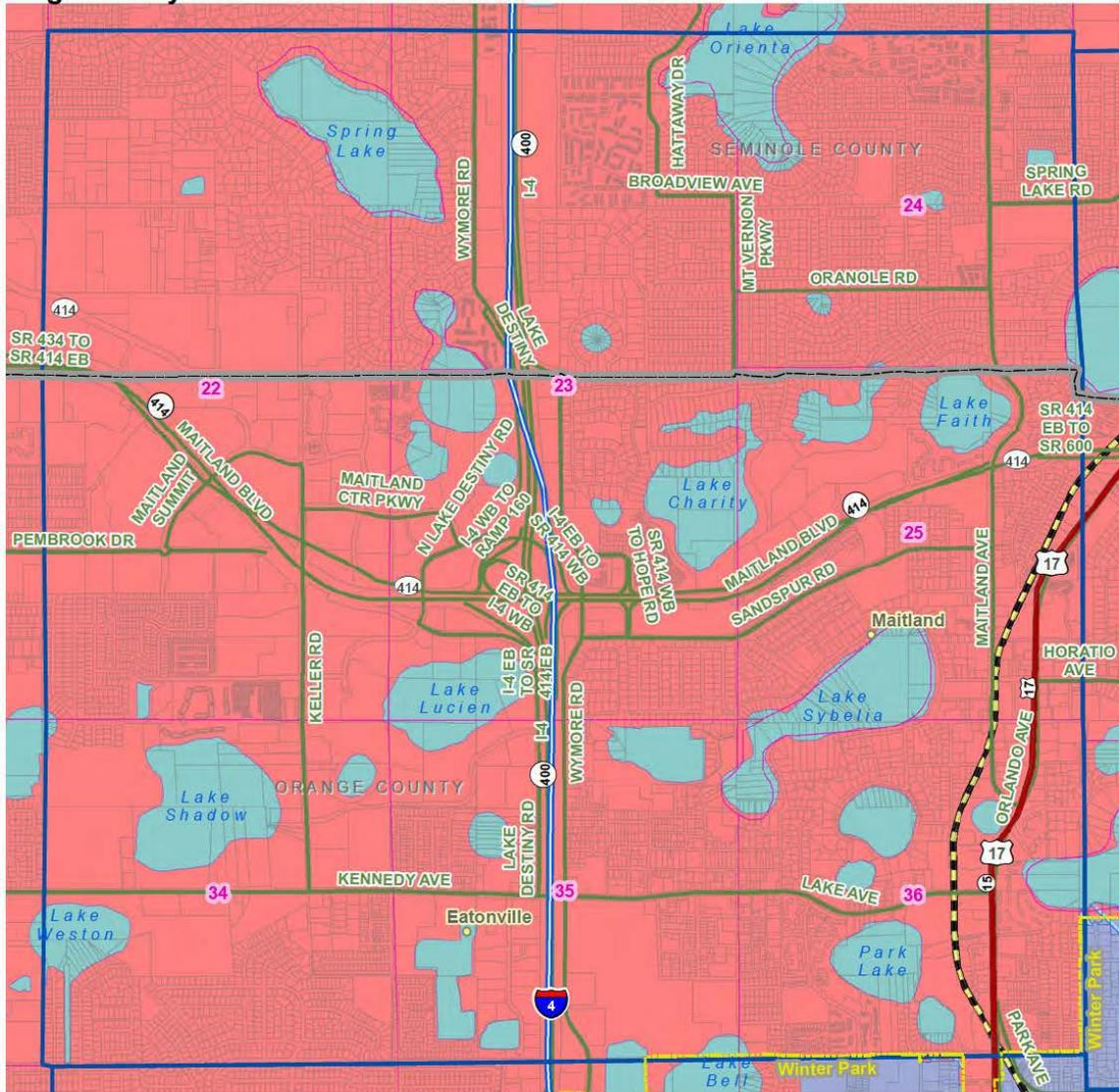
0 1.75 3.5 Miles

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| Service Territory | Proposed Revisions | — Limited Access | — Water |
| Not Part of This Agreement | City of Winter Park | — Highway | — Section |
| City of Winter Park | Duke Energy Florida | — Major Road | — County |
| Duke Energy Florida | | — Major Railroad Line | — City and Place Names |



