

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of the City of
Lakeland, Florida, on behalf of its
municipal utility, Lakeland Electric, and
the City of Bartow, Florida, for
Approval of a Territorial Agreement in
Polk County.

Docket No. 2022_____

Filed: April __, 2022

**JOINT PETITION FOR APPROVAL OF MODIFICATION
TO A TERRITORIAL AGREEMENT**

The City of Lakeland, Florida, on behalf of its municipal utility Lakeland Electric ("Lakeland"), and the City of Bartow, Florida ("Bartow," and together with Lakeland, the "Joint Petitioners" or the "Parties") pursuant to section 366.04(2)(d), Florida Statutes (2021), and Rules 25-6.0440 and 28-106.201 of the *Florida Administrative Code*, hereby jointly petition the Florida Public Service Commission (the "Commission") for approval of their territorial agreement in Polk County.

In further support of this Joint Petition, Lakeland and Bartow state as follows:

1. The names and addresses of the Joint Petitioners are:

City of Lakeland, Florida,
on behalf of its municipal utility,
Lakeland Electric
501 East Lemon Street
Lakeland, Florida 33801

City of Bartow, Florida
450 North Wilson Avenue
Bartow, Florida 33831

2. Any pleading, motion, notice, order, or other document required to be served upon the Parties or filed by any person in this proceeding should be served upon the following individuals:

For Lakeland

Palmer C. Davis
City Attorney
City Attorney's Office

City of Lakeland
228 South Massachusetts Avenue
Lakeland, Florida 33801
Telephone: (863) 834-6010
Facsimile: (863) 834-8204
Email: *Palmer.Davis@lakelandgov.net*

Cindy Clemmons
Manager of Legislative &
Regulatory Relations
Lakeland Electric
501 East Lemon Street
Lakeland, Florida 33801
Telephone: (863) 834-6595
Email: *Cindy.Clemmons@lakelandelectric.com*

For Bartow

Sean R. Parker
City Attorney
Boswell & Dunlap LLP
245 South Central Avenue
Bartow, Florida 33830
Telephone: (863) 533-7117
Facsimile: (863) 533-7412
Email: *srp@bosdun.com*

Brad Hiers
Director
City of Bartow, Electric
Utility
915 Stearman Street
Bartow, Florida 33830
Telephone: (863) 534-0142
Email: *bradhiers.electric@cityof
bartow.net*

3. Lakeland and Bartow are parties to a territorial agreement delineating their respective electric service territories in Polk County, Florida (the "Legacy Agreement"), approved by the Commission in Order No. 13025, issued February 23, 1984, in Docket No. 830556-EM. Order No. 13025 and a copy of the Legacy Agreement are attached to this Joint Petition as Exhibit A. The term of the Legacy Agreement was 25 years (pursuant to section 7 thereof). However, the Joint Petitioners have worked cooperatively on the service territorial boundaries since the Legacy Agreement expired and there are no outstanding disputes with the parties.

4. On April 4, 2022, the Joint Petitioners entered into a new Territorial Agreement, attached to this Joint Petition as Exhibit B (the "New Agreement"), in an effort to redefine specific areas of the Parties respective electric service areas,

corresponding to new subdivision development, in Polk County and to update their conformity with the Commission's jurisdiction over territorial agreements among electric utilities.

5. The New Agreement will become effective and enforceable only upon the issuance of an order by the Commission approving the New Agreement, which will supersede the Legacy Agreement in its entirety.

6. The purpose of the New Agreement is to update the Parties' compliance with the Commission's jurisdiction over territorial agreements among electric utilities, and to modify the territorial boundary between the Parties' respective electric service territories to accommodate new subdivision development, on what was previously vacant land, so that this new development is served, as between the Parties, in a manner that is consistent with the location of their existing facilities and good utility practice, and ensuring there is no duplication of facilities.

7. There are no known disputed issues of material fact related to this Joint Petition.

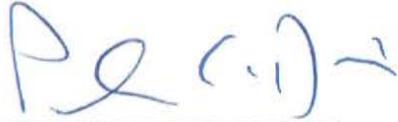
8. The Joint Petitioners believe, and therefore represent to the Commission, that the proposed New Agreement is in the public interest as it will eliminate uneconomic duplication of services, will create more cohesive and logically planned territorial boundaries corresponding to each of the Parties' other electric facilities, and will not cause a decrease in reliability to existing or future customers of either Lakeland or Bartow.

9. Because of the planning and construction of new facilities by the Parties in a coordinated fashion, no customer accounts will be transferred between the Parties to effectuate the New Agreement and, therefore, no written notice to customers is required.

WHEREFORE, for the above and foregoing reasons, Lakeland and Bartow respectfully request that the Commission approve the proposed New Agreement.

DATED this 11 day of April, 2022.

