



Stephanie A. Cuello  
SENIOR COUNSEL

March 15, 2023

**VIA ELECTRONIC FILING**

Adam J. Teitzman, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: *Joint Petition of Duke Energy Florida, LLC and Peace River Electric Cooperative, Inc. for Approval of Agreement for Temporary Territorial Variance*; Docket No. \_\_\_\_\_

Dear Mr. Teitzman:

Please find enclosed for electronic filing, the Joint Petition of Duke Energy Florida, LLC ("DEF") and Peace River Electric Cooperative, Inc. ("PRECO"), for Approval of Agreement for Temporary Territorial Variance. The filing includes:

- Joint Petition of DEF and PRECO, for Approval of Agreement for Temporary Territorial Variance;
- Executed Temporary Territorial Variance, enclosed as Exhibit B;
- Executed Asset Purchase Agreement ("APA") and Asset list; and
- Lake Branch maps, enclosed as Exhibit A.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me at (850) 521-1425.

Sincerely,

*s/ Stephanie A. Cuello*

Stephanie A. Cuello

SAC/mw  
Enclosures

cc: D. Bruce May, Jr, Holland & Knight LLP- [bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)  
Randall W. Shaw, Peace River Electric Cooperative, Inc.- [randy.shaw@preco.coop](mailto:randy.shaw@preco.coop)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition of Duke Energy Florida,  
LLC and Peace River Electric Cooperative,  
Inc. for Approval of Agreement for  
Temporary Territorial Variance

Docket No. \_\_\_\_\_

Filed: March 15, 2023

\_\_\_\_\_ /

**JOINT PETITION OF DUKE ENERGY FLORIDA, LLC AND PEACE RIVER  
ELECTRIC COOPERATIVE, INC. FOR APPROVAL OF AGREEMENT FOR  
TEMPORARY TERRITORIAL VARIANCE**

Duke Energy Florida, LLC (“DEF” or the “Company”), and Peace River Electric Cooperative, Inc. (“PRECO”) jointly petition the Florida Public Service Commission (the “Commission”) for approval of an Agreement for Temporary Territorial Variance entered into by the Parties on February 28, 2023 and, in support thereof, state:

1. DEF is a public utility subject to the jurisdiction of the Commission pursuant to Chapter 366 of the Florida Statutes. DEF’s general offices are located at:

Duke Energy Florida, LLC  
299 First Avenue North  
St. Petersburg, Florida 33701

2. PRECO is a rural electric cooperative organized under Chapter 425, Florida Statutes. PRECO's principal offices are located at:

Peace River Electric Cooperative, Inc.  
210 Metheney Road  
Wauchula, Florida 33873

3. Notices, orders, pleadings, and correspondence to be served upon DEF in this proceeding should be directed to:

Dianne M. Triplett  
Deputy General Counsel  
Duke Energy Florida, LLC  
299 First Avenue North  
St. Petersburg, FL 33701  
Telephone: 727-820-4692; Facsimile: 727-820-5519  
E-mail: [Dianne.Triplett@Duke-Energy.com](mailto:Dianne.Triplett@Duke-Energy.com)

Stephanie A. Cuello  
Senior Counsel  
Duke Energy Florida, LLC  
106 East College Avenue, Suite 800  
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Telephone: 850-521-1425; Facsimile: 727-820-5519  
E-mail: [Stephanie.Cuello@Duke-Energy.com](mailto:Stephanie.Cuello@Duke-Energy.com)  
[FLRegulatoryLegal@Duke-Energy.com](mailto:FLRegulatoryLegal@Duke-Energy.com)

4. Notices, orders, pleadings, and correspondence to be served upon PRECO in this proceeding should be directed to:

D. Bruce May, Jr.  
Holland & Knight LLP  
315 S. Calhoun St., Suite 600  
Tallahassee, FL 32301  
Telephone: 850-224-7000  
E-Mail: [bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)

Randall W. Shaw  
Peace River Electric Cooperative, Inc.  
Post Office Box 1310  
Wauchula, FL 33873  
Telephone: 863-781-0463  
E-Mail: [randy.shaw@preco.coop](mailto:randy.shaw@preco.coop)

5. DEF and PRECO are parties to a territorial agreement most recently approved by the Commission on January 28, 2019 in Order No. PSC-2019-0048-PAA-EU, which establishes a territorial boundary line between DEF's and PRECO's service territories ("Existing Agreement"). The Existing Agreement, among other things, authorizes DEF to serve the phosphate mining load of a Special Industrial Customer in areas north of State Road 64 in Hardee County, Florida. As a

result, the Special Industrial Customer currently receives electric service for its South Meade mining operation from DEF at multiple delivery points, one of which is DEF's Lake Branch substation.

6. The Special Industrial Customer has proposed a new mining project (the “Eastern Expansion Project” or the “Project”) which includes areas located both north and south of SR 64 in Hardee County. A map of the area encompassing the Project is attached as Exhibit “A”. While DEF has the right and obligation under the Existing Agreement to serve this new proposed load to the extent it is located north of SR 64, that part of the Project located south of SR 64 is within PRECO’s service territory.

7. Currently, PRECO does not have facilities in place to serve the Special Industrial Customer’s projected load for that portion of the Eastern Expansion Project south of SR 64. Thus, after evaluating this projected load south of SR 64 and the facilities necessary to serve that load, PRECO and DEF have determined that it is more economically feasible for DEF to temporarily provide electric service to the entire Project area , and DEF has sufficient capacity to do so.

8. Therefore, the Parties have negotiated a temporary variance to the Existing Agreement such that DEF will temporarily serve the entire mining load for the Project, including the new addition south of SR 64. The Agreement for Temporary Territorial Variance (“Temporary Variance Agreement”) is attached hereto as Exhibit “B” and expressly conditioned on Commission approval.

