

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** November 22, 2011

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Barrera) *SC*  
Division of Economic Regulation (Rieger) *SDR 20* *MB* *CRB* *(M)*

**RE:** Docket No. 110263-EU – Joint Petition for approval to amend territorial agreement in Lake and Orange Counties by Progress Energy Florida, Inc. and the City of Mount Dora.

**AGENDA:** 12/06/11 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\110263.RCM.DOC

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### Case Background

On August 30, 2011, Progress Energy Florida, Inc. (PEF) and the City of Mount Dora (Mount Dora) filed a joint petition for approval of an amended territorial agreement (amended agreement) between the two utilities in Lake and Orange Counties. PEF and Mount Dora are parties to a currently effective territorial agreement (current agreement) delineating their respective territories in Lake and Orange counties, which was approved by Order No. 10267.<sup>1</sup>

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<sup>1</sup> Order No. 10267, issued September 8, 1981, in Docket No. 800508-EU, In re: Joint Petition of the City of Mt. Dora and Florida Power Corporation for approval of retail territorial agreement relative to respective electric systems and service areas.

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Docket No. 110263-EU  
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The current agreement approved by Order No. 10267 had a duration period of thirty years. This recommendation addresses the parties' joint petition for approval of an amended agreement to replace the current agreement. The Commission has jurisdiction over the matter pursuant to Section 366.04, Florida Statutes (F.S.).

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the joint petition for approval to amend a territorial agreement in Lake and Orange Counties between PEF and Mount Dora?

**Recommendation:** Yes. The joint petition to amend a territorial agreement between PEF and Mount Dora should be approved. (Barrera, Rieger)

**Staff Analysis:** On August 30, 2011, PEF and Mount Dora filed a joint petition for approval of an amended agreement. According to the parties' petition, except for certain boundary revisions necessary to memorialize existing service relationships and avoid uneconomic service and duplication of facilities, the boundaries otherwise remain the same as set forth in the current agreement. The petition also points out that there are no customer transfers associated with this amended agreement, and the agreement has been negotiated for a term of 20 years. The amended agreement, as well as associated maps delineating the respective territorial areas of PEF and Mount Dora was attached to the petition as Exhibits A and B respectively, and are attached as Attachment A.

According to the amended agreement, the parties desire to restate and amend the current agreement in its entirety, in order to gain further operational efficiencies and customer service improvements in their respective retail service territories. The amended agreement will continue to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that the current agreement is intended to avoid. The amended agreement goes on to state 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.

Staff would point out that this amended agreement relates to a similar agreement between Mount Dora and Sumter Electric Cooperative, Inc. (SECO).<sup>2</sup> In that agreement, a territorial boundary was established between the Mount Dora and SECO that encompasses some of the same geographical areas as this proposed agreement. SECO has been apprised of this territorial agreement, and it does not have any objections to it. The parties have indicated that there is no change to the territorial boundary abutting SECO's service territory under the amended agreement.

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. Pursuant to Rule 25-6.0440(2), F.A.C., 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).

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<sup>2</sup> See Order No. PSC-96-0886-FOF-EU, issued July 9, 1996, in Docket No. 960396-EU, In re: Joint petition for approval of territorial agreement between Sumter Electric Cooperative, Inc. and City of Mount Dora.

Docket No. 110263-EU  
Date: November 22, 2011

It appears that the amended agreement proposed by PEF and Mount Dora eliminates existing or potential uneconomic duplication of facilities and does not cause a decrease in the reliability of electric service to existing or future ratepayers. Based on all of the above, staff recommends that the joint petition for approval of the amended territorial agreement between PEF and Mount Dora is in the public interest and should be approved.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order. (Barrera)

**Staff Analysis:** If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order.



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August 30, 2011

110263-EU

VIA HAND DELIVERY

Ms. Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Joint Petition to Amend Territorial Agreement between Progress Energy Florida, Inc. and the City of Mount Dora; Docket No. \_\_\_\_\_

Dear Ms. Cole:

Please find enclosed for filing the original and seven (7) copies of the joint petition to amend territorial agreement on behalf of Progress Energy Florida, Inc. ("PEF") and the City of Mount Dora ("Mount Dora").

Thank you for your assistance in this matter. Please don't hesitate to call me at (727) 820-5184 should you have any questions.