Respectfully submitted,



PALMER C. DAVIS
Florida Bar No. 864528
City Attorney
City Attorney's Office
City of Lakeland
228 South Massachusetts Avenue
Lakeland, Florida 33801
Telephone: (863) 834-6010
Facsimile: (863) 834-8204
Email: Palmer.Davis@lakelandgov.net
ATTORNEY FOR CITY OF LAKELAND,
FLORIDA

Respectfully submitted,



SEAN R. PARKER
Florida Bar No. 135100
Boswell & Dunlap LLP
245 South Central Avenue
Bartow, Florida 33830
Telephone: (863) 533-7117
Facsimile: (863) 533-7412
Email: srp@bosdun.com
ATTORNEY FOR CITY
OF BARTOW, FLORIDA

EXHIBIT A

[ORDER No. 13025 AND LEGACY AGREEMENT]

In Re: Joint Stipulation and Petition for Approval of..., 84 FPSC 2:194 (1984)

84 FPSC 2:194, 1984 WL 918519 (Fla.P.S.C.)

In Re: Joint Stipulation and Petition for Approval of Territorial
Agreement between City of Lakeland and City of Bartow.

Docket No. 830566-EM

Order No. 13025

Florida Public Service Commission

February 23, 1984

Before Gerald L. Gunter, Chairman, Joseph P. Cresse, John R. Marks, III, Katie Nichols and Susan W. Leisner, Commissioners.

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

The Florida Public Service Commission has decided to approve a joint electrical service territory agreement filed by the City of Lakeland (Lakeland) and the City of Bartow (Bartow), pursuant to Section 366.04(3)(d), Florida Statutes. Lakeland and Bartow submitted their agreement which provides for an allocation of electrical service territory in Polk County, Florida, on December 14, 1983. The primary purpose of the agreement is to provide for well-defined natural and other clearly designated electrical service area boundary lines so as to avoid uneconomical competitive practices between the two utilities.

We have evaluated the petition and its accompanying exhibits. We find, based upon our review, that this mutually agreed upon resolution of actual and potential service areas of conflict serves to prevent future territorial disputes, while enhancing the utilities capabilities to plan for and serve the expected growth in their respective electrical service areas. Approval of the agreement is in the best interest of the public and is supported by the evidence in the record.

In accordance with the foregoing, it is

ORDERED by the Florida Public Service Commission that the territorial agreement between the City of Lakeland and the City of Bartow is approved. It is further

ORDERED that the action proposed herein is preliminary in nature and will not become effective or final, except as provided by Florida Administrative Code Rule 25-22.29. It is further

ORDERED that any person adversely affected by the action proposed herein may file a petition for a formal proceeding, as provided by Florida Administrative Code Rule 25-22.29. Said petition must be received by the Commission Clerk on or before March 15, 1984, in the form provided by Florida Administrative Code Rule 25-22.36(7)(a) and (f). It is further

ORDERED that in the absence of such a petition, this Order shall become effective on March 15, 1984 as provided by Florida Administrative Code Rule 25-22.29(6).

By ORDER of the Florida Public Service Commission, this 23rd day of FEBRUARY, 1984.

STEVE TRIBBLE Commission Clerk

(SEAL)

As printed in Florida Public Service Commission Reporter

ED-3

TERRITORIAL BOUNDARY AGREEMENT BETWEEN
CITY OF BARTOW AND CITY OF LAKE LAND

WHEREAS, THE CITY OF BARTOW (hereinafter referred to as BARTOW) and the CITY OF LAKE LAND (hereinafter referred to as LAKE LAND) desire to eliminate and avoid duplication of electrical facilities in areas where the service territories of BARTOW and LAKE LAND are contiguous; and

WHEREAS, the elimination of such duplication would prevent needless and wasteful expenditures and enable both parties to serve their customers in the most economical and efficient manner; and

WHEREAS, the elimination of duplicitous service would tend to prevent the creation of hazardous situations; and

WHEREAS, the Florida Public Service Commission is empowered by the Legislature of the State of Florida, pursuant to F. S. 366.04(2)(d), to approve territorial agreements and the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between competing utilities and has adhered to the general opinion that retail territorial agreements, when properly presented to the Commission, in proper circumstances, are advisable and indeed in the public interest;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and to help enable each utility to operate in the most economical and efficient manner and in the best interests of its customers, the parties agree as follows:

1. That the irregular line, defined on Exhibit A and depicted by the diagram on Exhibit B, both of which are attached hereto and made a part hereof be and the same does hereby constitute the territorial boundary between Bartow and Lakeland.

2. That area shaded in red on Exhibit B shall constitute the service area of LAKE LAND and that area, on Exhibit B, shaded in green shall constitute the service area of BARTOW.

3. Neither BARTOW nor LAKE LAND shall cross the territorial boundary herein described to serve a customer inside the service territory of the other utility.

4. In the event that a customer located in the service territory of one party of this agreement applies to the other party for service, such customer shall promptly be referred to the party in whose service territory the customer is located.

5. No provision of this agreement is intended to affect the ownership or location of any generating facilities, transmission lines, substations, main distribution feeders, tie circuits or any other bulk power facilities or equipment of either party, which are now or may in the future be located within the service territory of the other party.