9. Upon Commission approval of the Temporary Variance Agreement, DEF would temporarily serve approximately 20 MW of mining load south of SR 64 in the Eastern Expansion Project. The Special Industrial Customer estimates the mining load south of SR 64 will begin in 2024 and continue until 2028, but PRECO and DEF intend for the territorial variance to be in

place until the actual end of the Special Industrial Customer’s mining. In exchange, PRECO will acquire DEF’s Lake Branch substation at the beginning of 2026 and the estimated non-mining load of 1 MW for nominal consideration. DEF will continue to serve the Special Industrial Customer’s mining load from the Lake Branch substation until the earlier of December 31, 2025, or the date all tailing pumping operations served by the Lake Branch Substation ceases. Because the Lake Branch substation only serves the Special Industrial Customer’s load and will have no other benefit for other DEF customers once the right to serve that the Special Industrial Customer load is transferred to PRECO, DEF will treat the sale and early retirement as normal from an accounting perspective.

10. DEF and PRECO request that this temporary territorial variance be approved until December 31, 2028. If additional time is needed for the Special Industrial Customer to complete the Project south of SR 64, the Parties will notify the Commission in writing of the need to extend the variance for an additional period of time.

11. DEF and PRECO are not aware of any disputed issues of material fact regarding the matter set forth in this joint petition or the relief requested.

WHEREFORE, DEF and PRECO respectfully request the Commission to approve the Temporary Variance Agreement as reflected in this Petition.

Respectfully submitted,

*/s/ Stephanie A. Cuello*

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*Attorney for Peace River Electric Cooperative, Inc.*

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[FLRegulatoryLegal@Duke-Energy.com](mailto:FLRegulatoryLegal@Duke-Energy.com)  
*Attorneys for Duke Energy Florida, Inc.*

**AGREEMENT FOR TEMPORARY TERRITORIAL VARIANCE**

Duke Energy Florida, LLC (“DEF”), and Peace River Electric Cooperative, Inc. (“PRECO”), collectively referred to as the “Parties”, enter into this Agreement for Temporary Territorial Variance (“Agreement”), this 28th day of February, 2023.

**RECITALS:**

**WHEREAS**, DEF and PRECO are parties to a territorial agreement most recently approved by the Florida Public Service Commission (“Commission”) on January 28, 2019 in Order No. Order No. PSC-2019-0048-PAA-EU (the “Existing Agreement”).

**WHEREAS**, the Existing Agreement establishes a territorial boundary line between DEF’s and PRECO’s service territories;

**WHEREAS**, the Existing Agreement authorizes DEF to serve the South Meade phosphate mining load of the Special Industrial Customer in areas north of State Road 64 in Hardee County, Florida, and PRECO to serve the Special Industrial Customer’s mining load south of State Road 64 in Hardee County.

**WHEREAS**, the Special Industrial Customer has planned a new mining project (the “Eastern Expansion Project” or the “Project”) which includes areas located both north and south of SR 64 in Hardee County.

**WHEREAS**, under the Existing Agreement the Project will be partly in the service territory of DEF and partly in the service territory of PRECO.

**WHEREAS**, based on these unique circumstances, DEF and PRECO have concluded that to avoid uneconomic duplication of facilities it would be most efficient for DEF to temporarily provide electric service to the Special Industrial Customer’s entire mining load for the Eastern Expansion Project.

**WHEREAS**, the Parties have negotiated a temporary variance to the Existing Agreement such that DEF will temporarily serve the entire mining load for the Project, including the new addition south of SR 64.

**NOW, THEREFORE**, in consideration of ten dollars (\$10.00), and other good and valuable considerations the receipt and adequacy of which are hereby acknowledged by the Parties, DEF and PRECO agree as follows:

1. The foregoing recitals are true and correct, and are incorporated herein by reference.
2. This Agreement addresses the provision of electric service on a temporary basis to the phosphate loads associated with the Special Industrial Customer's Eastern Expansion Project located in the general area of Sections 24, 25, 26, 27, and 34, Township 33 S, Range 27 E, in Hardee County, Florida, said area containing approximately 2,260 acres in Hardee County as shown in Attachment A.
3. For the term of this Agreement, DEF will temporarily serve the Special Industrial Customer's mining load south of SR 64 in the Eastern Expansion Project area. The Parties estimate that this new mining load will begin in 2024 and continue until 2028, but the Parties intend for the territorial variance to be in place until the Special Industrial Customer concludes its mining operations in the Project area.
4. In exchange, PRECO will acquire DEF's Lake Branch substation and the estimated non-mining load of approximately 1 MW for nominal consideration on or before December 31, 2025. The Parties agree that DEF will continue to serve the Special Industrial Customer's load from the Lake Branch substation until the earlier of December 31, 2025 or the date all tailing pumping operations served by the Lake Branch substation ceases.



5. Upon termination of this Agreement, the Parties' rights and obligations with respect to the provisions of electric service to the Special Industrial Customer's load in the areas addressed herein shall revert to and be governed by the Existing Agreement.

6. The Parties agree that the above temporary service assignment is economically sound and consistent with good engineering practices.

7. This Agreement and the Parties' performance thereof are subject to the approval of the Commission and shall become effective on the date of issuance of a final non-appealable Commission order approving same without modification. The Parties agree to jointly seek approval of this Agreement by the Commission.


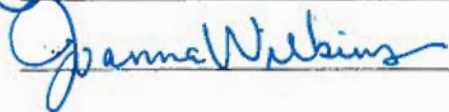
8. In the event Commission approval of this Agreement without modification is not obtained, neither Party will have any cause of action against the other arising under the Agreement or on account of such nonattainment of approval

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

This Agreement shall be non-assignable unless approved in writing by both Parties and the Commission.

