

TERRITORIAL AGREEMENT

between

JEA

and

[NEWCO]

dated as of

[•]

THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND IS NOT LEGALLY BINDING IN ANY RESPECT. NO BINDING OBLIGATION WILL ARISE (AS A RESULT OF ANY COURSE OF DEALING OR OTHERWISE) UNLESS AND UNTIL A FINAL TERRITORIAL AGREEMENT IS DULY EXECUTED AND DELIVERED BY ALL PERSONS NAMED AS PARTIES.

TABLE OF CONTENTS

Article I THE RIGHTS AND OBLIGATIONS OF JEA IN THE SERVICE TERRITORY 2

 Section 1.1 Customers 2

 Section 1.2 Power to be Provided by JEA 2

 Section 1.3 Rates for Power to be Provided by JEA..... 2

Article II THE RIGHTS AND OBLIGATIONS OF NEWCO IN THE SERVICE TERRITORY 2

 Section 2.1 Newco’s Responsibility. 2

 Section 2.2 Power to be Provided by Newco..... 2

 Section 2.3 Transmission and Distribution 2

 Section 2.4 Adequate Service and Reliable Operation 2

 Section 2.5 Rates for Power Provided by Newco 3

 Section 2.6 Billing and Collections 3

 Section 2.7 Customer Service 3

Article III TRANSFER OF CUSTOMERS 3

 Section 3.1 Transfer of Customers..... 3

 Section 3.2 Transition of Billing and Collection Services..... 3

 Section 3.3 Customer Deposits 3

 Section 3.4 Assignment of Rights..... 3

Article IV IMPLEMENTATION AND DURATION OF THIS AGREEMENT 3

 Section 4.1 Commission Approval 3

 Section 4.2 Duration 4

Article V MISCELLANEOUS 4

 Section 5.1 Bulk Power Supply for Resale 4

 Section 5.2 No Assumption of Liabilities..... 4

 Section 5.3 Notices 4

 Section 5.4 Rules of Construction 4

 Section 5.5 Severability 5

 Section 5.6 Entire Agreement 5

 Section 5.7 Successors and Assigns..... 5

 Section 5.8 No Third-Party Beneficiaries 5

 Section 5.9 Amendment and Modification; Waiver 6

Section 5.10 Amendment to Ancillary Agreements. 6

Section 5.11 Governing Law; Submission to Jurisdiction..... 6

Section 5.12 Specific Performance 6

Section 5.13 Counterparts 6

Annexes

Annex A – Defined Terms

Exhibits

Exhibit A – Service Territory

TERRITORIAL AGREEMENT ¹

This Territorial Agreement (“Agreement”), dated [•], is made and entered into by and between JEA, a municipal electric utility and body politic and corporate (“JEA”) created by the City of Jacksonville, Florida, and [•], a [•] (“Newco”) an investor-owned utility, to provide electric service to customers in the geographic area illustrated in the Florida Department of Transportation General Highway County maps for Duval, Clay, Nassau and St. Johns counties attached hereto as Exhibit A (“Service Territory”). Newco and JEA are each referred to herein as a “Party” and together herein as the “Parties”. Capitalized terms used herein but not defined in the text hereof shall have the respective meanings set forth in Annex A.

- A. JEA is authorized by the Charter of the Consolidated City of Jacksonville, to produce and provide electricity to customers in Duval County and surrounding counties;
- B. Newco is an electric utility authorized by the laws of the State of Florida to provide electricity and power to customers throughout Florida.
- C. JEA and Newco have entered into an Asset Purchase and Sale Agreement (the “Purchase Agreement”), dated [•], pursuant to which Newco has agreed to acquire substantially all of the assets and liabilities of JEA’s Business (as defined therein), with the exception of certain excluded assets.
- D. The excluded assets retained by JEA include that certain Amended and Restated Power Purchase Agreement, dated as of December 31, 2014 (as amended, from time to time, the “Vogtle PPA”), between JEA and the Municipal Electric Authority of Georgia (“MEAG”), pursuant to which JEA has agreed to purchase from MEAG a portion of the electrical power generated by certain nuclear plants known as Vogtle (such power purchased by JEA under the Vogtle PPA being referred to as the “Vogtle Energy”).
- E. The Consolidated City of Jacksonville has entered into a Franchise Agreement with Newco, dated [•], granting Newco the right to provide electric service to customers in Duval County and surrounding counties and delineating the respective rights and obligations of JEA and Newco to provide electric service to these customers. The Franchise Agreement grants Newco the exclusive franchise, right and privilege to provide electric service in the Service Territory, except for the right to provide service reserved by JEA under the terms of the Franchise Agreement. The sole and limited right to provide service reserved by JEA under the terms of the Franchise Agreement is the right to receive and supply energy purchased under the Vogtle PPA to Customers and otherwise satisfy JEA’s obligations under the Vogtle PPA.
- F. JEA and Newco desire to provide electric service in a manner that reduces or eliminates uneconomic duplication of facilities and which promotes economic and efficient electric service to Customers in the Service Territory.