6. It is mutually understood that this agreement shall govern the relationship between the parties with respect to service territories and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

7. The parties understand that the term of this agreement shall be for a period of 25 years and that the boundary established herein may not be changed, by any means (including, but not limited to, annexation) except by mutual consent of the parties.

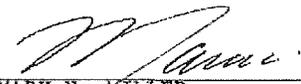
8. The prevailing party in any action, at law or equity, brought for the purpose of enforcing or interpreting this agreement or any provision hereof, shall be entitled to all costs, including a reasonable attorneys' fee at both the trial and Appellate levels, including any proceedings before an administrative body. Venue for any such action shall be Polk County, Florida.

IN WITNESS WHEREOF, this agreement has been executed in duplicate this 31st day of October, 1983 and one duplicate copy has been delivered to each of the parties hereto.

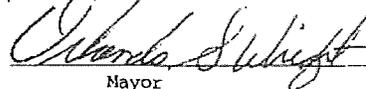
CITY OF LAKELAND, FLORIDA


FRANK J. O'REILLY, MAYOR

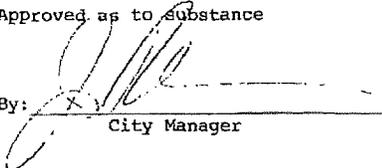
ATTEST: 
HURETTA W. BASSETT,
CITY CLERK

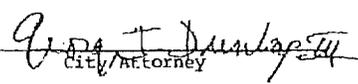
APPROVED AS TO FORM AND CORRECTNESS: 
MARK N. MILLER,
CITY ATTORNEY

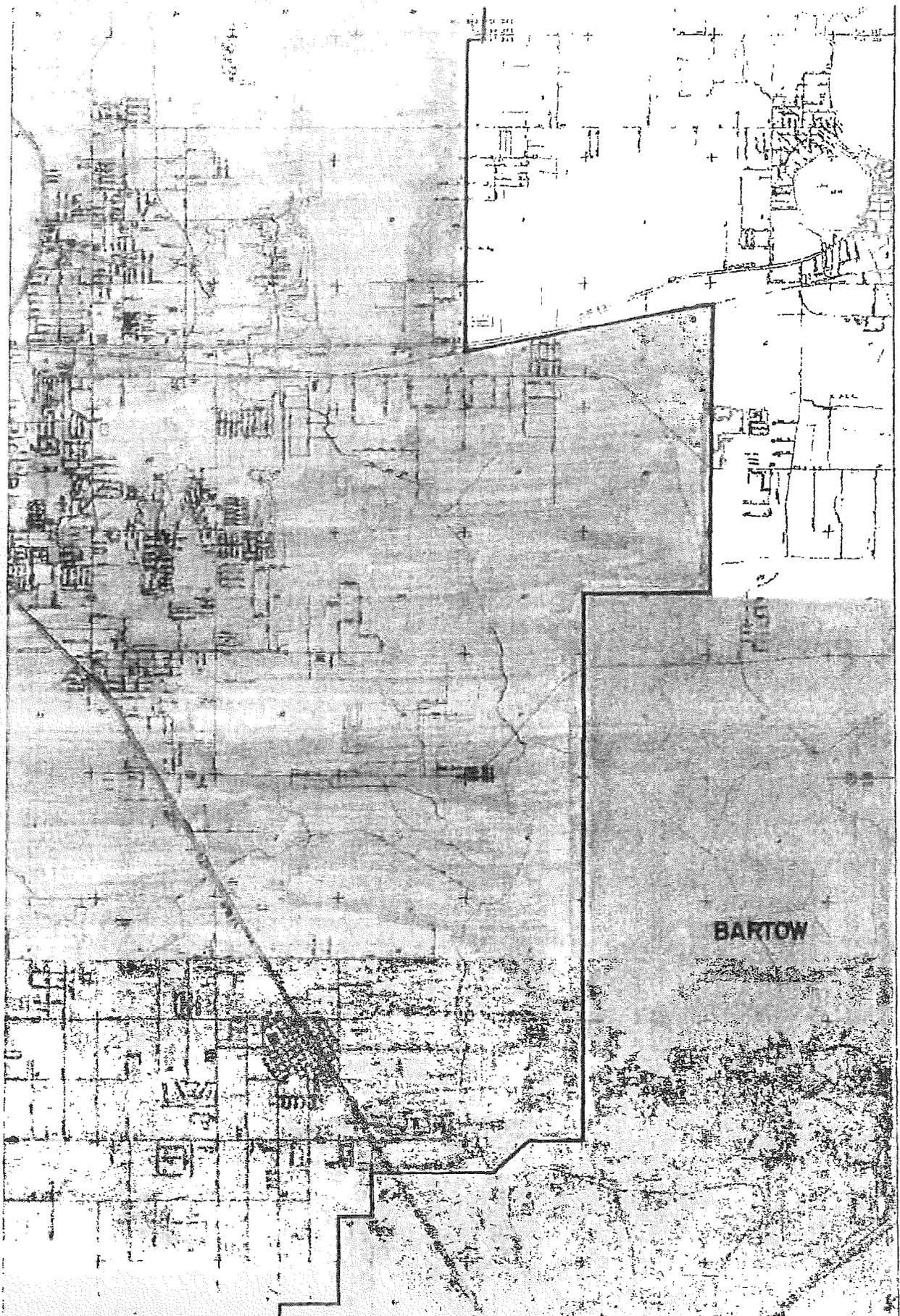
CITY OF BARTOW, FLORIDA


Mayor

ATTEST: 
City Auditor & Clerk

Approved as to substance
By: 
City Manager

Approved as to correctness and form:
By: 
City Attorney



BARTOW

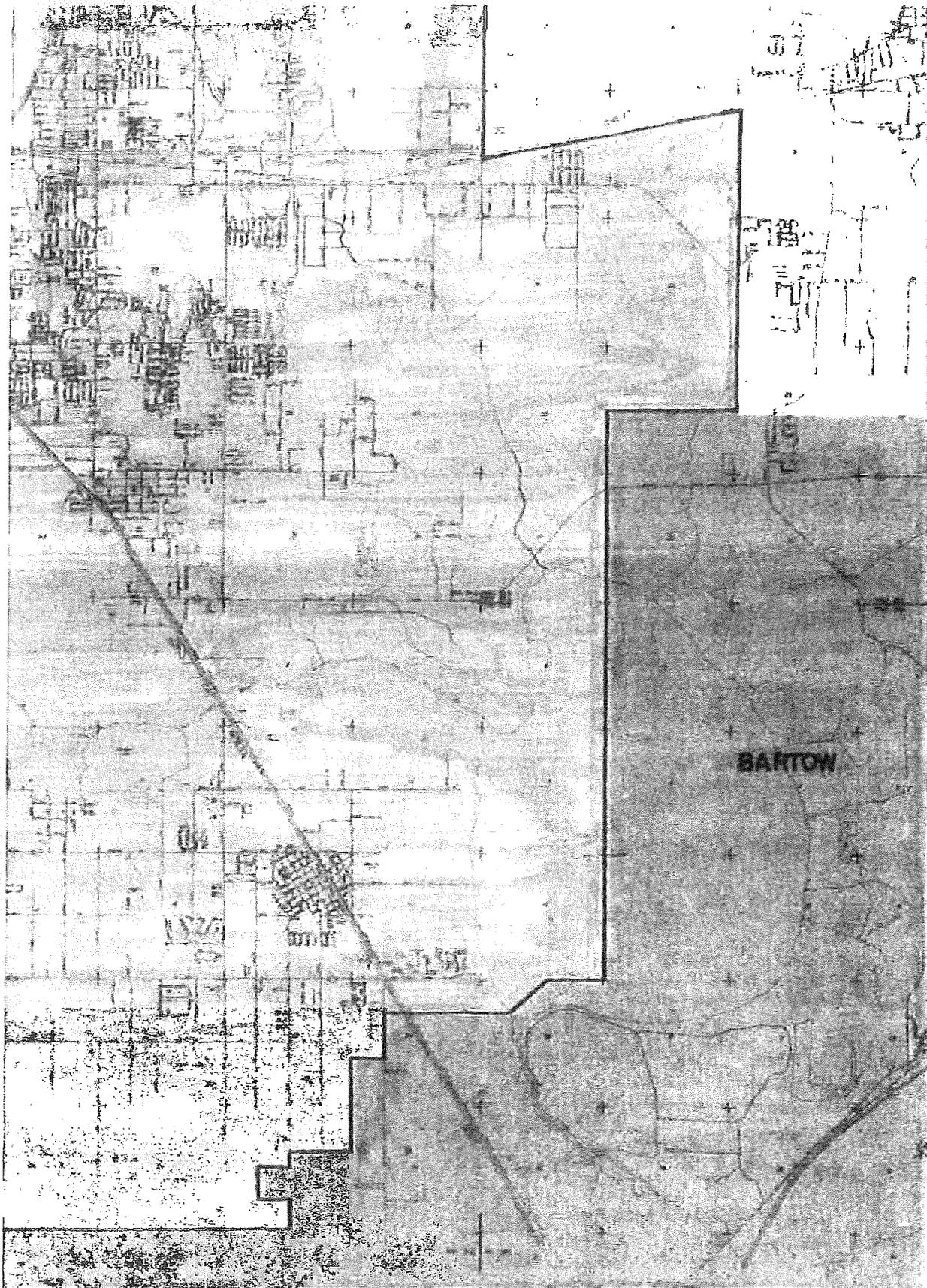


EXHIBIT B

[NEW AGREEMENT]

TERRITORIAL AGREEMENT

This Territorial Agreement is dated as of this 4th day of April 2022, and is between the **CITY OF BARTOW, FLORIDA**, a municipality under Florida law that owns or operates electric generation, transmission, or distribution facilities and provides retail electric service to customers in Polk County, Florida ("**Bartow**"), and the **CITY OF LAKELAND, FLORIDA**, on behalf of its municipal utility Lakeland Electric, a municipality under Florida law that owns or operates electric generation, transmission, or distribution facilities and provides retail electric service to customers in Polk County, Florida ("**Lakeland**").

