

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
CLERK

**DATE:** November 29, 2012

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

**FROM:** Office of the General Counsel (M. Brown) *mcb JSC*  
Division of Economics (King) *WK*  
Division of Engineering (Ellis, Watts) *EJD JWD*  
*PoE* *WPA* *CIC*

**RE:** Docket No. 120237-EU – Joint petition for approval of territorial agreement in Alachua County by Central Florida Electric Cooperative, Inc., and City of Newberry, a Florida municipal corporation.

**AGENDA:** 12/10/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECO\WP\120237.RCM.DOC

### Case Background

On September 21, 2012, Central Florida Electric Cooperative, Inc., (CFEC) and the City of Newberry (Newberry) filed a joint petition for approval of a territorial agreement (agreement) in Alachua County. Newberry and CFEC have been serving customers in the city limits without a territorial agreement since approximately 1995. The proposed agreement (Attachment A) would clearly define the boundaries of each party to allow for improvement or expansion by Newberry or CFEC without the threat of territorial disputes arising in the future. If approved, the agreement would result in the transfer of 18 customers from CFEC to Newberry. These

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customers were sent a notification letter regarding the territorial agreement and no customer has filed comments in response to the notification.

This recommendation addresses the parties' joint petition for approval of the territorial 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 of the territorial agreement in Alachua County between CFEC and Newberry?

**Recommendation:** Yes. The territorial agreement between CFEC and Newberry will not cause a detriment to the public interest; therefore, it should be approved. (M. Brown, King)

**Staff Analysis:** 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. Rule 25-6.0440(2), F.A.C., states that 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).

Newberry and CFEC have been serving customers in the city limits without a territorial agreement since approximately 1995. The agreement, filed on September 21, 2012, clearly defines the boundaries of each party to allow the utilities to improve and expand their territories without the threat of future territorial disputes. The agreement would become effective upon the Commission's approval and would remain in place for 15 years. In addition, the parties believe that the modification to the territorial boundaries will prevent duplication of capital expenditures within the proposed area of transfer. Specifically, in order to serve Nations Park, a newly constructed youth baseball stadium owned by the City and located in the south side of the city limits, CFEC or Newberry would need to install a three-phase line. Since Newberry has a right to serve its own facilities and the cost for Newberry to extend service was estimated to be less than CFEC's cost, CFEC agreed that Newberry should provide service to Nations Park.

Further, in response to staff's data request, the parties explained that:

- the modifications to the boundaries will increase operational efficiencies by shortening the response time for after-hour emergencies, repairs, and maintenance since Newberry's service area is approximately 2.5 square miles and its maintenance yard is only 2 miles from any point in its distribution system;
- the modifications to the territorial boundaries will improve customer service for the proposed transferred customers due to the proximity and availability of Newberry services to their residences;
- although 15 of the 18 proposed transferred customer accounts reside outside of the city limits of Newberry, the parties claimed that each customer has the right to participate in all city commission meetings to address issues with Newberry's electric utility;

- no customer has filed comments in response to the notification letters sent regarding the territorial agreement; and,
- if a customer is required to have a deposit with CFEC, the amount of the deposit collected by Newberry will not exceed the deposit amount imposed by CFEC. Newberry will not request a deposit if the customer was not required to have a deposit with CFEC.

The parties indicated that the transfer of the 18 customers and related facilities would be completed within 12 months. The parties also provided residential bill comparisons for the period January 2010 through March 2012, which indicate that CFEC's and Newberry's bills are similar. Thus, the 18 customers being transferred will see only minimal bill impacts.

It appears that the proposed agreement eliminates the potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. Therefore, based on the above, staff believes that the proposed territorial agreement will not cause a detriment to the public interest and should be approved.

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

**Recommendation:** Yes. If no person whose interests are substantially affected timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order. (Brown)

**Staff Analysis:** If no person whose interests are substantially affected timely files a protest to the Commission's Proposed Agency Action Order, this docket should be closed upon issuance of a Consummating Order.