In consideration of the mutual covenants, representations, warranties, and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

¹ **Note: This draft remains subject to the ongoing review of the Office of the General Counsel of the City of Jacksonville and, as such, may require further modifications.**

**ARTICLE I
THE RIGHTS AND OBLIGATIONS OF JEA IN THE SERVICE TERRITORY**

Section 1.1 **Customers.** All Customers shall be served by both JEA and Newco, as described in this Agreement.

Section 1.2 **Power to be Provided by JEA.** Pursuant to Article IV of the Franchise Agreement, JEA will retain all of its rights and powers set forth in Chapter 21 of the City Charter for the sole and limited purpose of receiving and supplying Vogtle Energy to Customers on an as-available basis and otherwise satisfying its obligations under the Vogtle PPA. JEA shall coordinate delivery of Vogtle Energy with Newco.

Section 1.3 **Rates for Power to be Provided by JEA.** JEA shall be solely responsible for determining the Vogtle Energy Rates and Vogtle Energy Customer Charges based on (a) the actual costs incurred by JEA under and relating to the power supplied under the Vogtle PPA, and (b) all other costs, charges, expenses and reserves incurred by JEA in connection with the delivery of the Vogtle Energy under the Vogtle PPA to each customer class. JEA has the right to charge customers monthly for all actual costs it incurs under the Vogtle PPA, regardless of whether Vogtle units 3 and 4 are generating power during the period for which the costs are incurred. Newco shall not have the right or authority to establish or change the Vogtle Energy Rates or Vogtle Energy Customer Charges. JEA does not have the right or authority to establish additional charges above and beyond charges necessary to satisfy the actual costs of the Vogtle PPA.

**ARTICLE II
THE RIGHTS AND OBLIGATIONS OF NEWCO IN THE SERVICE TERRITORY**

Section 2.1 **Newco’s Responsibility.** Pursuant to Section 1.01 of the Franchise Agreement, contemporaneously herewith, the City of Jacksonville will grant Newco the exclusive franchise, right and privilege of providing electric services (as defined therein) within the Franchise Area (as defined therein), except as otherwise reserved by and to JEA.

Section 2.2 **Power to be Provided by Newco.** Newco will bear sole responsibility for providing customer power needs in excess of the power purchased under the Vogtle PPA and any additional power required to meet customer needs in the event power from the Vogtle PPA is not available. Such power shall be sourced and supplied by Newco at its own expense with costs passed on to Customers. Additionally, such costs incurred from providing the electric service shall not be included in the Vogtle Energy Customer Charges in the Consolidated Bills. In providing the electric service, Newco shall furnish electric service that is sufficient, adequate and efficient upon terms as required by the Florida PSC.

Section 2.3 **Transmission and Distribution.** Newco shall be required to maintain, operate and make needed improvements in the transmission and distribution system needed to serve Customers in the Service Territory and to provide JEA with transmission and distribution services as needed to deliver the Vogtle Energy to Customers pursuant to the Transmission Agreement and the Distribution Agreement.²

Section 2.4 **Adequate Service and Reliable Operation.** Newco shall be responsible for coordinating system dispatch, providing load balancing services, back-up power in the event of outages and

² **Note to Draft:** Provision to provide additional detail on the Newco’s obligations to maintain the transmission and distribution systems to ensure adequate service to Customers and reliable operation of the grid, if, and to the extent, such detail herein would be helpful to the Florida PSC in their review.

all other capabilities and services (including ancillary services) needed to ensure adequate service to Customers and reliable operation of the grid in the Service Territory.

Section 2.5 **Rates for Power Provided by Newco.** Subject to the Florida PSC approval and as required by Law, Newco shall be solely responsible for determining the Newco Energy Rates and Newco Energy Customer Charges. JEA shall not have the right or authority to establish or change the Newco Energy Rates or Newco Energy Customer Charges.

Section 2.6 **Billing and Collections.** Pursuant to that certain Billing and Collections Agreement, between JEA and Newco (the “Billing and Collections Agreement”), JEA shall retain Newco to provide a comprehensive range of billing and collections services with respect to the Vogtle Energy Customer Charges. All such amounts shall be incorporated as a separate line item into each Customer’s Consolidated Bill which shall also include Newco Energy Customer Charges. Newco shall be responsible for generating Consolidated Bills on a monthly basis and for promptly remitting to JEA all Vogtle Energy Customer Payments collected from Customers.