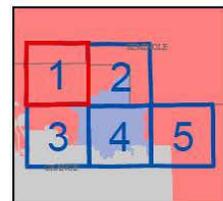
**DUKE ENERGY - CITY OF WINTER PARK
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 Orange County**

EXHIBIT H



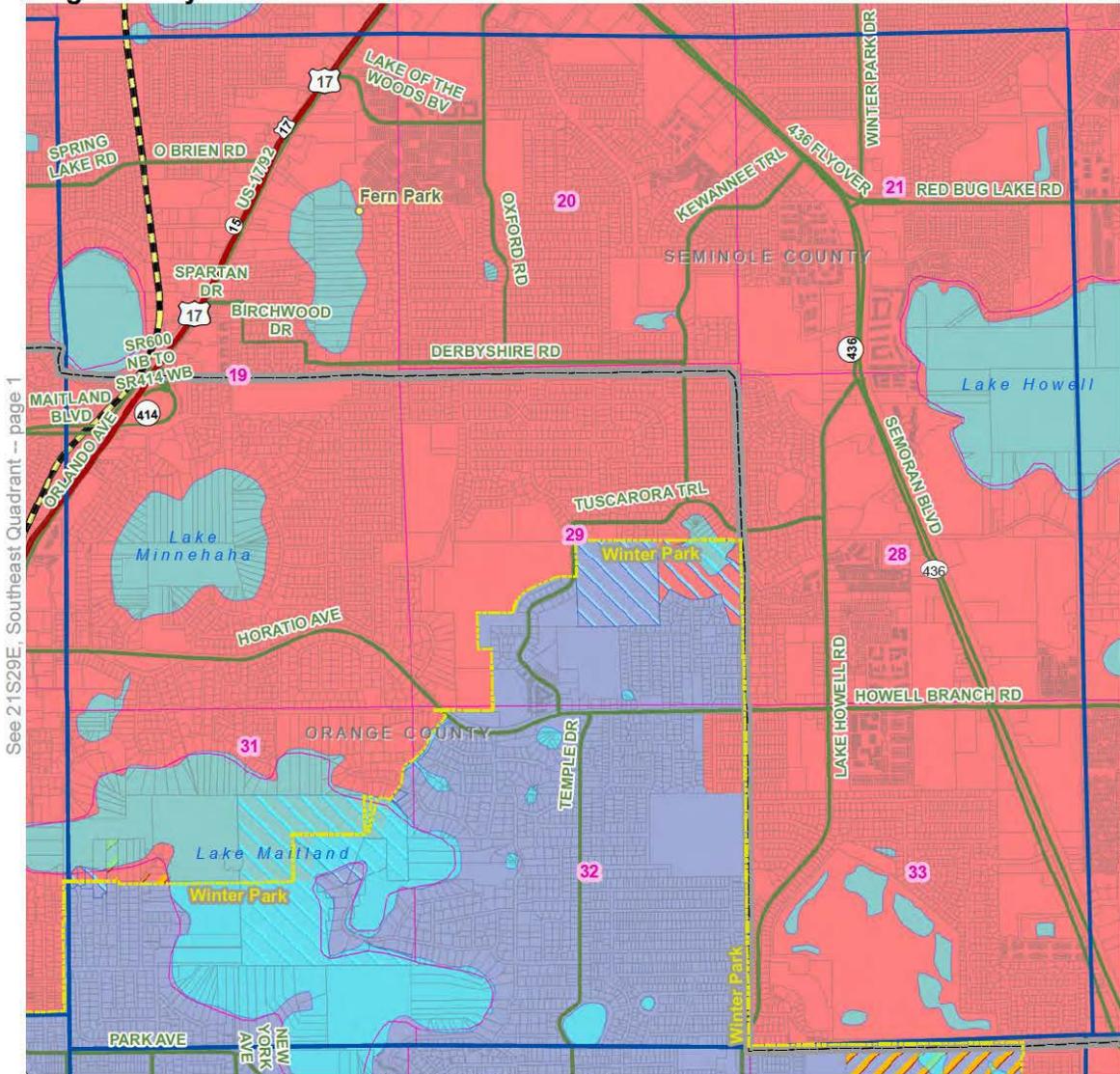
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Quadrant: Southeast
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**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
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EXHIBIT H