Respectfully,

*John T. Burnett*  
John T. Burnett

JTB/lms

COM	_____	cc:	Gail Simpson (PEF)
APA	_____		Andrew Hand (Attorney for City of Mt. Dora)
ECP	_____		
GCL	_____		
RAD	_____		
SRC	_____		
ADM	_____		
OPC	_____		
CLK	_____		

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition to amend territorial  
agreement between Progress Energy  
Florida, Inc. and the City of Mount Dora.

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Docket No. 110263-EU  
Filed: August 30, 2011

**JOINT PETITION TO AMEND TERRITORIAL AGREEMENT**

Progress Energy Florida, Inc. ("PEF") and the City of Mount Dora ("Mount Dora") (collectively, the "Joint Petitioners"), pursuant to Section 366.04(2)(d), Fla. Stats., and Rule 25-6.0440, F.A.C., jointly petition the Florida Public Service Commission ("the Commission") for approval of an amended Territorial Agreement between PEF and Mount Dora in Lake and Orange counties. In support hereof, the Joint Petitioners represent as follows:

1. The Joint Petitioners are electric utilities organized under the laws of Florida and are subject to the regulatory jurisdiction of the Commission regarding territorial agreements pursuant to Section 366.04(2), F.S. PEF's principal offices are located in St. Petersburg, Florida. Mount Dora's principal offices are located in Mount Dora, Florida.
2. All pleadings, notices and other communications in this matter should be served on the undersigned representatives for PEF and Mount Dora.
3. PEF and Mount Dora are parties to a currently effective territorial agreement delineating their respective territories in Lake and Orange counties which was approved by the Commission by its Order No. 10267, issued on September 8, 1981, in Docket No. 800508-EU (the "Current Agreement").


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4. PEF and Mount Dora have agreed to an amended territorial agreement (the "Amended Agreement") to replace the Current Agreement. A copy of the Amended Agreement and the associated maps delineating the respective territorial areas of PEF and Mount Dora have been provided as Exhibit A and Exhibit B. Except for certain boundary revisions necessary to memorialize existing service relationships and avoid uneconomic service and duplication of facilities, the boundaries otherwise remain the same as set forth in the Current Agreement. There are no customer transfers associated with this territorial agreement and the agreement has been negotiated for a term of 20 years.

5. The Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest. The Joint Petitioners believe and therefore represent that the Amended Agreement is in the public interest and should be approved.

WHEREFORE, the Joint Petitioners respectfully request that the Commission grant this Joint Petition and approve the Amended Agreement contained in Exhibit A and Exhibit B hereto.

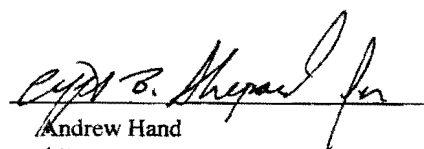
Respectfully submitted,



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John T. Burnett  
Associate General Counsel  
Progress Energy Service Company, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (727) 820-5184  
Facsimile: (727) 820-5519

*Attorney for Progress Energy Florida, Inc.*



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Andrew Hand  
Attorney  
Shepard, Smith & Cassidy P.A.  
2300 Maitland Center Parkway, Suite 100  
Maitland, FL 32751  
Telephone: (407) 622-1772  
Facsimile: (407) 622-1884

*Attorney for City of Mount Dora*



## Exhibit A

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### Amended Territorial Agreement Between Progress Energy Florida and the City of Mount Dora

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**AMENDED TERRITORIAL AGREEMENT**

Section 0.1: The City of Mount Dora ("Mount Dora") and Florida Power Corporation (doing business as Progress Energy Florida, Inc.) ("PEF") (collectively, the "Parties") enter into this Amended Territorial Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2011.

**WITNESSETH:**

Section 0.2: WHEREAS, Mount Dora and PEF are each authorized, empowered, or obligated by legislative authority or their corporate charter and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas; and

Section 0.3: WHEREAS, Mount Dora and PEF are Parties to a currently effective territorial agreement delineating their respective territories in Lake and Orange counties which was approved by the Commission by its Order No. 10267, issued on September 8, 1981, in Docket No. 800508-EU (the "Current Agreement").

Section 0.4: WHEREAS, the Parties desire to restate and amend the Current Agreement in its entirety through this Amended Agreement in order to gain further operational efficiencies and customer service improvements in their respective retail service territories in the aforesaid counties, while continuing to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that the Current Agreement is intended to avoid and;

Section 0.5: 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.

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

## **ARTICLE I DEFINITIONS**

**Section 1.1:** Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" shall mean the boundary line(s) depicted on the maps attached hereto as Exhibit B which delineate and differentiate the Parties' respective Territorial Areas in Lake and Orange counties.

