

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Clay Electric
Cooperative and the City of Newberry,
Florida for approval of a territorial
agreement in Alachua County

Submitted for filing:
Docket Number: _____
December 5, 2016

JOINT PETITION TO APPROVE TERRITORIAL AGREEMENT

Clay Electric Cooperative, Inc. (CEC) and the City of Newberry, Florida (Newberry) (collectively the Joint Petitioners or the Parties) pursuant to Florida Statutes §366.04(2)(d) and Rule 25-6.0440, F.A.C., jointly petition the Florida Public Service Commission (the Commission) for approval of a territorial agreement (the Agreement) in Alachua County, and in support thereof, present as follows:

1. The Joint Petitioners are electric utilities organized under the laws of Florida and are subject to the regulatory jurisdiction of the Commission pursuant to Florida Statutes §366.04(2).
2. CEC's principal office is located in Keystone Heights, Florida. Newberry's principal office is located in Newberry, Florida.
3. For the purposes of this Joint Petition, the contact information of the Joint petitioners shall be that of their respective undersigned attorneys, and all pleadings, notices, and other communications in this matter should be served on the Joint Petitioners' undersigned attorneys.
4. The Joint Petitioners previously were under a territorial agreement approved by Commission in Docket No. 910678EU and Order No. 25080 dated September 18, 1991

and subsequently amended in Docket No. 001834 and Order No. PSC-01-0566-PAA-EU on March 12, 2001. That agreement as amended expired on September 18, 2009.

5. To best avoid the duplication of services and wasteful expenditures, as well as to best protect the health and safety of the public from potentially hazardous conditions, the Joint Petitioners have negotiated the proposed new Agreement delineating their respective service boundaries in Alachua County. The Agreement is attached hereto as Attachment A, along with accompanying maps and written descriptions delineating the territorial boundaries to which the Parties have agreed. The modified territorial boundaries are depicted in the Territorial Boundary Maps attached as Exhibit A and written descriptions of the territorial boundaries are included in Exhibit C as required by Rule 25-6.0440(1)(a) F.A.C. This proposed Agreement has been negotiated for a term of thirty (30) years and shall renew for consecutive five year periods unless either party provides written notice of termination at least twelve (12) months prior to the renewal date.
6. The Joint petitioners expect that the transfers of all customers affected by this agreement will be completed within 12 months of the Effective Date and will notify the Commission in writing if circumstances require additional time.
7. In this agreement two (2) customers are being transferred from CEC to Newberry. One of the customers is a residential customer and the other is a general service commercial customer. Prior to the filing of this joint petition, and in accordance with Rule 25-6.0440(1)(d) F.A.C., the affected customers subject to transfer have been sent written notification of this proposed Agreement. Sample copies of the letters providing such notification are attached as Exhibit D. As of the time of filing no negative responses to the

notices have been received. A summary of all of the negative responses, if any, will be provided to the Commission by supplemental filing.

8. The Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest. The Agreement will avoid the duplication of services and wasteful expenditures, as well as protect the health and safety of the public from potentially hazardous conditions. For these reasons, the Joint Petitioners believe and represent that the Commission's approval of the Agreement is in the public interest.

WHEREFORE, CEC and Newberry respectfully request that the Commission grant this Joint Petition and Approve the Agreement.

DATED this 5th day of December, 2016.

Respectfully submitted,

CLAY ELECTRIC COOPERATIVE, INC.

By: /s/ John H. Haswell

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CITY OF NEWBERRY, FLORIDA

By: /s/ S. Scott Walker

S. Scott Walker
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527 E. University Avenue
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(352) 372-1282

ATTACHMENT A

Territorial Agreement

Clay Electric Cooperative, Inc.