WITNESSETH:

WHEREAS, Bartow and Lakeland are each, by virtue of Florida law and in the exercise of their proprietary powers as municipalities, authorized and empowered to furnish retail electric service to persons upon request within their respective electric service areas. And, the respective service areas of each party are contiguous in portions of Polk County, Florida; and

WHEREAS, to avoid duplication of service and uneconomic duplication of facilities, Bartow and Lakeland entered into that certain Territorial Boundary Agreement Between City of Bartow and City of Lakeland, dated October 31, 1983, which was approved by the Florida Public Service Commission (the "**Commission**") pursuant to its powers under section 366.04, Florida Statutes, in Order No. 13025, issued February 23, 1984, in Docket No. 830556-EM (the "**Legacy Agreement**"), which delineated the parties service area boundaries in Polk County until October 31, 2008; and

WHEREAS, upon expiration of the Legacy Agreement the parties have worked cooperatively on the service territorial boundaries and there have been no outstanding disputes between the parties; and

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 retail territorial agreements between electric utilities subject to its jurisdiction based on 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; and

WHEREAS, in order to gain further operational efficiencies and customer service improvements in the retail electric service territory in Polk County, while continuing to eliminate circumstances that could give rise to the duplication of service, uneconomic duplication of facilities, and avoidance of hazardous situations, the parties hereby desire to enter into this Territorial Agreement (the "**Agreement**").

NOW THEREFORE, Bartow and Lakeland mutually agree as follows:

Article 1
RETAIL ELECTRIC SERVICE

1.1 In General. Except as otherwise specifically provided in this Agreement, Bartow has the exclusive authority to furnish retail electric service within the Bartow Territorial Area, and Lakeland has the exclusive authority to furnish retail electric service in the Lakeland Electric Territorial Area, both as shown on the maps contained in Composite Exhibit A. The Territorial Boundary Line will not be affected by any change, through annexation or otherwise, that may occur to the corporate limits of either Bartow or Lakeland, unless agreed to in writing by the parties and approved by the Commission.

1.2 Service to New Customers. Bartow and Lakeland hereby agree that neither 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 1.3. However, in those instances where the Territorial Boundary Line traverses the property line of an individual New Customer or prospective New Customer, the party in whose service area the majority of the Customer's electric energy usage is expected to occur (on the basis of reasonable engineering judgment or knowledge) will be entitled to serve all of the Customer's usage.

1.3 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 circumstances, 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. The other party shall inform the customer of the temporary nature of such 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 in accordance with Section 4.1. Such temporary service shall be discontinued upon written notice from the requesting party of its intent to provide service, which the parties will coordinate to minimize any inconvenience to the customer. However, the party providing temporary service under this Section 1.3 will not be required to pay the other Party for any loss of revenue associated with the provision of such temporary service, nor will the party providing temporary service be required to pay the other party any going concern value.

1.4 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 request is not permitted under this Agreement, as approved by the Commission, and shall refer the prospective New Customer to the other party.

1.5 Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Agreement in which either party is inadvertently providing retail electric service to a customer's Point of Use located within the service area of the other party, service to such customer

will be transferred to such other party. Until the transfer of service can be completed, the party providing inadvertent service to the customer's Point of Use will be deemed to be providing temporary service in accordance with Section 1.3. The receiving party must purchase the electric facilities of the inadvertently serving party used solely to provide service to the customer subject to transfer in return for compensation determined in accordance with section 2.3(a). The parties will use reasonable efforts to complete such transfer within twelve (12) months of the discovery of the inadvertent error.

1.6 **Transfer of Customers and Facilities.** There are no known customers or facilities to be transferred as of the date of this Agreement.

Article 2 TRANSFER OF CUSTOMERS

2.1 **Customer Transfers in General.** In the event circumstances arise during the term of this agreement in which the parties subsequently 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 will 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 the transfer of the customers located in the Reallocated Area to the other party.

2.2 **Transfer of Facilities.** In conjunction with the transfer of customers pursuant to Sections 1.5 and 2.1, the receiving party must purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service to the transferring customers for an amount determined in accordance with Section 2.3(a).

2.3 **Compensation for Transferred Facilities.** (a) The receiving party shall compensate the transferring party for the electric distribution facilities described in Section 2.2 in an amount based upon the replacement cost (new), less depreciation calculated on a straight-line basis over the life of each unit of property comprising the facilities, as determined from the books and records of the transferring party at the time of the transfer. Replacement costs shall be determined by applying a cost escalator such as the Handy Whitman Index or a common engineering cost estimation methodology, as will be mutually agreed to, in writing, by the parties.