Section 2.7 **Customer Service.** Newco shall be solely responsible for all customer service activities except for the provision of Vogtle Energy by JEA as described in this Agreement.

ARTICLE III TRANSFER OF CUSTOMERS

Section 3.1 **Transfer of Customers.** Upon the approval of this Agreement by the Florida PSC and all other necessary regulatory approvals and the Closing, all Customers shall be transferred to Newco and served by JEA and Newco as described in this Agreement. The Parties shall cooperate for the purpose of giving notice of such transfer and shall work together to minimize any service interruptions or Customer disruptions.

Section 3.2 **Transition of Billing and Collection Services.** The services included in Schedule A of the Billing and Collections Agreement shall be transitioned from JEA to Newco pursuant to the terms therein.

Section 3.3 **Customer Deposits.** JEA shall transfer all deposits made by the Customers to Newco. Newco shall not increase any Customer’s deposit requirement solely because such Customer was transferred from JEA to Newco.

Section 3.4 **Assignment of Rights.** All easements, street light contracts, and joint use agreements held by JEA relating to the service of Customers in the Service Territory shall be assigned to Newco pursuant to the terms of the Purchase Agreement.

ARTICLE IV IMPLEMENTATION AND DURATION OF THIS AGREEMENT

Section 4.1 **Commission Approval.** This Agreement is subject to the authority of the Florida PSC, whose approval of this Agreement is a precondition to it becoming effective. Neither JEA nor Newco shall be bound to this Agreement until such approval has been obtained. JEA and Newco recognize that, after such approval, the Florida PSC has continuing jurisdiction over this Agreement pursuant to Florida law. The Parties agree to (i) jointly petition the Florida PSC for approval of this Agreement, (ii) support this Agreement and the joint petition before the Florida PSC and (iii) take all reasonable steps to secure the Florida PSC’s approval of this Agreement.

Section 4.2 **Duration.** This Agreement shall continue and remain in effect until (i) the Florida PSC, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing or (ii) the Vogtle PPA expires, terminates or JEA’s obligations under the Vogtle PPA otherwise conclude. In the event of clause (ii) herein, Newco shall file a petition with the Florida PSC to terminate JEA’s interest and involvement in the Service Territory, thereby leaving Newco as the sole electric utility in the Service Territory. For the duration of this Agreement, no portion of the Service Territory may be served by either JEA or Newco in any manner contrary to this Agreement.

**ARTICLE V
MISCELLANEOUS**

Section 5.1 **Bulk Power Supply for Resale.** No provision of this Agreement shall be construed to prevent either Party from providing bulk power supply to wholesale customers for resale purposes wherever they may be located. In addition, no provision of this Agreement shall be construed as applying to bulk power supply for resale.

Section 5.2 **No Assumption of Liabilities.** By virtue of this Agreement alone, JEA and Newco each assume no financial obligations or liabilities of the other Party.

Section 5.3 **Notices.** Any notice, request, instruction or other document to be given hereunder by any Party to the other shall be in writing and delivered personally or sent by (a) registered or certified mail, postage prepaid, (b) email or (c) overnight courier:

If to JEA: c/o the Office of the General Counsel
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202
Attention: General Counsel
E-mail: [•]

with a copy (which shall not constitute notice) to: [•]
Attention: [•]
E-mail: [•]

If to Newco: [•]
Attention: [•]
E-mail: [•]

with a copy (which shall not constitute notice) to: [•]
Attention: [•]
E-mail: [•]

or to such other persons or addresses as may be designated in writing by the Party to receive such communication as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving Party (i) upon actual receipt, if delivered personally; (ii) three (3) Business Days after deposit in the mail, if sent by registered or certified mail; (iii) upon receipt if sent by email and received by 5:00 pm (Eastern Time), on a Business Day (otherwise the next Business Day) (*provided* that if given by email such notice, request, instruction or other document shall be followed up within one (1) Business Day by dispatch pursuant to one of the other methods described herein); or (iv) on the next Business Day after deposit with an overnight courier, if sent by an overnight courier.

Section 5.4 **Rules of Construction.**

(a) **Construction.** Each Party acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged between the Parties shall be deemed the work product of the Parties and may not be construed against any Party by reason of its preparation. Accordingly, any rule of Law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted it is of no application and is hereby expressly waived.

(b) **Interpretation.** All references in this Agreement to Annexes, Exhibits, Articles, Sections and clauses refer to the corresponding Annexes, Exhibits, Articles, Sections and clauses of this Agreement unless expressly provided otherwise. The table of contents and headings appearing at the beginning of any Articles, Sections or clauses of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, or clauses and shall be disregarded in construing the language contained therein. The words “this Agreement,” “herein,” “hereby,” “hereunder” and “hereof” and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words “this Article,” “this Section,” “this clause” and words of similar import, refer only to the Article, Section or clause hereof in which such words occur. The word “including” (in its various forms) means “including, without limitation.” Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained herein shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms and shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. References to any Person include the successors and permitted assigns of that Person. References to any applicable Law refer to such applicable Law as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated under such statute) and references to any section of any Law include any successor to such section, unless otherwise specifically indicated. Unless the context otherwise requires, all references to days means calendar days.