IN WITNESS WHEREOF, DEF and PRECO have executed this Agreement on the day and year first above written.

Witnesses:


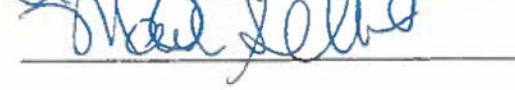
  
\_\_\_\_\_  
  
\_\_\_\_\_

DUKE ENERGY FLORIDA LLC

By:  \_\_\_\_\_

As Its: State President, Florida

Witnesses:

PEACE RIVER ELECTRIC  
COOPERATIVE, INC.

By: 

As Its: General Manager / CEO

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (the “ Agreement”) is made as of the 28th day of February, 2023 by and between Duke Energy Florida, LLC, a Florida limited liability company (“Seller”) and Peace River Electric Cooperative, Inc., a Florida not-for-profit corporation (“ Buyer”). Seller and Buyer may be collectively referred to as the “Parties” and individually as a “Party.”

**WHEREAS**, Seller and Buyer are parties to a Territorial Agreement dated January 28, 2019 (the “Territorial Agreement”);

**WHEREAS**, Seller and Buyer have agreed to modify the Territorial Agreement and enter into an agreement for temporary territorial variance (the “Territorial Variance Agreement”);

**WHEREAS**, the Territorial Variance Agreement is subject to approval by the Florida Public Service Commission (“FPSC”);

**WHEREAS**, Seller owns certain electrical facilities and assets as more particularly described herein and in Schedule 1 attached hereto located at the Lake Branch Substation in Hardee County, Florida (the “Lake Branch Substation”);

**WHEREAS**, as a condition to Buyer agreeing to enter into the Territorial Variance Agreement, Seller has agreed to sell Buyer the Purchased Assets (as defined herein) pursuant to the terms set forth in this Agreement; and

**WHEREAS**, Buyer desires to purchase, and Seller desires to sell, the Purchased Assets on the terms of this Agreement, to occur simultaneous to the purchase and sale of approximately 1.84 +/- acres of improved real property located at the northwest corner of Lake Branch Road and County Road 664A, Hardee County, Florida under that certain Purchase and Sale Agreement (the “REPSA”) between Buyer and South Ft. Meade Partnership, L.P., a Delaware limited partnership.

**NOW THEREFORE**, for and in consideration of the premises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are adopted and incorporated herein.
2. **Sale of Assets.** Seller agrees to sell, and Buyer agrees to purchase, all of Seller’s right, title and interest in and to the electrical facilities and assets described on Schedule 1 (the “Purchased Assets”), free and clear of all liens, security interests, claims, or other encumbrances other than Permitted Liens (as defined herein), in accordance with the terms set forth in this Agreement.

For purposes of this Agreement, “Permitted Liens” shall mean (i) liens for taxes not yet due and payable or being contested in good faith in appropriate proceedings, (ii) liens arising in the ordinary course of business by operation of law for amounts not yet due and payable and which

do not materially encumber the Purchased Assets, and (iii) zoning, entitlement, conservation and other land use and environmental restrictions and regulations by any governmental authority which do not materially encumber the Purchased Assets.

Buyer agrees to assume and be responsible to pay, perform or discharge any liabilities or obligations with respect to the Purchased Assets for the period from and after the Effective Time (as defined below) or arising out of or relating to the ownership or operation of the Purchased Assets from and after the Effective Time.

3. Purchase Price. The “Purchase Price” for the Purchased Assets shall be Ten Dollars (\$10.00).

4. Closing Date. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place on the later of (i) December 31, 2025, or (ii) the date that is five (5) business days after the conditions in Section 9 have been satisfied (or waived) by the appropriate Party, or at such time and date as Buyer and Seller mutually agree after all of the conditions to Closing set forth in this Agreement are either satisfied or waived (the “Closing Date”). The Closing shall be effective as of 12:01 A.M. local time, in Hardee County, Florida on the Closing Date (the “Effective Time”). The Closing shall be accomplished by wire transfer and electronic exchange of duly executed documents on the Closing Date.

5. Seller's Obligations Prior to Closing. Until Closing, Seller and/or Seller's agents or representatives shall not, without the prior written consent of Buyer, in its sole discretion, solicit, negotiate, or accept offers for the purchase of the Purchased Assets from any other party, or sell, assign or create any right, title or interest in any or all of the Purchased Assets in favor of a third party. From the date of this Agreement until the Closing or sooner termination of this Agreement, Seller covenants as follows: (a) Seller will continue to operate and maintain the Purchased Assets in the ordinary course of business consistent with past practices; (b) Seller will maintain the existing insurance covering the Purchased Assets or if any of such policies is expiring such policies will be replaced with new policies containing substantially similar coverage, provided that Seller reserves the right to self-insure any and all insurance covering the Purchased Assets; and (c) Seller will give prompt written notice to Buyer of any fire or other casualty affecting the Purchased Assets.

6. Closing Deliveries.

a) Seller's Deliveries. At the Closing, Seller will deliver, or cause to be delivered, to Buyer the following:

- i. the Bill of Sale in the form attached hereto as Exhibit A (the “Bill of Sale”), duly executed by Seller;
- ii. an agreement between Seller and The Mosaic Company (“Mosaic”) terminating Seller's easement rights with respect to the real property upon which the Purchased Assets are situated, duly executed by Seller and Mosaic;

- iii. an operating and access agreement (which, among other things, shall delineate the line of demarcation between Seller's and Buyer's facilities, the respective responsibilities of the Parties during operation of each Party's facilities, and the required notification upon certain operational actions) in a form mutually acceptable to Seller and Buyer (the "Operating and Access Agreement") and duly executed by Seller; and
- iv. such other documents as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith.

b) Buyer's Deliveries. At the Closing, Buyer will deliver, or cause to be delivered, to Seller the following:

- i. the Purchase Price by wire transfer of immediately available funds to the bank account or accounts designated by Seller, in writing, on the Closing Date;
- ii. the Bill of Sale, duly executed by Buyer;
- iii. the Operating and Access Agreement, duly executed by Buyer; and
- iv. such other documents as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith.