(b) All payments determined in accordance with this Section 2.3 must be made by the receiving party in cash within sixty (60) days of the presentation of an invoice from the transferring party upon completion of the transfer.

(c) The transferring party will make, execute, and deliver to the receiving party the appropriate instruments of transfer to convey the transferring party's interest in the electric distribution facilities transferred to the receiving party pursuant to Section 2.2. Reasonable costs incurred by the transferring party in the preparation, execution, and recording (if required) of any such instruments will be reimbursed by the receiving party, including reasonable attorney's fees

related to the drafting, review, and approval of such instruments or rendition of required legal opinions, if any.

Article 3
OPERATION AND MAINTENANCE

3.1 **Facilities to Remain.** Other than as expressly provided for in this Agreement, no generating plant, transmission line, substation, distribution line, or any related equipment shall be subject to transfer or removal under this Agreement, except that each party hereby agrees that it will operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other party.

3.2 **Bartow Facilities to be Served.** Nothing in this Agreement is to be construed or interpreted to prevent or in any way inhibit the right and authority of Bartow to serve any City of Bartow municipal facility located in the Lakeland Electric Territorial Area, except that Bartow must construct, operate, and maintain any lines and facilities related to serving such municipal facility in such a manner as to minimize any interference with the operations of Lakeland in the Lakeland Electric Territorial Area.

3.3 **Lakeland Facilities to be Served.** Nothing in this Agreement is to be construed or interpreted to prevent or in any way inhibit the right and authority of Lakeland to serve any City of Lakeland municipal facility located in the Bartow Territorial Area, except that Lakeland must construct, operate, and maintain any lines and facilities related to serving such municipal facility in such a manner as to minimize any interference with the operations of Bartow in the Bartow Territorial Area.

3.4 **Location of Express Feeder Lines.** Nothing in this Agreement is to be construed or interpreted to prevent or in any way prohibit the right of each party to keep, construction, and maintain Express Feeder Lines within the Territorial Area of the other party.

Article 4
PREREQUISITE APPROVAL

4.1 **Commission Approval.** The provisions and the parties' respective performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of this Agreement in its entirety is an absolute condition precedent to the validity, enforceability, and applicability hereof. This Agreement will have no effect whatsoever until such approval has been obtained. Any proposed modification to this Agreement must 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' respective performance hereunder.

4.2 **Liability in the Event of Disapproval.** In the event approval pursuant to Section 4.1 is not obtained or given by the Commission, neither party will have any claim against the other arising under this Agreement.

4.3 **Supersedes Prior Agreements.** Upon approval by the Commission, this Agreement is deemed to specifically supersede the Legacy Agreement and all other prior agreements between the parties defining the boundaries of their respective Territorial Areas in Polk County.

Article 5 DURATION OF THIS AGREEMENT

5.1 **Term.** This Agreement will remain in effect from the Effective Date and continue for an initial term of fifteen (15) years unless otherwise set forth in this Agreement. Thereafter, the "Term" of this Agreement will automatically extend for successive five (5) year periods, unless either party provides not less than twelve (12) months prior written notice of its desire for any such automatic extension to not occur.

Article 6 CONSTRUCTION OF AGREEMENT

6.1 **Other Electric Utilities.** Nothing in this Agreement is intended to define, establish, or affect in any manner the rights of either party relative to any other electric utility that is not a party to this Agreement, with respect to furnishing retail electric service, including the Territorial Area of either party relative to the service territory of any other electric utility that is not a party to this Agreement. The parties understand that Bartow or Lakeland may, from time to time and subject to Commission approval, enter into agreement with other electric utilities providing retail electric service in Polk County and that, in such event, nothing in this Agreement is to be construed or interpreted to prevent Bartow or Lakeland from designating any portion of its Territorial Area under this Agreement as the retail electric service territory of such other electric utility.

6.2 **Bulk Power for Resale.** Nothing in this Agreement is to be construed or interpreted 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 provision or term of this Agreement is to be construed or interpreted as applying to bulk power supply for resale purposes.

6.3 **Intent and Interpretation.** It is hereby declared to be the purpose and intent of the parties that this Agreement is to be interpreted and construed, among other things, to further this State's policy of regulating the service territories of electric utilities; regulating 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 for the parties to serve their respective customers.

Article 7

GENERAL PROVISIONS

7.1 **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 is binding upon either of the parties unless made in writing, signed by both parties, and approved by the Commission.

7.2 **Successors and Assigns.** Nothing in this Agreement, expressed or implied, is intended nor is it to be construed to confer upon or give any Person, 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 contained in this Agreement shall inure to the sole benefit of and shall be binding only upon the parties and their respective representatives, successors and assigns.

7.3 **Notices.** (a) Each party giving or making any notice, request, demand, or other communication (each, a "Notice") pursuant to this Agreement must give the Notice in writing and must use one of the following methods of delivery, each of which for purposes of this agreement is a writing: (1) personal delivery; (2) registered or certified mail, in each case, return receipt requested and postage prepaid; (3) nationally recognized overnight courier, with all fees prepaid; or (4) electronic mail with electronic confirmation of the addressee opening the electronic mail (i.e., read receipt).