**ATTACHMENT A**

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**TERRITORIAL AGREEMENT**

**between**

**Central Florida Electric Cooperative  
And City of Newberry**

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CFECity of Newberry Joint Petition  
Last Updated: 4-26-12

**AMENDED TERRITORIAL AGREEMENT**

**THIS TERRITORIAL AGREEMENT ("Agreement")**, made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF NEWBERRY, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter called "CITY") and **CENTRAL FLORIDA ELECTRIC COOPERATIVE**, an electric cooperative existing under the laws of the State of Florida (hereinafter called "COOPERATIVE"), collectively called the "Parties," amending the previous Territorial Agreement executed on or about March 26, 2012;

**WITNESSETH**

**WHEREAS**, the CITY and COOPERATIVE are each authorized and empowered to provide retail electric service to persons, firms and corporations, public and private, within the State of Florida, and pursuant to such authority presently furnish electricity and power to Customers both inside and outside of the corporate limits of the City, in Alachua County, Florida; and obligated by their corporate charter and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas;

**WHEREAS**, the Commission has previously recognized that duplication of electric facilities results in needless and wasteful expenditures, may create hazardous situations, and fails to provide the most economical and cost-effective service to the utility customer and therefore detrimental to the public interest; and

**WHEREAS**, the Commission is empowered by Section 366.04, *Florida Statutes*, to approve territorial agreements between and among municipal electric utilities and electric cooperatives; and

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**WHEREAS**, the respective areas of service of the Parties hereto are contiguous in many places within Alachua County and the CITY which may result in future duplication of service facilities unless such duplication is precluded by the Territorial Agreement; and

**WHEREAS**, the Parties desire to establish an Agreement in its entirety through this Agreement in order to gain further operational efficiencies and customer service improvements in their respective retail service territories in Alachua County, while continuing to eliminate the circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations.

**WHEREAS**, in order to delineate said retail service areas, the Parties have agreed upon a territorial boundary line in portions of the CITY, to define and delineate the retail service areas between the Parties within Alachua County and the CITY as further described herein; and

**WHEREAS**, the Parties agree that the terms and conditions as set forth in this Agreement are in the interest of both Parties and in the public interest by avoiding the unnecessary and uneconomic duplication of electric facilities; and

**WHEREAS**, the Parties acknowledge that this Agreement shall have no force and effect unless approved by the Commission;

**NOW, THEREFORE**, in fulfillment of the purposes and desires aforesaid, and to serve the public interest, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties do hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1 Territorial Boundary Lines:** As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate the areas on the map attached hereto

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as Exhibit "A" and which differentiate and divide the Cooperative Territorial Area from the City Territorial Area.

Section 1.2 Cooperative Territorial Area: As used herein, the term "Cooperative Territorial Area" shall mean the geographic areas shown on Exhibit "A" allocated to the COOPERATIVE as its retail service territory and labeled as "CFEC" on the maps contained in Exhibit "A".

Section 1.3 City Territorial Area: As used herein, the term "City Territorial Area" shall mean the geographic areas shown on Exhibit "A" allocated to the CITY as its retail service territory and labeled as "City of Newberry" on the maps contained in Exhibit "A".

Section 1.4 Distribution Lines: As used herein, the term "Distribution Lines" shall mean all lines for the flow of electric energy of either Party having a rating up to but not including 69 kV.

Section 1.5 Express Distribution Feeders: As used herein, the term "Express Distribution Feeder" shall mean a three-phase line, at distribution voltage, that transports power through the other Party's territory but serves no load within such territory.

Section 1.6 Transmission Lines: As used herein, the term "Transmission Lines" shall mean all lines for the flow of electric energy of either Party having a rating of 69 kV or over.

Section 1.7 New Customers: As used herein, the term "New Customers" shall mean all retail electric customers applying for service, whether or not at a new or existing location, to either CITY or COOPERATIVE after the effective date of this Agreement, and located within the territorial area of either Party at the time such application is made.

Section 1.8 Existing Customers: As used herein, the term "Existing Customers" shall mean all retail electric customers receiving service on or before the effective date of this Agreement from either Party.

Section 1.9 Extra-Territorial Customers: As used herein, the term "Extra-Territorial Customers" shall mean all retail electric customers with a Point of Use located in the territorial area of one Party but who are receiving service from the other Party on the Effective Date of this Agreement.

Section 1.10 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 under this Agreement, irrespective of where the customer's point of connection or metering is located.

Section 1.11 Service Facilities: As used herein, the term "Service Facilities" shall mean all substations, poles, wires, cables, lighting, equipment, meters, transformers, capacitors, switchgear, monitoring and control devices, together with related equipment, facilities and property rights, used solely or useful solely in furnishing electricity to customers.

Section 1.12 Commission: As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.13 Effective Date: As used herein, the term "Effective Date" shall mean the date of the Commission's final order granting approval of this Agreement in its entirety.

**ARTICLE II**  
**AREA DESIGNATIONS AND NEW CUSTOMERS**

Section 2.1 Service Areas: The Cooperative Territorial Area, as shown on the geographic area shown on Exhibit "A", is hereby set aside to COOPERATIVE as its retail

service area for the term hereof; and the City Territorial Area, as shown on the geographic area shown on Exhibit "A", is hereby set aside to the CITY as its retail service area for such period, and, except as otherwise specifically provided herein, neither Party shall deliver any electric energy across any Territorial Boundary Line for use at retail in the territorial area of the other.