And

The City of Newberry Florida

Alachua County

TERRITORIAL AGREEMENT

THIS AGREEMENT, made and entered into as of this 10th day of October, 2016, 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 **CLAY ELECTRIC COOPERATIVE, INC.**, an electric cooperative existing under the laws of the State of Florida (hereinafter called "Clay"), collectively called the "Parties";

WITNESSETH

WHEREAS, the City and Clay are both 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 of Newberry, in Alachua County, Florida; and

WHEREAS, the Florida Public Service Commission (FPSC) previously approved a Territorial Agreement between the parties by virtue of Order No. 25080 in Docket No. 910678-EU issued on September 18, 1991, which was subsequently amended by Order Approving Amendment to Territorial Agreement, Order No. PSC-01-0566-PAA-EU in Docket No. 001834-EU issued on March 12, 2001; and

WHEREAS, the term of the Territorial Agreement as amended was 18 years from the date of the FPSC's approval of the agreement, and such term expired on September 18, 2009; and

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

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

WHEREAS, in order to delineate said retail service areas, the Parties have agreed upon a territorial boundary line in portions of the City of Newberry, to define and delineate the retail service areas between the Parties within the City of Newberry and Alachua County 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 FPSC;

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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
INCORPORATION OF RECITALS.

Section 1.1 The above recitals are true and correct and are incorporated herein as if set forth in full.

ARTICLE II
DEFINITIONS

Section 2.1 Territorial Boundary Lines: As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate the areas on the map attached hereto as Exhibit A and which differentiate and divide the Clay Territorial Area from the City Territorial Area.

Section 2.2 Clay Territorial Area: As used herein, the term "Clay Territorial Area" shall mean the geographic area shown on Exhibit A lying within the shaded areas labeled "Clay Electric".

Section 2.3 City Territorial Area: As used herein, the term "City Territorial Area" shall mean the geographic area shown on Exhibit A lying within the shaded area and labeled "City of Newberry".

Section 2.4 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 2.5 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 2.6 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 2.7 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 Clay after the effective date of this Agreement, and located within the territorial area of either party at the time such application is made.

Section 2.8 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 2.9 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 2.10 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 2.11 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 2.12 Annexed Area: As used herein, the term "Annexed Area" shall mean any area presently located in Clay Territorial Area and subsequently annexed by and to the City of Newberry.

Section 2.13 Effective Date: As used herein, the term "Effective Date" shall mean the date of the Florida Public Service Commission's final order granting approval of this Agreement in its entirety.

ARTICLE III
AREA DESIGNATIONS AND NEW CUSTOMERS

Section 3.1 Service Areas: The Clay Territorial Area, as herein defined, is hereby set aside to Clay as its retail service area for the term hereof; and the City Territorial Area, as herein defined, 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 3.2 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 3.3 Interim Service: Where either party entitled to serve a New Customer pursuant to Section 2.2 above believes that the extension of its facilities to such New Customer would not be appropriate or compatible with its existing operational requirements but would be compatible with its future plans, the party may, in its discretion, request the other party to provide service to the New Customer on an interim basis. Such request shall be made in writing and the other party shall promptly notify the requesting party if it will accept or decline the request. If such request is accepted, the party providing interim service shall be deemed to do so only on behalf of the requesting party, who shall remain entitled to serve the New Customer to the same extent as if it had provided service in the first instance. At such time as the requesting party elects to begin providing service directly to the New Customer, after reasonable written notice to the other party, such other party shall cease providing interim service and, thereafter, service shall be furnished to the New Customer in accordance with Sections 2.1 and 2.2 above.

Section 3.4 Transfer: Two customers will be transferred in this agreement. Those customers are identified in Exhibit B.

Section 3.5 Compensation: Because there are only two (2) customers being transferred from Clay to the City, there will be no compensation due from either party.

Section 3.6: 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.

Section 3.7 Bulk Power Supply for Resale: Nothing herein shall be construed to prevent either party from providing bulk power supply to wholesale customers for resale purposes wheresoever they may be located. Further, no other provision of this agreement shall be construed as applying to bulk power for resale.

ARTICLE IV
OPERATION AND MAINTENANCE

Section 4.1 Facilities to Remain: All generating plants, transmission lines, substations, distribution lines and related service 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 either party 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; provided, however, that such facilities are used in connection with that party's primary business as an electric, water, wastewater, natural gas or telecommunications utility, and where such service is feasible and does not in any way interfere with or hinder the other party from serving its customers within its service area in a reliable and cost effective manner.