(b) Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "Addressee") at the address listed below or to another Addressee or at another address designated by a party in a Notice pursuant to this section 7.3:

If to Bartow: City of Bartow
450 North Wilson Avenue
Bartow, Florida 33830
Attention: Brad Hiers, Director, Bartow Electric
Email: bradhiers.electric@cityofbartow.net

If to Lakeland: Lakeland Electric
501 East Lemon Street
Lakeland, Florida 33801
Attention: Cindy Clemmons, Manager of Legislative & Regulatory
Relations
Email: cindy.clemmons@lakelandelectric.com

(c) Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving or making the Notice has complied with subsections (a) and (b) and if the Addressee has received the Notice. A Notice is deemed to have been received as follows:

- (1) If a Notice is delivered in person, or sent by registered or certified mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
- (2) If a Notice is sent by email, upon receipt by the party giving or making the Notice of a red receipt report indicating that the email was received by the Addressee.
- (3) If the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change of address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.
- (4) Despite the other clauses in this subsection (c), if any Notice is received after 5:00 p.m. on a business day where the Addressee is located, or on a day that is not a business day where the addressee is located, then the Notice is deemed received at 9:00 a.m. on the next business day where the Addressee is located.

7.4 **Jurisdiction, Venue and Governing Law.** The parties irrevocably consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement, document or instrument delivered pursuant to, in connection with, or simultaneously with this Agreement, or breach of this Agreement or any such document or instrument if the parties are unable to resolve any dispute by joint petition to the Commission as set forth in Section 4.1 of this Agreement. This Agreement shall be governed by the laws of the State of Florida. The prevailing party in any action, at law or equity, brought for the purpose of enforcing or interpreting this Agreement, shall be entitled to all costs, including reasonable attorneys' fees, including any proceedings before an administrative body.

Article 8 DEFINED TERMS

8.1 **Defined Terms.** Capitalized terms used in this agreement, and not defined elsewhere in this agreement, have the following definitions:

"Bartow Territorial Area" means the geographic areas in Polk County allocated to the City of Bartow, Florida as its retail electric service territory and labeled as "Bartow Territorial Area" or "Bartow" on the maps contained in Composite Exhibit A.

"Effective Date" means the date on which the Commission's final order granting approval for this agreement in its entirety becomes effective and no longer subject to judicial review.

"Existing Customer" means a Person receiving retail electric service from either Bartow or Lakeland at the location for which service is existent on the Effective Date of this Agreement.

"Express Feeder Line" means line(s) and related facilities, regardless of voltage, that transports power through the other party's Territorial Area, but is not used to serve load within the other party's Territorial Area.

"Lakeland Electric Territorial Area" means the geographic areas in Polk County allocated to the City of Lakeland, Florida, on behalf of its municipal utility, Lakeland Electric, as its retail electric service territory and labeled as "Lakeland Territorial Area" or "Lakeland" on the maps contained in Composite Exhibit A.

"New Customer" means each and every Person applying for retail electric service after the Effective Date of this Agreement at a Point of Use in the Territorial Area of either party.

"Person" means an individual, an entity, or a government body, except for Bartow and Lakeland.

"Point of Use" means the location with the Territorial Area of a party where a customer's end-use facilities consume electricity, to whom such party is entitled to provide retail electric service pursuant to this Agreement, regardless for where the customer's point of connection or metering is located.

"Territorial Area" means and refers to the Bartow Territorial Area or the Lakeland Electric Territorial Area, respectively, as the context requires.

"Territorial Boundary Line" means the boundary line(s) depicted on the maps contained in Composite Exhibit A which delineate the parties respective Territorial Areas in Polk County.

"Temporary Service Customer" means a retail electric customer of either party who is being temporarily served under the provisions of Section 1.3.

8.2 Drafting Conventions. The following drafting conventions are applicable to the reading of this Agreement:

- (1) The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."
- (2) The headings provided in this Agreement are for convenience only and do not affect its meaning.
- (3) Any reference to a contract or agreement (including this Agreement), document, or instrument means such contract, agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms of that contract, agreement, document, or instrument.

- (4) Unless specified otherwise, any reference to a law, statute, or regulation means that law, statute, or regulation as amended or supplemented from time to time and any corresponding provisions of successor laws, statutes, or regulations.
- (5) The words "party" and "parties" refer only to a named party to this Agreement.
- (6) The definitions in this Agreement apply equally to both singular and plural forms of the terms defined.
- (7) Unless specified otherwise, references in this contract to articles, sections, and exhibits are references to articles, sections, and exhibits of this Agreement.

[Signature Page Follows]

The parties are signing this Territorial Agreement as of the date stated in the introductory clause.