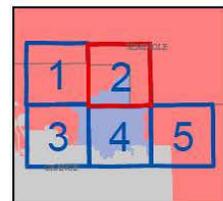


See 21S29E, Southeast Quadrant -- page 1

See 22S30E, Northwest Quadrant -- page 4

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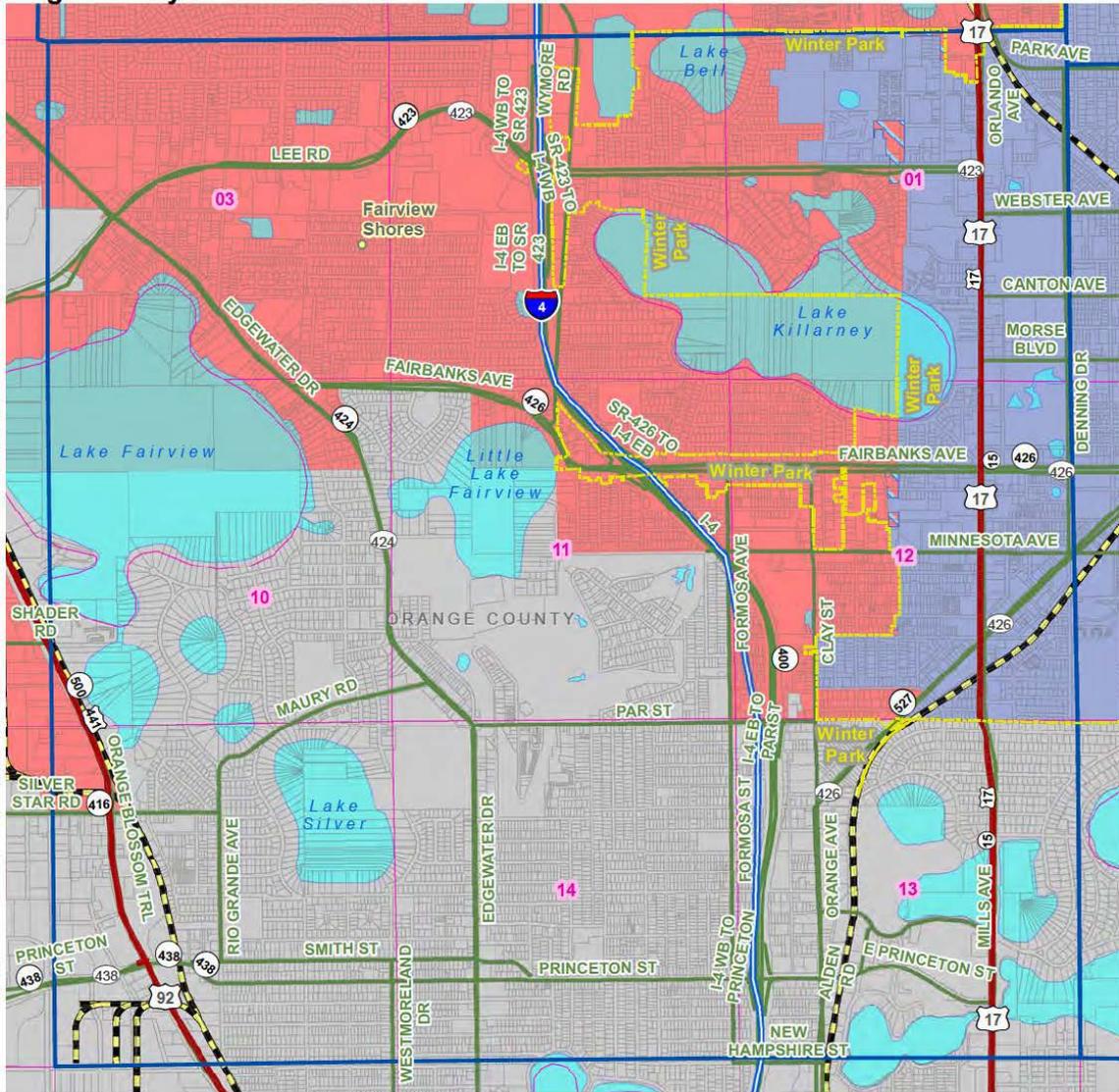
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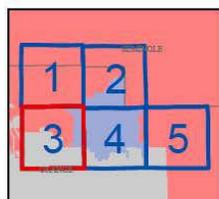
See 21S29E, Southeast Quadrant -- page 1