Section 2.2 New Customers: The Parties shall each have the right to provide retail electric service to all New Customers within their respective territorial areas. Neither Party shall hereafter serve or offer to serve a New Customer located in the territorial area of the other Party except on an interim basis as provided in Section 2.3 below.

Section 2.3 Interim Service: The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may dictate 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 instances, 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 Point of Use 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 6.1 hereof. 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.

Section 2.4: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Agreement in which either Party is inadvertently providing retail electric service to a Point of Use located within the service area of the other Party, service to such Point

of Use will be transferred to the other Party. Until such transfer can be completed, the service provided by the Party inadvertently serving the Point of Use will be deemed temporary in accordance with the provisions of Section 2.3 above, which the serving Party shall accept. The electric facilities of the transferring Party used solely to provide electric service to the Point of Use subject to such transfer may also be transferred, at the option of the receiving Party, in return for compensation determined in accordance with Section 3.3 below. Any such transfer shall be completed within 12 months of the discovery of the inadvertent error.

Section 2.5: 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 service is not permitted under this Agreement as approved by the Commission, and shall refer the prospective New Customer to the other Party.

**ARTICLE III**  
**TRANSFER OF CUSTOMERS**

Section 3.1 In General: In order to achieve the operational efficiencies and other benefits contemplated by the Proposed Agreement in a timely manner, all Extra-Territorial Customers shall be transferred to the Party in whose Territorial Area such customers are located at the earliest practical time, consistent with sound utility practices and reasonable customer notice. The Parties expect the transfer of Extra-Territorial Customers to be completed within twelve months from the Effective Date and will notify the Commission if circumstances require additional time to complete the transfer. The Extra-Territorial Customers subject to transfer hereunder are listed by name and service address on Exhibit "B" hereto.

Section 3.2 Transfer of Facilities: If Service Facilities are transferred pursuant to Sections 2.4 or 3.1 above, the receiving Party may elect to purchase the Service Facilities of the transferring Party related exclusively to serving the Extra-Territorial Customers for an amount determined in accordance with Section 3.3(a) below.

Section 3.3 Compensation for Transferred Customers and Facilities: All services subject to transfer, together with the service facilities related thereto shall be transferred in the following manner and for the following considerations:

- a) Compensation for Service Facilities. The CITY shall pay the COOPERATIVE in cash, the amount established in this section. If Service Facilities are transferred pursuant to Sections 2.4 or 3.1 above, the CITY shall compensate the COOPERATIVE in an amount based upon the replacement cost (new), less depreciation calculated on a straight line basis over the life of the asset (service facility) as determined from the COOPERATIVE's books and records, and the cost to the COOPERATIVE for reintegration of its remaining system to the extent such reintegration costs are reasonably required by sound utility practices, but in no event shall the fair market value be less than twenty (20) percent of replacement cost. The replacement cost shall be determined by COOPERATIVE's replacement cost and then depreciated as shown on Exhibit "C".
- b) Compensation for Transferred Customers. In addition to any compensation due in Section (a), the CITY will pay the at the time of the transfer of each service transferred an amount equal to the product of COOPERATIVE's gross charge per kilowatt hour (which amount includes the customer charge) for service to such location at the time of transfer multiplied by the total kilowatt hours used for electric

service at such location for either the immediately preceding twenty-four (24) month period in which the account was served at the service location, or a twenty-four (24) month period annualized in the event less the twenty-four (24) months are billed during the preceding year as shown on Exhibit "D".

- c) Compensation for Street and Security Lights. In addition to compensation due per Sections (a) and (b) above, the amount to be paid for street and security lights transferred shall be an amount equal to the total billings for such security lights for the immediately preceding twenty-four (24) month period in which the account was served at the service location, or a twenty-four (24) month period annualized in the event less than twenty-four (24) months are billed during the preceding year as shown on Exhibit "D".
- d) Transfer Instruments. With each transfer, the COOPERATIVE will make, execute and deliver to the CITY a conveyance, deed or other instrument of transfer as is appropriate in order to convey all rights, title and interest of the COOPERATIVE in any Service Facilities, rights-of-way, easements, road permits, or other rights.
- e) Deposits. All deposits and or membership will be refunded directly to Extra-Territorial Customers as per Central Florida Electric Cooperative, Inc. policy.
- f) Time of Payment. All payments from the CITY to the COOPERATIVE determined in accordance with this section shall be made in cash within thirty (30) days of the related transfer. The compensation provided by the CITY to the COOPERATIVE pursuant to this paragraph (a) through (d) shall not exceed the sum of \$77,806.66

**OPERATION AND MAINTENANCE**

**Section 4.1 Facilities to Remain:** All generating plants, transmission lines, substations, distribution lines and related facilities now used by either Party in conjunction with their respective electric utility systems, and which are used directly or indirectly and are useful in serving customers in their respective service areas, shall be allowed to remain where situated and shall not be subject to removal hereunder; provided, however, that such Party shall operate and maintain said lines and facilities in such manner as to minimize any interference with the operations of the other Party.