**Section 1.2:** Mount Dora Territorial Area. As used herein, the term "Mount Dora Territorial Area" shall mean the geographic areas in Lake and Orange counties allocated to Mount Dora as its retail service territory and labeled as "Mount Dora Territorial Area" or "Mt. Dora" on the maps contained in Exhibit B.

**Section 1.3:** PEF Territorial Area. As used herein, the term "PEF Territorial Area" shall mean the geographic areas in Lake and Orange counties allocated to PEF as its

retail service territory and labeled as "PEF Territorial Area" or "PEF" on the maps contained in Exhibit B.

**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, which such Party shall be entitled to provide retail electric service under this Amended Agreement, irrespective of where the customer's point of connection or metering is located.

**Section 1.5: New Customers.** As used herein, the term "New Customers" shall mean all end-use customers applying for retail electric service after the Effective Date of this Amended Agreement at a Point of Use in the Territorial Area of either Party.

**Section 1.6: Existing Customers.** As used herein, the term "Existing Customers" shall mean any person receiving retail electric service from either PEF or Mount Dora at the location for which the service is existent on the Effective Date of this Amended Agreement.

**Section 1.7: Commission.** As used herein, the term "Commission" shall mean the Florida Public Service Commission.

**Section 1.8: Effective Date.** As used herein, the term "Effective Date" shall mean the date on which the Commission's final Order granting approval of this Amended Agreement in its entirety becomes no longer subject to judicial review.

**Section 1.9: 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 Current Agreement.

**ARTICLE II**  
**RETAIL ELECTRIC SERVICE**

Section 2.1: In General. Except as otherwise specifically provided herein, Mount Dora shall have the exclusive authority to furnish retail electric service within the Mount Dora Territorial Area and PEF shall have the exclusive authority to furnish retail electric service within the PEF Territorial Area. The Territorial Boundary Line shall not be affected by any change, through annexation or otherwise, that may occur in the corporate limits of any municipality lying within the Mount Dora Territorial Area or the PEF Territorial Area, unless 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 or attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Section 2.3 herein. 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 shall be entitled to serve all of the 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 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 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. However, the Party providing temporary service hereunder shall not be required to pay the other Party for any loss of revenue associated with the provision of such temporary service, 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 request is not permitted under this Amended 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 Amended 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 2.3 herein. The receiving Party may elect to 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 3.3.1 herein. Any such transfer shall be completed within 12 months of the discovery of the inadvertent error.

Section 2.6: Transfer of Customers and Facilities. There are no known customers or facilities to be transferred pursuant to this Amended Agreement.

**ARTICLE III  
TRANSFER OF CUSTOMERS**

Section 3.1: In General. In the event circumstances arise during the term of the Agreement in which the Parties agree that, based on sound economic considerations or good engineering practices, an area located in the Service Territory 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 Service Territory of the other Party and the transfer of the customers located in the Reallocated Area to the other Party.

Section 3.2: Transfer of Facilities. In conjunction with the transfer of customers pursuant to Sections 2.5 above, the receiving Party may elect to 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 3.3.1 below.

Section 3.3: Compensation for Transferred Facilities.

Section 3.3.1: Cost of Facilities. The receiving Party shall compensate the transferring Party for the electric distribution facilities described in Section 3.2 above 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 mutually agreed to by the Parties.

Section 3.3.2: Time of Payment. All payments determined in accordance with this section shall be made by the receiving Party in cash within 60 days of the presentation of an invoice from the transferring Party upon completion of the transfer.

Section 3.3.3: Transfer Instruments. 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 3.2 above.

#### **ARTICLE IV OPERATION AND MAINTENANCE**

Section 4.1: Facilities to Remain. Other than expressly provided 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: Mount Dora Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of Mount Dora to serve any Mount Dora municipal facility located in the PEF Territorial Area; provided, however,



that Mount Dora shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operation of PEF in PEF's Territorial Area.

Section 4.3: PEF Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of PEF to serve any PEF facility located in the Mount Dora Territorial Area which facility is used exclusively in connection with PEF's business as an electric utility; provided, however, that PEF shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operation of Mount Dora in Mount Dora's Territorial Area.