7. Closing Conditions. From the date hereof until the Closing, each Party shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the Closing conditions set forth in this Agreement.

8. Tax Matters.

a) Prorations of Purchased Assets Taxes and Non-Tax Items. Personal property taxes and assessments (or estimates of the taxes to be assessed) relating to the Purchased Assets shall be prorated between the Parties as of the Effective Time. Seller shall use commercially reasonable efforts to file any tax returns and prosecute any claims in respect of such taxes in the ordinary course of business and consistent with past practice. At least ten (10) business days prior to the date any taxes attributable to the Purchased Assets are required to be paid for any taxable period beginning before and ending after the Effective Time, Seller will deliver to Buyer a worksheet setting forth Seller's good faith reasonable estimate of the prorated amount for such taxes owed by Buyer (the "Estimated Tax Prorated Amount"). Buyer shall pay such Estimated Tax Prorated Amount to Seller at the Closing.

b) Transfer and Excise Taxes. Buyer shall be responsible to pay all sales, use, excise or other taxes or assessments which may be imposed as a result of the sale of the Purchased Assets and any other costs imposed as a result of the transfer of the Purchased Assets. Seller shall accept Buyer's valid direct pay permit or exemption certificate, as

applicable, and will cooperate with Buyer in minimizing any excise taxes applicable to the transfer of the Purchased Assets.

c) Other Taxes. Buyer and Seller shall each be responsible for paying their own respective taxes not otherwise described herein including, but not limited to: income, franchise, gross receipts, margins, commercial activity, license, and privilege taxes.

9. Conditions to Closing.

a) Buyer's Conditions to Closing. The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer in its sole discretion):

- i. The representations and warranties of Seller shall be true and correct in all material respects as of the Closing Date.
- ii. Seller shall have performed and complied in all material respects with all agreements, covenants and conditions contained in this Agreement that are required to be performed and complied with by Seller on or prior to the Closing Date.
- iii. The Parties shall have received a final non-appealable order of the FPSC approving the Territorial Variance Agreement without modification.
- iv. There shall not be any litigation or proceedings (filed by a person other than Buyer) or law, rule, regulation or order restraining, enjoining or otherwise prohibiting or making illegal or threatening in writing to restrain, enjoin or otherwise prohibit or make illegal the consummation of the transactions contemplated by this Agreement.
- v. Seller shall have executed and delivered or caused to be executed and delivered to Buyer all the items set forth in Section 6(a).
- vi. The closing under the REPSA shall be simultaneous to the Closing hereunder (and all conditions to the REPSA closing shall have been met or waived by the applicable parties thereto).

b) Seller's Conditions to Closing. The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller in its sole discretion):

- i. The representations and warranties of Buyer shall be true and correct in all material respects as of the Closing Date.
- ii. Buyer shall have performed and complied in all material respects with all agreements, covenants and conditions contained in this Agreement that are required to be performed and complied with by Buyer on or prior to the Closing Date.

- iii. The Parties shall have received a final non-appealable order from the FPSC approving the Territorial Variance Agreement without modification.
- iv. There shall not be any litigation or proceedings (filed by a person other than Seller) or law, rule, regulation or order restraining, enjoining or otherwise prohibiting or making illegal or threatening in writing to restrain, enjoin or otherwise prohibit or make illegal the consummation of the transactions contemplated by this Agreement.
- v. Buyer shall have executed and delivered or caused to be executed and delivered to Buyer all the items set forth in Section 6(b).

10. Acceptance; Delivery; Risk of Loss. Upon the Closing: (i) Seller shall be deemed to have delivered the Purchased Assets to Buyer, (ii) Buyer shall be deemed to have taken delivery of and accepted the Purchased Assets from Seller, and (iii) all right, title, ownership and risk of loss of the Purchased Assets shall be transferred to Buyer as of the Effective Time.

11. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the date of this Agreement and as of the Closing as follows:

a) Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida. Seller has all requisite limited liability company power and authority to own the Purchased Assets. Seller is duly licensed or qualified to do business in each jurisdiction in which the ownership of the Purchased Assets makes such licensing or qualification necessary, except as would not materially and adversely affect Seller's ability to perform its obligations under this Agreement.

b) The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized and approved by all requisite limited liability company action.

c) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms (except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity).

d) The execution, delivery, performance, and consummation of this Agreement do not and will not: (i) conflict with any organizational documents of Seller; (ii) conflict with any applicable law or governmental order applicable to Seller; (iii) conflict with or give rise to a right of notice, termination, acceleration, or modification of any obligation or loss of any benefit under any contract of Seller, except as would not, individually or in the aggregate, be reasonably expected to materially and adversely affect Seller's ability to perform its obligations under this Agreement; or (iv) give rise to any material consent, approval, waiver, or authorization that must be obtained by Seller prior to the Closing from any person or entity, or any right to receive any notice or filing.

e) Seller is the lawful and rightful owner of the Purchased Assets, and has good and valid title and the right to sell the same to Buyer free and clear of all liens, security interests, claims or other encumbrances, except for Permitted Liens.

f) There are no actions, suits, claims, investigations or other legal proceedings pending or, to the best of Seller's knowledge, threatened against or by Seller with respect to the Purchased Assets or the transactions contemplated by this Agreement.

12. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the date of this Agreement and as of the Closing as follows:

a) Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida. Buyer is duly licensed or qualified to do business in each jurisdiction in which the ownership of its assets (including the Purchased Assets from and after the Closing) makes such licensing or qualification necessary, except as would not materially and adversely affect Buyer's ability to perform its obligations under this Agreement.

b) The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized and approved by all requisite corporate action.

c) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms (except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditor's rights generally and by general principles of equity).

d) The execution, delivery, performance, and consummation of this Agreement do not and will not: (i) conflict with any organizational documents of Buyer; (ii) conflict with any applicable law or governmental order applicable to Buyer; (iii) conflict with or give rise to a right of notice, termination, acceleration, or modification of any obligation or loss of any benefit under any contract of Buyer, except as would not, individually or in the aggregate, be reasonably expected to materially and adversely affect Buyer's ability to perform its obligations under this Agreement; or (iv) give rise to any material consent, approval, waiver, or authorization that must be obtained by Buyer prior to the Closing from any person or entity, or any right to receive any notice or filing.

13. No Finder. Each Party represents and warrants to the other as of the date of this Agreement and at the Closing that neither it nor any party acting on its behalf has paid, or become obligated to pay, or committed any other party to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

14. Indemnification and Limitation of Liability.

a) Indemnification by Buyer. From and after the Closing, Buyer agrees to indemnify and hold Seller, its agents, employees, officers, directors, shareholders, members, representatives, parent and other affiliates harmless from and against any loss,



liability, claim, cost, damage or expense (including reasonable attorney's fees) arising out of or in connection with any of the following:

- i. any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement; and
- ii. any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement.

b) Indemnification by Seller. From and after the Closing, Seller agrees to indemnify and hold Buyer, its agents, employees, officers, directors, shareholders, members, representatives, parent and other affiliates harmless from and against any loss, liability, claim, cost, damage or expense (including reasonable attorney's fees) arising out of or in connection with any of the following:

- i. any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement; or
- ii. any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement.

c) Indemnification Procedures. If any indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any person who is not a Party to this Agreement or an affiliate of a Party to this Agreement against such indemnified Party with respect to which the indemnifying Party is obligated to provide indemnification under this Agreement, the indemnified Party shall give the indemnifying Party prompt written notice thereof. The indemnifying Party shall have the right to participate in, or by giving written notice to the indemnified Party, to assume the defense of any claim at the indemnifying Party's expense and by the indemnifying Party's own counsel, and the indemnified Party shall cooperate in good faith in such defense. Notwithstanding any other provision of this Agreement, neither the indemnifying Party nor an indemnified person shall enter into settlement of any claim subject to indemnification hereunder without the prior written consent of the indemnified Party or the indemnified person, as applicable (which consent shall not be unreasonably withheld, conditioned or delayed). Any direct claim by an indemnified Party on account of a loss which does not result from a third party claim shall be asserted by the indemnified Party giving the indemnifying Party reasonably prompt written notice thereof. Such notice by the indemnified Party shall describe the direct claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the loss that has been or may be sustained by the indemnified Party. If the indemnifying Party does not so respond in writing within thirty (30) days of notice of a direct claim, the indemnifying Party shall be deemed to have rejected such claim, in which case the indemnified Party shall be free to pursue such remedies as may be available to the indemnified Party on the terms and subject to the provisions of this Agreement. Each indemnified person shall have the duty to mitigate any damages subject to indemnification.

d) Limitation of Liability.

- i. BUYER ACKNOWLEDGES THAT SELLER IS NOT MAKING ANY REPRESENTATION OR WARRANTY OTHER THAN AS EXPLICITLY SET FORTH IN SECTION 11 OF THIS AGREEMENT. SPECIFICALLY, BUYER ACKNOWLEDGES THAT SELLER IS NOT MAKING, AND EXPLICITLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY REGARDING THE CONDITION OF THE PURCHASED ASSETS TRANSFERRED HEREUNDER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN SECTION 11 OF THIS AGREEMENT, THE PURCHASED ASSETS ARE TRANSFERRED TO BUYER "AS-IS, WHERE IS, WITH ALL FAULTS" WITHOUT ANY OTHER REPRESENTATIONS AND WARRANTIES WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE CONDITION OR QUALITY OF THE PURCHASED ASSETS.
- ii. After the Closing, the indemnification under this section shall constitute the sole and exclusive remedy of the Parties with respect to the transaction contemplated by this Agreement, including for breach or inaccuracy of any representations, warranties, covenants or agreements herein, and the Parties expressly waive any other remedy available at law or in equity.
- iii. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF USE OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT LIMIT THE RECOVERY UNDER THIS SECTION 14 BY AN INDEMNIFIED PARTY OF ANY AMOUNT PAID OR PAYABLE TO THIRD PARTIES IN RESPECT OF ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION HEREUNDER IS OTHERWISE REQUIRED.

15. Further Assurances. At the reasonable request of a Party, the other Party shall make, do and execute or cause to be made, done and executed all such further acts, deeds and

assurances as such Party may, at any time or from time to time, reasonably request to more effectively convey the Purchased Assets to Buyer and to effectuate this Agreement.

16. Survival of Representations and Warranties. The representations and warranties herein contained on the part of Seller and Buyer shall survive the execution and Closing of this Agreement by the Parties for a period of 12 months (or thereafter if a claim for indemnification is made thereon prior the expiration of such 12-month period), and shall be deemed made as of the Closing Date.