**Section 4.2 Joint Use:** The Parties hereto realize that it may be necessary, under certain circumstances and in order to carry out this Agreement, to make arrangements for the joint use of their respective service facilities. In such event, arrangement shall be made by separate instruments incorporating standard engineering practices and providing proper clearances with respect thereto.

**Section 4.3 Express Distribution Feeders:** Either Party may maintain, operate and/or erect new Express Distribution Feeders in the territorial area of the other Party; provided, however, that the Party shall construct, operate and maintain said feeders in a manner so as to minimize any interference with the operation of the other Party's facilities.

**Section 4.4. Party's Right to Serve Own Facilities:** Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the CITY or COOPERATIVE to serve any of its existing business or operational facilities, including such facilities hereinafter constructed that are located in the other party's territorial area. This provision shall be limited to be CITY or COOPERATIVE owned, funded and operated projects.

**ARTICLE V**  
**PREREQUISITE APPROVAL**

**Section 5.1 Florida Public Service Commission Approval:** The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof.

**Section 5.2 Liability in the Event of Disapproval:** In the event approval pursuant to Section 6.1 is not obtained, neither Party will have any claim against the other arising under this Agreement.

**ARTICLE VI**  
**DURATION**

**Section 6.1:** This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the Commission's approval of this Agreement.

**ARTICLE VII**  
**CONSTRUCTION OF AGREEMENT**

**Section 7.1 Intent and Interpretation:** This Agreement shall be construed and interpreted to give full effect to the intention of the Parties for entering into this Agreement, which is to avoid needless and uneconomic costs associated with unnecessary duplication of electric service facilities by either Party that would likely result if the Parties did not agree as provided herein.

**Section 7.2 Bulk Power Supply 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 Agreement shall be construed as applying to a bulk power supply for resale purposes.



Section 7.3 Other Electric Utilities: Nothing in this Agreement is intended to define, establish or affect in any manner the rights of any other electric utility not a Party to this Agreement with respect to the furnishing of retail electric service.

Section 7.4 Franchise Fee Agreement: Nothing contained in this Agreement shall preclude the COOPERATIVE from entering into a subsequent franchise fee agreement with the CITY.

**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 Agreement, the only terms and conditions agreed upon are those set forth herein, and no amendment to, alteration or modification of this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, signed by both Parties, and approved by the Commission. This Agreement supersedes any and all territorial agreements previously entered into by the Parties.

Section 8.2 Third Parties, Successors and Assigns: Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation other than the Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of any shall be binding only upon the Parties hereto and their respective representatives, successors and assigns.

Section 8.3 Notices: Notices and other written communications contemplated by this Agreement shall be deemed to have given if sent by certified mail, postage prepaid, by prepaid private courier, or by confirmed facsimile transmittal, as follows:

To the COOPERATIVE:

General Manager,  
Central Florida Electric Cooperative, Inc.  
P O Box 9  
Chiefland, Florida 32644  
Facsimile 352-493-4499

To the CITY:

City Manager,  
City of Newberry  
P. O. Box 369  
Newberry, Florida 32669  
Facsimile 352-472-1799

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.

Section 8.4 Severability: the invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 8.5 Costs and Attorney's Fees: In the event legal action is taken to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover all costs incurred, including reasonable attorney's fees, including such costs and fees incurred in any appellate proceeding.

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals by  
the appropriate and authorized officials of each Party.

CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC. on this 7 day of May,  
2012,  
ATTEST:

By: Randy Mikell  
Randy Mikell, President  
Central Florida Electric Cooperative, Inc .

By: Gregory V. Beauchamp  
Gregory V. Beauchamp  
Attorney, Central Florida Electric Cooperative, Inc.

CITY OF NEWBERRY on this 14<sup>th</sup> day of May, 2012,  
ATTEST:

By: William H. Conrad  
Honorable William H. Conrad, Mayor

By: Keith R. Ashby  
Keith Ashby, City Manager

By: Gayle B. Fons  
Gayle B Fons, City Clerk

Approved as to form and legality:

By: S. Scott Walker  
S. Scott Walker  
Attorney, City of Newberry