## **ARTICLE V PREREQUISITE APPROVAL**

Section 5.1: Commission Approval. The provisions and the Parties performance of this Amended Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of this Amended Agreement in its entirety shall be an absolute condition precedent to the validity, enforceability, and applicability hereof. This Amended Agreement shall have no effect whatsoever until such approval has been obtained. Any proposed modification to this Amended 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 Amended Agreement or the Parties performance hereunder.

Section 5.2: Liability in the Event of Disapproval. In event approval pursuant to Section 5.1 is not obtained, neither Party will have any claim against the other arising under this Amended Agreement.

Section 5.3: Supersedes Prior Agreements. Upon approval by the Commission, this Amended Agreement shall be deemed to specifically supersede the Current Agreement between the Parties defining the boundaries of their respective Territorial Areas in Lake and Orange counties.

## ARTICLE VI

### DURATION

Section 6.1: Term. This Amended Agreement shall continue and remain in effect for a period of 20 years from the Effective Date.

## ARTICLE VII

### CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Amended 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 Amended Agreement with respect to the furnishing of retail electric service including, but not limited to, the service territory of either party hereto relative to the service territory of any other electric utility not a party to this Amended Agreement. The Parties understand that Mount Dora or PEF may, from time to time and subject to Commission approval, enter into territorial agreements with other utilities providing retail service in Lake and Orange counties and that, in such event, nothing herein shall be construed to prevent Mount Dora or PEF from designating any portion of its Territorial Area under this Amended 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 Amended Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 7.3: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Amended Agreement shall 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 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 Amended Agreement, the only terms and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Amended Agreement shall be binding upon either of the Parties unless made in writing, signed by both Parties, and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this Amended Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or corporation, other than the Parties, any right, remedy or claim under or by reason of this Amended 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 Amended 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:

Mount Dora  
Electric Utility Manager  
City of Mount Dora  
1250 North Highland Street  
Mount Dora, Florida 32757

Progress Energy Florida  
General Counsel  
Post Office Box 14042  
St. Petersburg, FL 33733-4042


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 Amended Agreement to be executed in triplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first written above.

ATTEST:

  
City Clerk

CITY OF MOUNT DORA

By   
Mayor

PROGRESS ENERGY FLORIDA

By   
President

## Exhibit B

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### Amended Territorial Agreement Maps

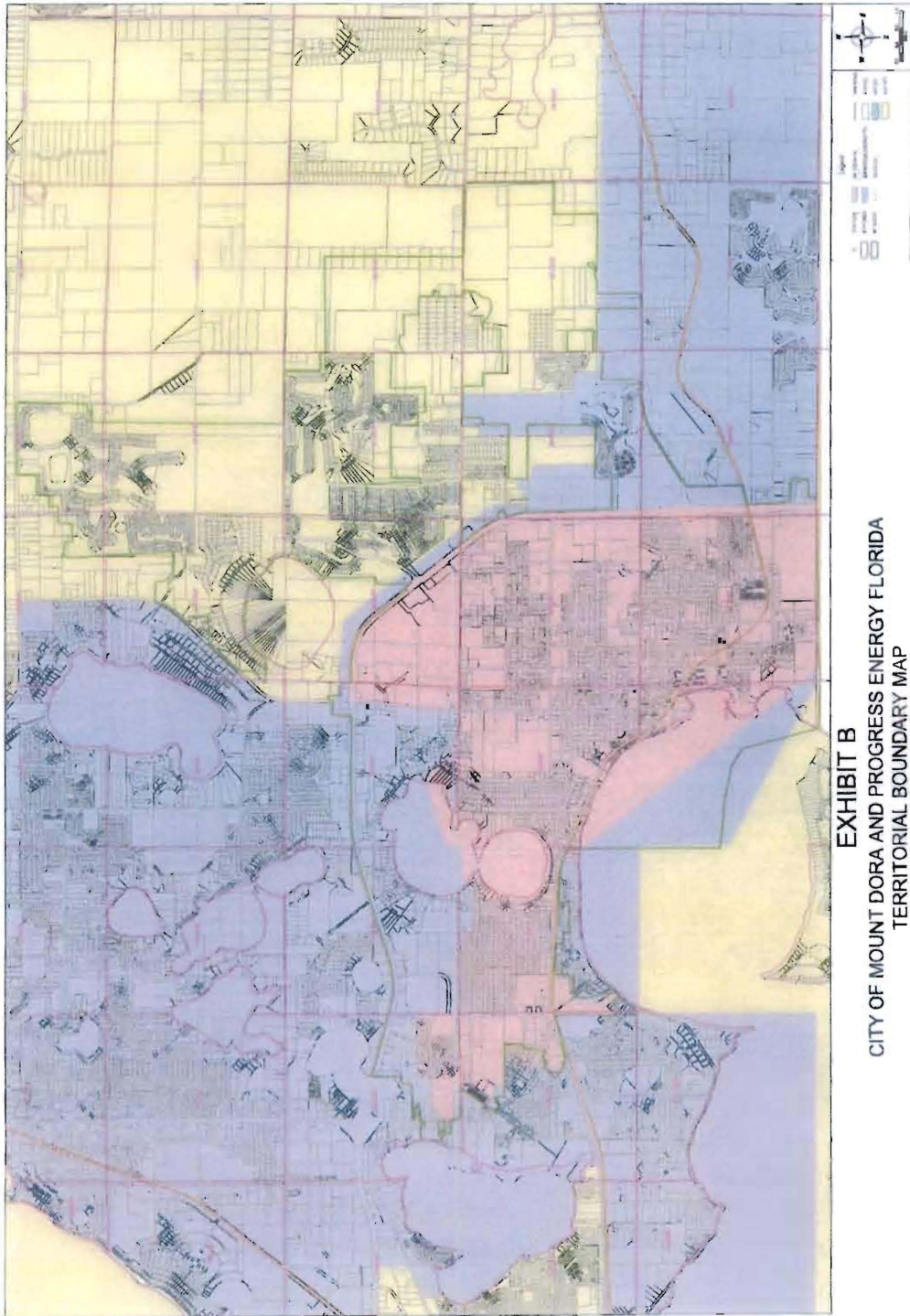
Between Progress Energy Florida  
and the City of Mount Dora