17. Termination; Defaults; Remedies.

a) Termination. This Agreement may be terminated at any time prior to the Closing:

- i. by the mutual written consent of Buyer and Seller.
- ii. by Buyer by written notice to Seller if Buyer is not then in breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the Closing conditions specified in this Agreement and such breach, inaccuracy or failure either (x) cannot be cured on or prior to the Closing Date, or (y) is not cured within thirty (30) days after written notice of such breach, inaccuracy or failure from Buyer.
- iii. by Seller by written notice to Buyer if Seller is not then in breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the Closing conditions specified in this Agreement and such breach, inaccuracy or failure either (x) cannot be cured on or prior to the Closing Date, or (y) is not cured within thirty (30) days after written notice of such breach, inaccuracy or failure from Seller.
- iv. by either Party not then in breach of any provision of this Agreement if the Closing does not occur on or before January 31, 2026.

b) Effect of Termination. In the event of the termination of this Agreement in accordance with this Section, this Agreement shall forthwith become void and there shall be no liability on the part of any Party, except that nothing herein shall relieve any Party from liability for any material breach of any provision hereof, fraud, or intentional misrepresentation.

c) Defaults and Remedies. Subject to Section 14(d), each Party shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the obligations of the other Party hereunder not only by an action(s) for damages but also by an action(s) for specific performance, injunctive and/or other equitable relief, without posting any bond or other undertaking. The Parties acknowledge and agree that any breach or threatened breach of this Agreement by any Party will likely result in some irreparable injury.

18. Successors and Assigns. This Agreement shall inure to the benefit of Buyer and Seller and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

19. Severability. Any term, condition or provision of this Agreement which is, or is deemed to be, void, prohibited, or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, and is ineffective to the extent of such avoidance, prohibition and unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof. Any such avoidance, prohibition and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

20. Entire Agreement; Modification. This Agreement (including all Exhibits and Schedules hereto) contains the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior agreements, understanding and representations, oral or written. No modification to this Agreement shall be effective unless in writing and signed by both Parties.

21. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO ITS CONFLICTS OF LAW DOCTRINE, AND THIS AGREEMENT SHALL BE DEEMED IN ALL RESPECTS TO BE A CONTRACT OF SUCH STATE.

22. No Third Party Beneficiaries. Except for each Party's indemnitees as specifically provided in this Agreement, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

23. Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

24. Headings. The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.

25. Exhibits and Schedules. All of the exhibits and schedules attached hereto are incorporated herein and made a part of this Agreement by reference thereto.

26. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by electronic mail, a nationally recognized overnight courier, or registered or certified mail, postage prepaid, addressed as follows or to such other address of which the Parties may have given notice:

If to Seller:

Duke Energy Florida, LLC  
3300 Exchange Place  
Lake Mary, FL 32746  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With copy to:

Duke Energy Florida, LLC  
299 1<sup>st</sup> Avenue, N.  
St. Petersburg, FL 33701  
Attn: Dianne Triplett, Deputy General Counsel  
Email: [Dianne.Triplett@duke-energy.com](mailto:Dianne.Triplett@duke-energy.com)

If to Buyer:

Peace River Electric Cooperative, Inc.  
210 Metheny Road, North  
Wauchula, FL 33873  
Attn: Randall W. Shaw, General Manager/CEO  
Email: [randy.shaw@preco.coop](mailto:randy.shaw@preco.coop)

With copy to:

Peace River Electric Cooperative, Inc.  
210 Metheny Road, North  
Wauchula, FL 33873  
Attn: Paul Roberts, Vice President of Engineering  
Email: [paul.roberts@preco.coop](mailto:paul.roberts@preco.coop)

Unless otherwise specified herein, such notices or other communications shall be deemed received (a) on the date delivered, if delivered personally, by registered or certified mail or by nationally recognized overnight courier, or (b) when delivered, if by electronic mail received no later than 5 p.m. ET on a business day (provided that, (x) if delivered after such time, it shall be deemed delivered on the next business day, and (y) with respect to such electronic mail delivery, a copy thereof also is sent to be received on the next business day).

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year first hereinabove set forth.

SELLER:

**Duke Energy Florida, LLC**

By: Melissa Seixas  
Name: MELISSA SEIXAS  
Title: STATE PRESIDENT

BUYER:

**Peace River Electric Cooperative, Inc.**

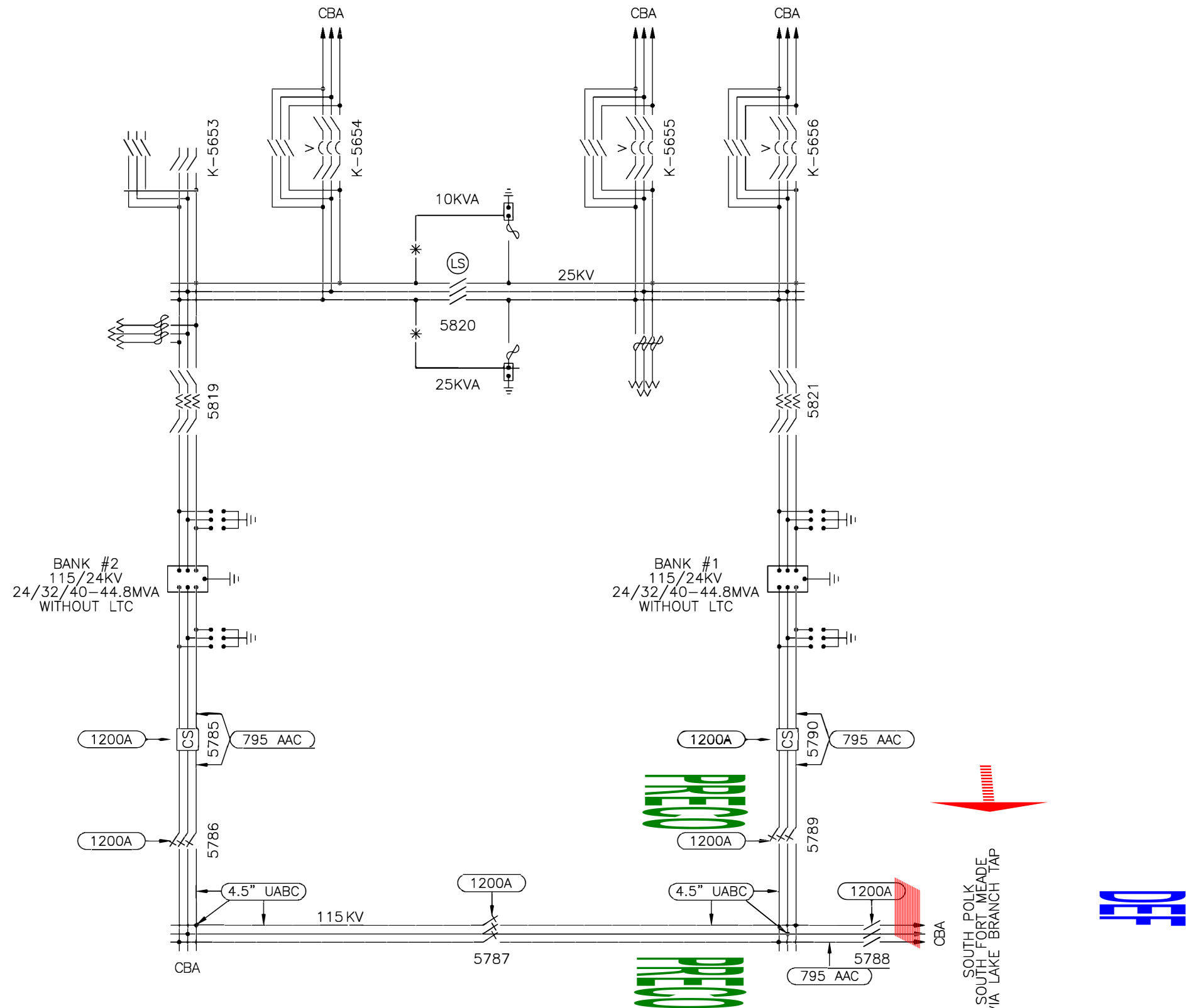
By: Randall W. Shew  
Name: Randall W. Shew  
Title: GM/CEO