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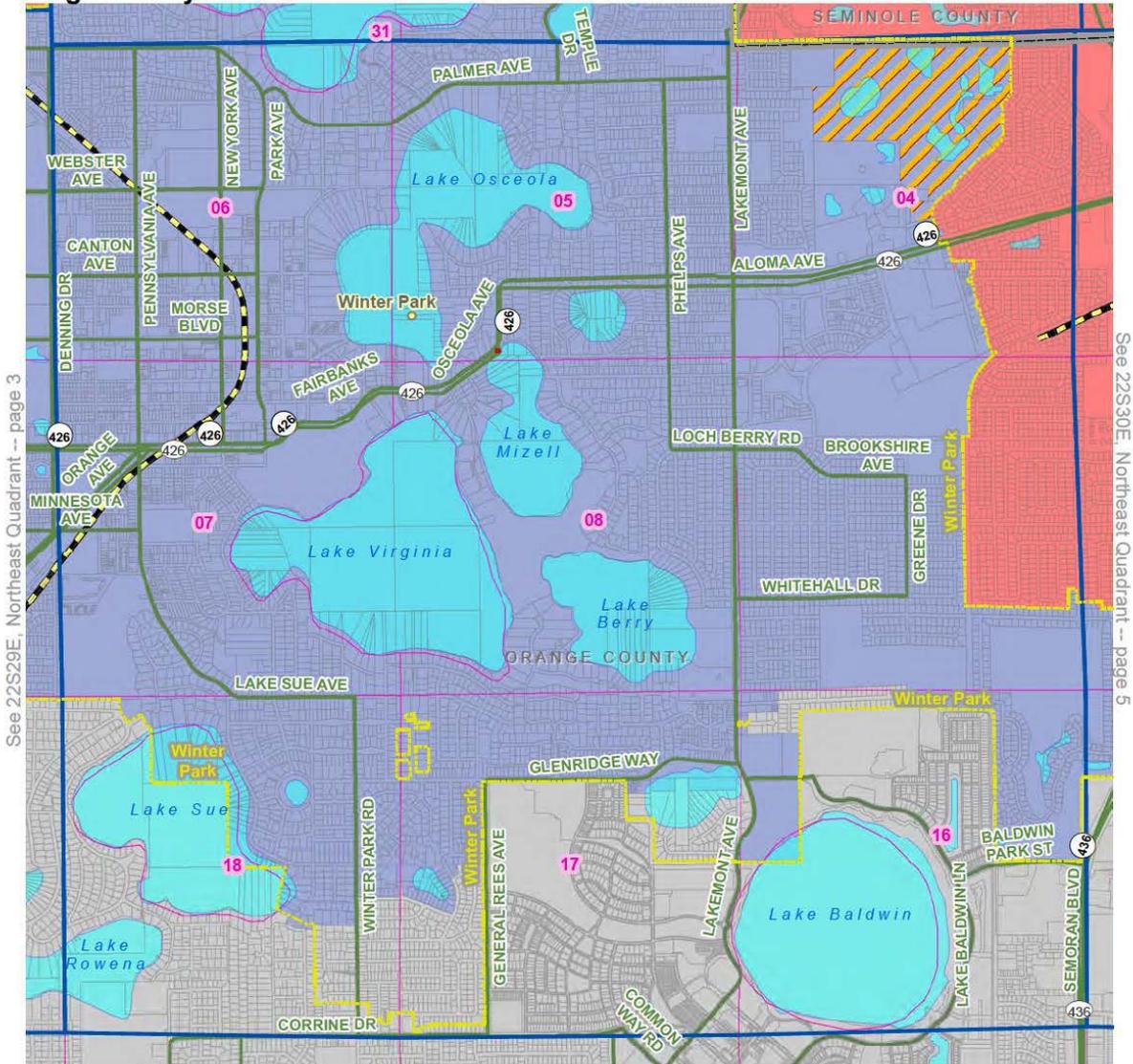
Quadrant: Northeast
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See 21S30E, Southwest Quadrant -- page 2