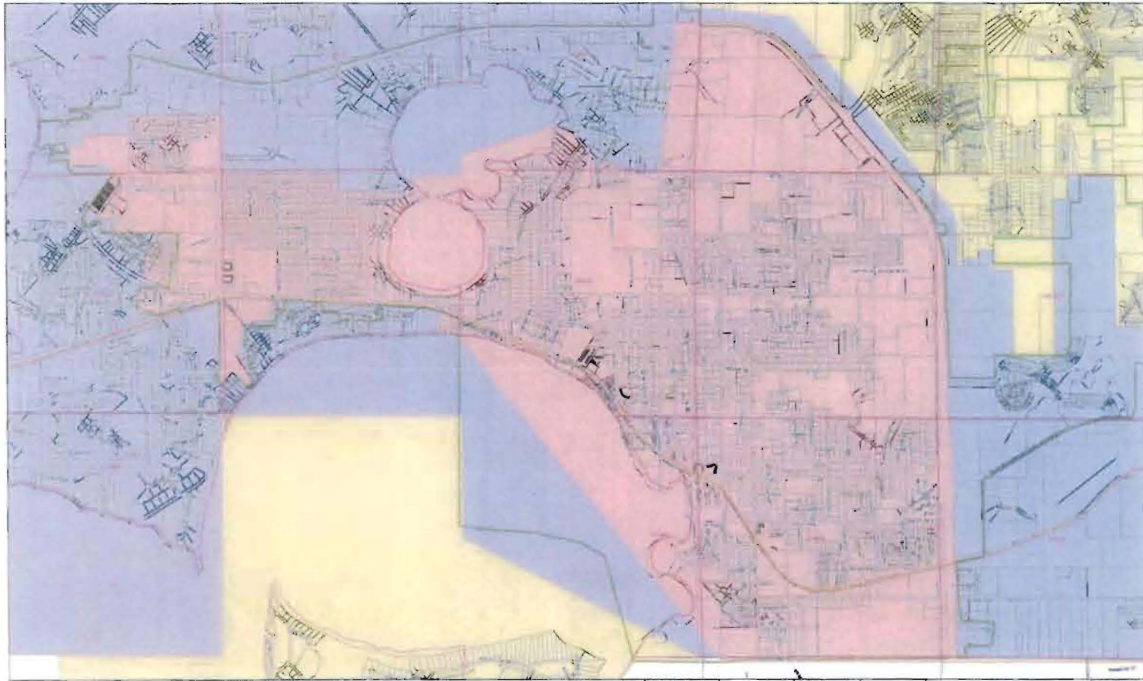
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**EXHIBIT B**  
CITY OF MOUNT DORA AND PROGRESS ENERGY FLORIDA  
TERRITORIAL BOUNDARY MAP - STREET LEVEL NAMES  
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