## LAKE BRANCH SUBSTATION ASSETS

<b>Asset Description</b>	<b>Location Description</b>
BREAKER VAC , ABC PH, 25.0 KV, 28.0 KV, 1,200.0 AMPS, 5.0 CYCLES	BREAKER K-5654, 25KV, CB, 25.0 KV
BREAKER VAC , ABC PH, 25.0 KV, 28.0 KV, 1,200.0 AMPS, 5.0 CYCLES	BREAKER K-5655, 25KV, CB, 25.0 KV
BREAKER VAC , ABC PH, 25.0 KV, 28.0 KV, 1,200.0 AMPS, 5.0 CYCLES	BREAKER K-5656, 25KV, CB, 25.0 KV
5653 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION 5653 SW HKST 25KV 1200A
5654 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION 5654 SW HKST 25KV 1200A
5655 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION 5655 SW HKST 25KV 1200A
5785, 115KV, CS BANK #2,SWITCH, SUBSTATION MOAB, 115.0 KV	SWITCH, SUBSTATION 5785, 115KV, CS BANK #2, 115.0 KV
5786 115KV CB SWITCH,SWITCH, SUBSTATION UNKNOWN, 1,200.0 AMPS	SWITCH, SUBSTATION 5786 115KV CB SWITCH
5787 115KV CB SWITCH,SWITCH, SUBSTATION UNKNOWN, 1,200.0 AMPS	SWITCH, SUBSTATION 5787 115KV CB SWITCH
5788 115KV CB SWITCH,SWITCH, SUBSTATION UNKNOWN, 1,200.0 AMPS	SWITCH, SUBSTATION 5788 115KV CB SWITCH
5789 115KV CB SWITCH,SWITCH, SUBSTATION UNKNOWN, 1,200.0 AMPS	SWITCH, SUBSTATION 5789 115KV CB SWITCH
5790, 115KV, CS BANK #1,SWITCH, SUBSTATION MOAB, 115.0 KV	SWITCH, SUBSTATION 5790, 115KV, CS BANK #1, 115.0 KV
5819 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION 5819 SW HKST 25KV 1200A
5821 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION 5821 SW HKST 25KV 1200A
K5820 25KV SWITCHES,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION K5820 25KV SWITCHES
K5653 25KV SWITCHES,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION K5653 25KV SWITCHES
K5654 25KV SWITCHES,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION K5654 25KV SWITCHES
K5655 25KV SWITCHES,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION K5655 25KV SWITCHES
K5656 25KV SWITCHES,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION K5656 25KV SWITCHES
5656 SW HKST 25KV 1200A,SWITCH, SUBSTATION UNKNOWN	SWITCH, SUBSTATION MOS 5656, 25.000 KV
115/24KV 40MVA BANK #1, TRANSFORMER 3PH, 115.0 VOLTS, 24.0 VOLTS	TRANSFORMER BANK #1, 115.0 KV
115/24KV 40MVA BANK #2, TRANSFORMER 3PH, 115.0 VOLTS, 24.0 VOLTS	TRANSFORMER BANK #2, 115.0 KV
CHARGER, LAKE BRANCH, 10503, 125 VDC	BATTERIES & CHARGERS
STATION BATTERY, LAKE BRANCH, 384027901, 125 VDC VOLTS	BATTERIES & CHARGERS
STRUCTURES AND IMPROVEMENTS	SUBSTATION/CONTROL HOUSE
10KVA AND 25KVA STATION SERVICE TRANSFORMERS	NEAR SWITCH 5820

List Updated by Paul S. Cordero on 1/5/23





\* DENOTES FUSE CUTOUTS NOT INSTALLED. ONLY ONE SOURCE TO FEED XFMR AT A TIME.