Section 5.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 5.6 Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter, including all documents or communications, whether oral, written or electronic, submitted or made in connection with the negotiation and execution of this Agreement.

Section 5.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign or delegate its rights or obligations hereunder without the prior written consent of the other Party. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 5.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties 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.

Section 5.9 Amendment and Modification; Waiver. This Agreement may be altered, amended, modified, enlarged or supplemented only by an agreement in writing signed by each of the Parties and approved by the Florida PSC. 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. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 5.10 Amendment to Ancillary Agreements. Any amendment, modification or supplement to the Billing and Collections Agreement, the Transmission Agreement, or the Distribution Agreement must be consistent with the intent of this Agreement.

Section 5.11 Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to conflicts of laws principles that would result in the application of the laws of any other jurisdiction. ANY ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE IN THE CIRCUIT COURT OF THE STATE OF FLORIDA IN DUVAL COUNTY, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT IN ANY SUCH ACTION. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT DELIVERED IN ACCORDANCE WITH SECTION 5.3 HEREOF SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION BROUGHT IN SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN SUCH COURT THAT ANY SUCH ACTION BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 5.12 Specific Performance. The Parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy at law or in equity and the Parties hereby waive any requirement for the posting of any bond or similar collateral in connection therewith. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that (a) the other Party has an adequate remedy at law, or (b) an award of specific performance is not an appropriate remedy for any reason at law or equity.

Section 5.13 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. Delivery of an executed signature page of this Agreement by facsimile, e-mail or other customary means of electronic transmission shall be deemed to have the same legal effect as delivery of a manually executed counterpart hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

JEA

By: _____
Name:
Title:

[NEWCO]

By: _____
Name:
Title:

ANNEX A

DEFINED TERMS

The following terms have the meanings specified or referred to in this Annex A:

“Action” means any claim, action, cause of action, demand, directive, lawsuit, appeal, arbitration, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law or in equity, in each case, by or before a Governmental Authority.

“Agreement” has the meaning set forth in the Preamble.

“Billing and Collections Agreement” has the meaning set forth in Section 2.6.

“Business Day” means any date except a Saturday, Sunday or federal holiday and any day which is a legal holiday under the law of the State of Florida or a day on which banking institutions located in the State of New York are authorized or required by Law to close.

“Closing” means the consummation of the transactions as contemplated by the Purchase Agreement.

“Consolidated Bill” means a consolidated bill processed and prepared by Newco that includes Vogtle Energy Customer Charges and Newco Energy Customer Charges.

“Customers” means end-use customers in the Service Territory.

“Distribution Agreement” means that certain Distribution Agreement, between JEA and Newco.

“Florida PSC” means the Florida Public Service Commission.

“Governmental Authority” means any federal, state or local, domestic or foreign governmental or regulatory authority, agency, commission, body, arbitrator, court, regional reliability entity, or any other legislative, executive or judicial authority.

“JEA” has the meaning set forth in the Preamble.

“Law” means any federal, state, local or foreign law, statute or ordinance, common law or any rule, regulation, legally binding standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement or permit of any Governmental Authority.

“MEAG” has the meaning set forth in Recital B.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Purchase Agreement” has the meaning set forth in Recital A.

“Newco” has the meaning set forth in the Preamble.

“Newco Energy” means the electric service furnished by Newco.

“Newco Energy Customer Charges” means Newco’s charges to Customers for Newco Energy.

“Newco Energy Rates” means the rates and other amounts to be applied in calculating the Newco Energy Customer Charges included on Consolidated Bills.

“Service Territory” has the meaning set forth in Recital C.

“Transmission Agreement” means that certain Transmission Agreement, between JEA and Newco.

“Vogle Energy” has the meaning set forth in Recital B.

“Vogle Energy Amounts” means the Vogle Energy Customer Charges and the Vogle Energy Customer Payments.

“Vogle Energy Customer Charges” means JEA’s charges to Customers for Vogle Energy.

“Vogle Energy Customer Payments” means all amounts received from Customers in respect of the Vogle Energy Customer Charges.

“Vogle Energy Rates” means the rates and other amounts to be applied in calculating the Vogle Energy Customer Charges included on Consolidated Bills, as provided by JEA to Newco from time to time.

“Vogle PPA” has the meaning set forth in Recital B.

** ** *

Exhibit A

Service Territory

(See attached.)