CITY OF BARTOW, FLORIDA

By:



Name: Steve Githens

Title: Mayor

Attest:

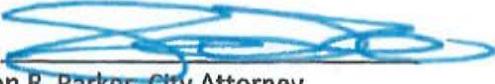
By:



Jacqueline M. Poole, City Clerk

Approved as to form and correctness:

By:


Sean R. Parker, City Attorney

CITY OF LAKELAND, FLORIDA, on behalf of its
municipal utility, LAKELAND ELECTRIC

By:



Name: H. William Mutz

Title: Mayor

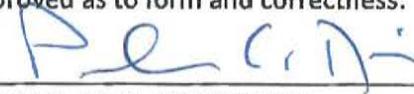
Attest:

By:


Kelly S. Koos, City Clerk

Approved as to form and correctness:

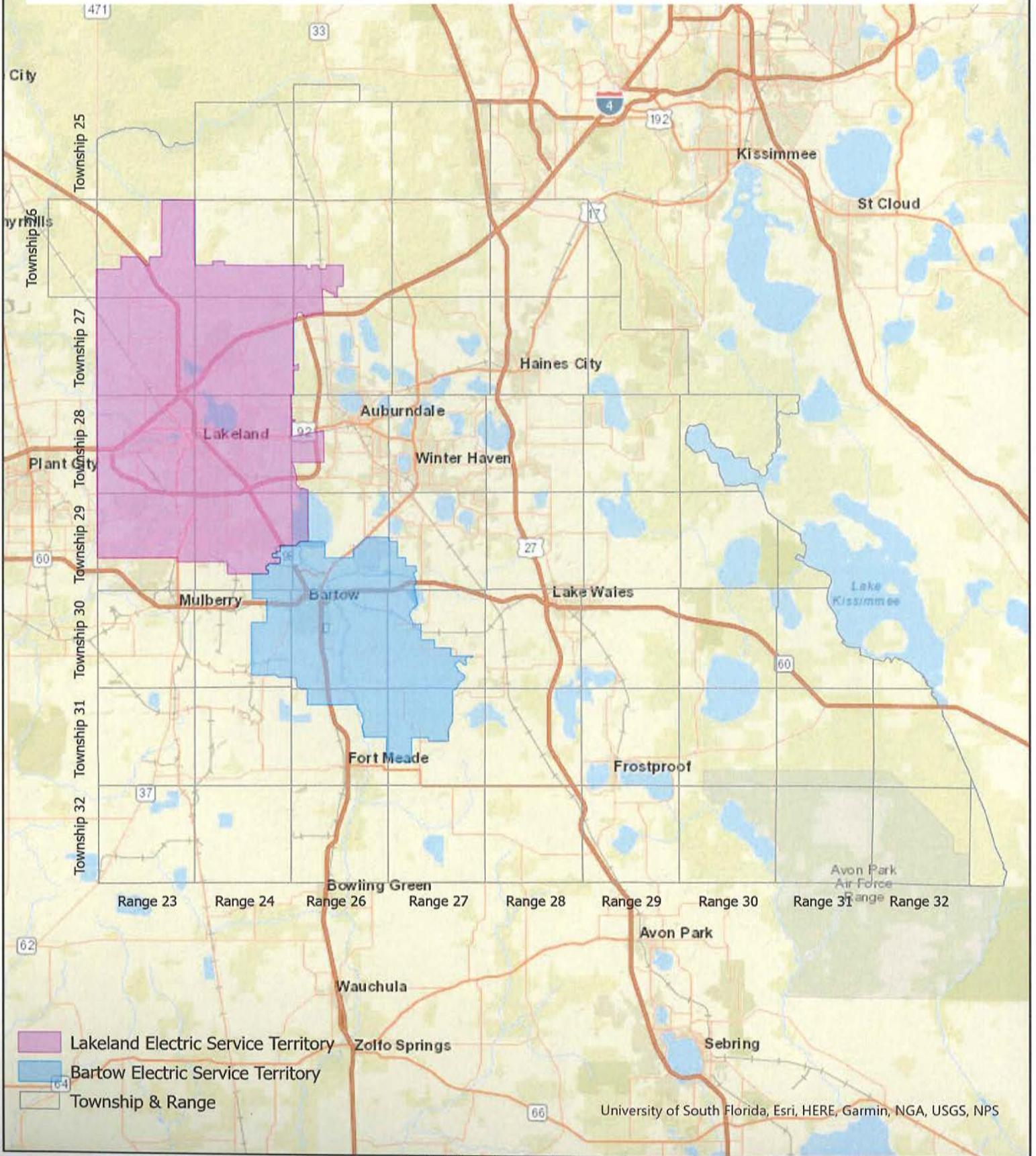
By:


Palmer C. Davis, City Attorney

[Signature Page to Territorial Agreement between Bartow and LE, dated as of April 4, 2022.]

COMPOSITE EXHIBIT A
Territorial Maps

Lakeland & Bartow Electric Service Territories in Polk County FL Map A



Lakeland & Bartow Electric Service Territory in Polk County FL Map B



**Lakeland
Service Area**

**Bartow
Service Area**

Legend

-  Bartow City Limits
-  Parcels
-  Shared Service Territory Line