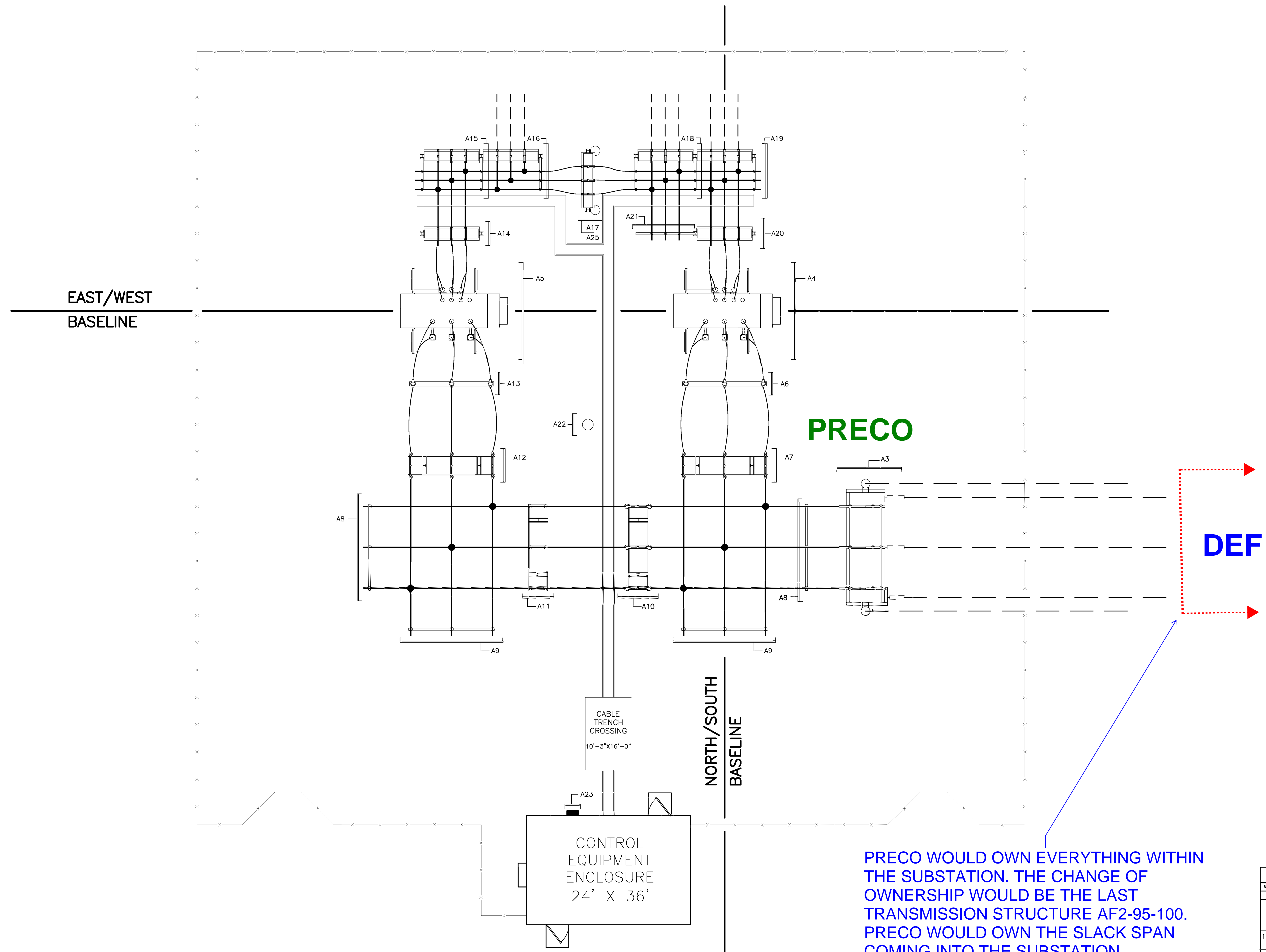
5	REVISE LINE DESIGNATION ON 115KV LINE	CJM		EJO	12/18
4	UPDATED 3-LINE DIAGRAM PER FACILITY RATING QUESTION #261.	ALS	TGN GMP	EA	3/13
3	LIMITING ELEMENT VERIFICATION	SDA		BR	09/09
2	ADDED FUSE CUTOUT NOTE PER RELAY ENGINEERING REQUEST. WO# 1765D1	DW		WAS	12/05
1	CONVERTED TO "B" SIZE PROJECTWISE FORMAT.	DW	TLS		11/05

NO.	DESCRIPTION	DRAWN	CHKD.	APPR.	DATE
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9/13/04	N.T.S. SCALE	SUBSTATION ENGINEERING			
DW	DW TECH	THREE LINE DIAGRAM LAKE WALES - OPC SOUTHERN REGION LAKE BRANCH SUBSTATION			
MEW	WAS ENGR				

1	OF	1	DWG.	04750101
	SHEET			



**PRECO**

**DEF**

PRECO WOULD OWN EVERYTHING WITHIN THE SUBSTATION. THE CHANGE OF OWNERSHIP WOULD BE THE LAST TRANSMISSION STRUCTURE AF2-95-100. PRECO WOULD OWN THE SLACK SPAN COMING INTO THE SUBSTATION.

1 CHANGED CEE ARRANGEMENTS WHICH CHOD FENCE LOCS. MOVED CT 1"-E" TO THE WEST PER AS-BUILT (176201)		DW	WAS	10/05	
NO.	DESCRIPTION	DRAWN	CHKD.	APPR.	DATE
REVISIONS					
<b>Progress Energy</b>					
1/13/05	1"=10' SCALE	SUBSTATION ENGINEERING			
DW	DW	ELECTRICAL LAYOUT			
DRAWN	TECH				
MEW	WAS	LAKE BRANCH SUBSTATION			
CHECK	ENGR				
1 OF 1 SHEET	1 DWG.	S-475-D5			