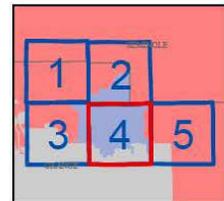


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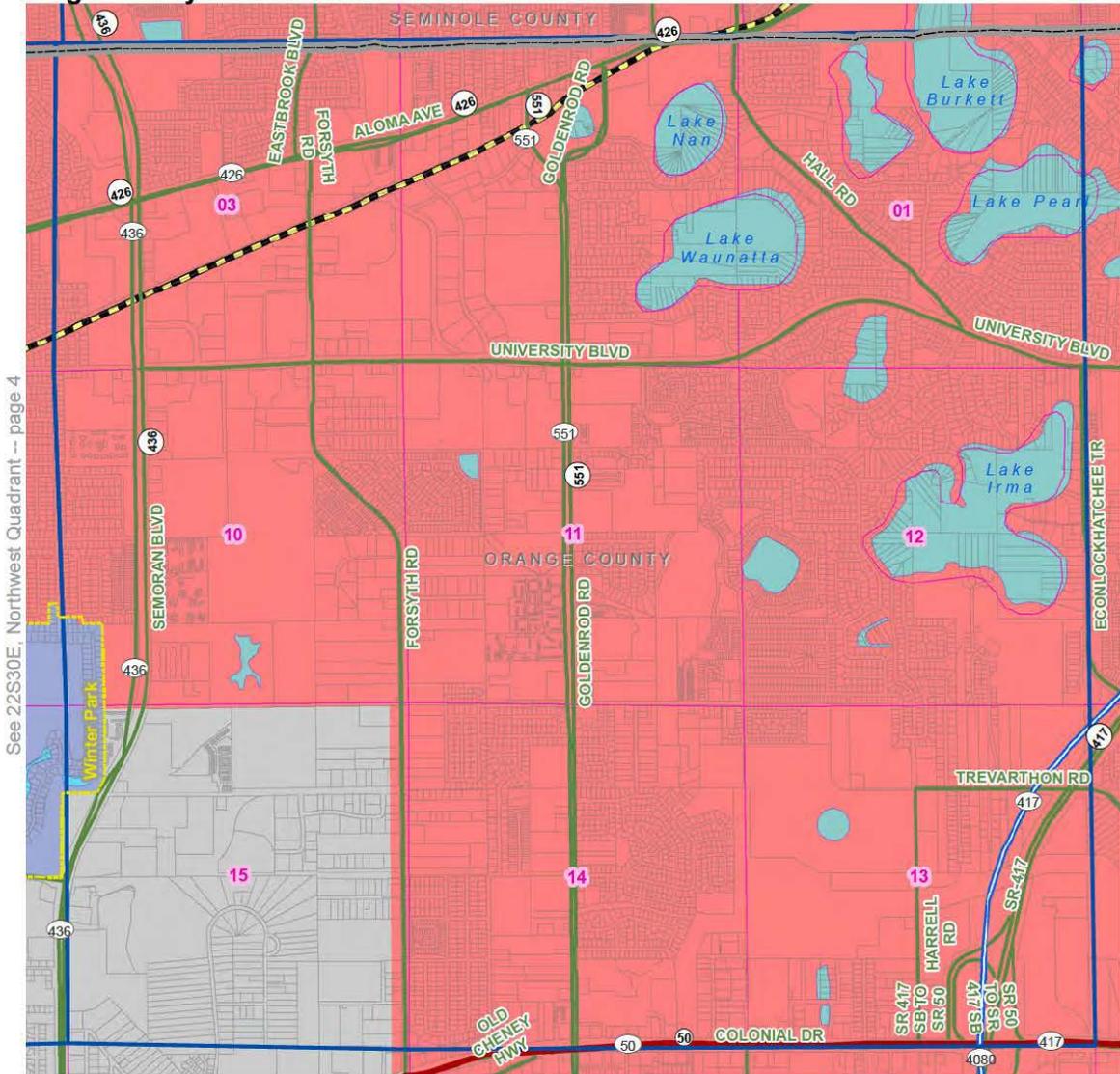
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| ■ Not Part of This Agreement | ▭ City of Winter Park | — Highway | ▭ Section | ▭ Winter Park City Boundary |
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**DUKE ENERGY - CITY OF WINTER PARK
 TERRITORIAL AGREEMENT
 Orange County**

EXHIBIT H



See 22S30E, Northwest Quadrant -- page 4

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