ARTICLE V
ANNEXATION

Section 5.1 Annexed Areas: The City shall have no right to acquire by eminent domain, condemnation, or otherwise any customers or facilities of Clay in any portion designated as the Clay Territorial Area. The City and Clay may enter into franchise agreements regarding any portion of the Clay Territorial Area which is within the city limits of the City, or is subsequently annexed into the city limits of the City.



ARTICLE VI
PREREQUISITE APPROVAL

Section 6.1 Florida Public Service Commission Approval: The provisions of this agreement are subject to the regulatory authority of the FPSC, and appropriate approval by the FPSC of the provisions of this agreement shall be a prerequisite to the validity and applicability hereof.

ARTICLE VII
DURATION

Section 7.1: This agreement shall remain in effect from the date of approval of this agreement by the FPSC for a term of thirty (30) years. At the end of the initial thirty (30) year term and the end of any subsequent renewal term, this agreement shall automatically renew for a term of five (5) additional years. Each party may terminate this agreement by giving notice to the other party one (1) year before the expiration of the initial term or any subsequent five (5) year renewal term. Upon termination, either party may petition the FPSC to change the terms of this agreement.

ARTICLE VIII
CONSTRUCTION OF AGREEMENT

Section 8.1 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.

ARTICLE IX
MISCELLANEOUS

Section 9.1 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 FPSC. This agreement supersedes any and all territorial agreements previously entered into by the Parties.

Section 9.2 Other Electric Utilities: Nothing in this agreement is intended to define, establish or effect 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 9.3 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.

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Section 9.4 Notices: Notices given hereunder shall be deemed to have been given to the City if send by U.S. Mail postage prepaid, by courier for which a receipt is obtained, or by hand delivery to:

City Manager
City of Newberry
Post Office Box 369
Newberry, Florida 33669

and as to Clay if sent in a similar manner to:

General Manager
Clay Electric Cooperative, Inc.
Post Office Box 308
Keystone Heights, Florida 32656


Either party may change the address for notices at any time by designating in writing to the other party such new address, and giving notice thereof in writing in the same manner as provided herein.

Section 9.5 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 9.6 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.

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

ATTEST:



John Henry Whitehead, Its Secretary

CLAY ELECTRIC COOPERATIVE, INC.

By: 

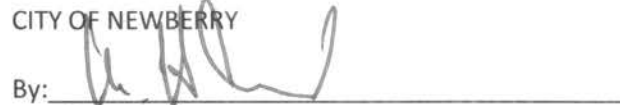
Dewitt Hersey, Its President

ATTEST:



Judy Rice, Its City Clerk

CITY OF NEWBERRY

By: 

Bill Conrad, Its Mayor

Approved as to form and legality:

CEC/City of Newberry
Territorial Agreement

EC


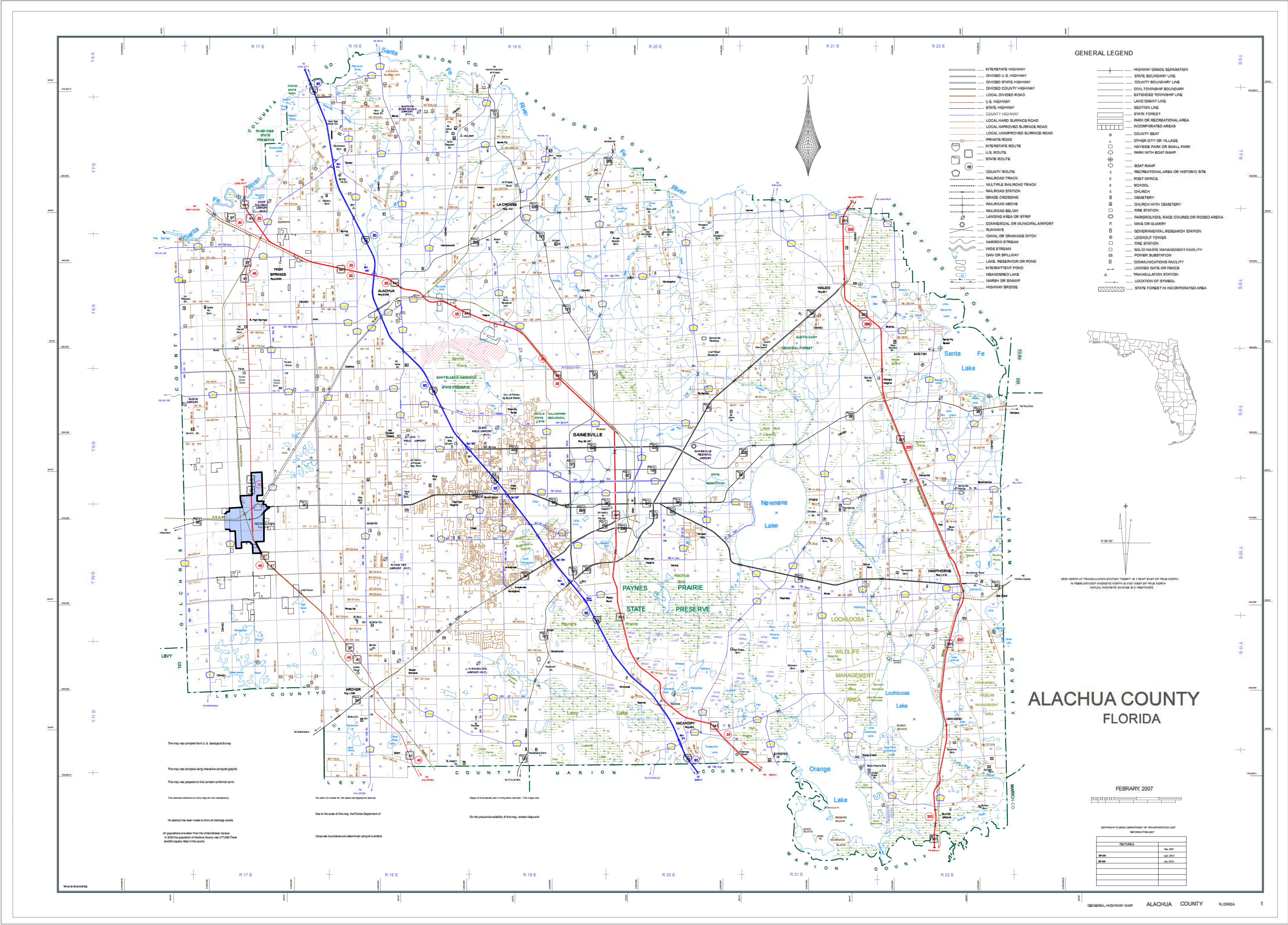
By: 
Scott Walker, Esquire
Attorney, City of Newberry

EXHIBIT A

**MAPS DEPICTING THE TERRITORIAL BOUNDARY LINES AND SERVICE
TERRITORIES OF CLAY ELECTRIC COOPERATIVE AND THE CITY OF
NEWBERRY IN ALACHUA COUNTY**

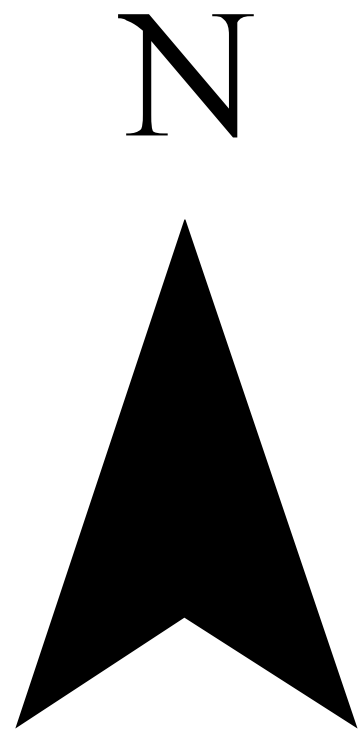
City of Newberry - Clay Electric Territory Agreement

Florida Department of Transportation County Road Map

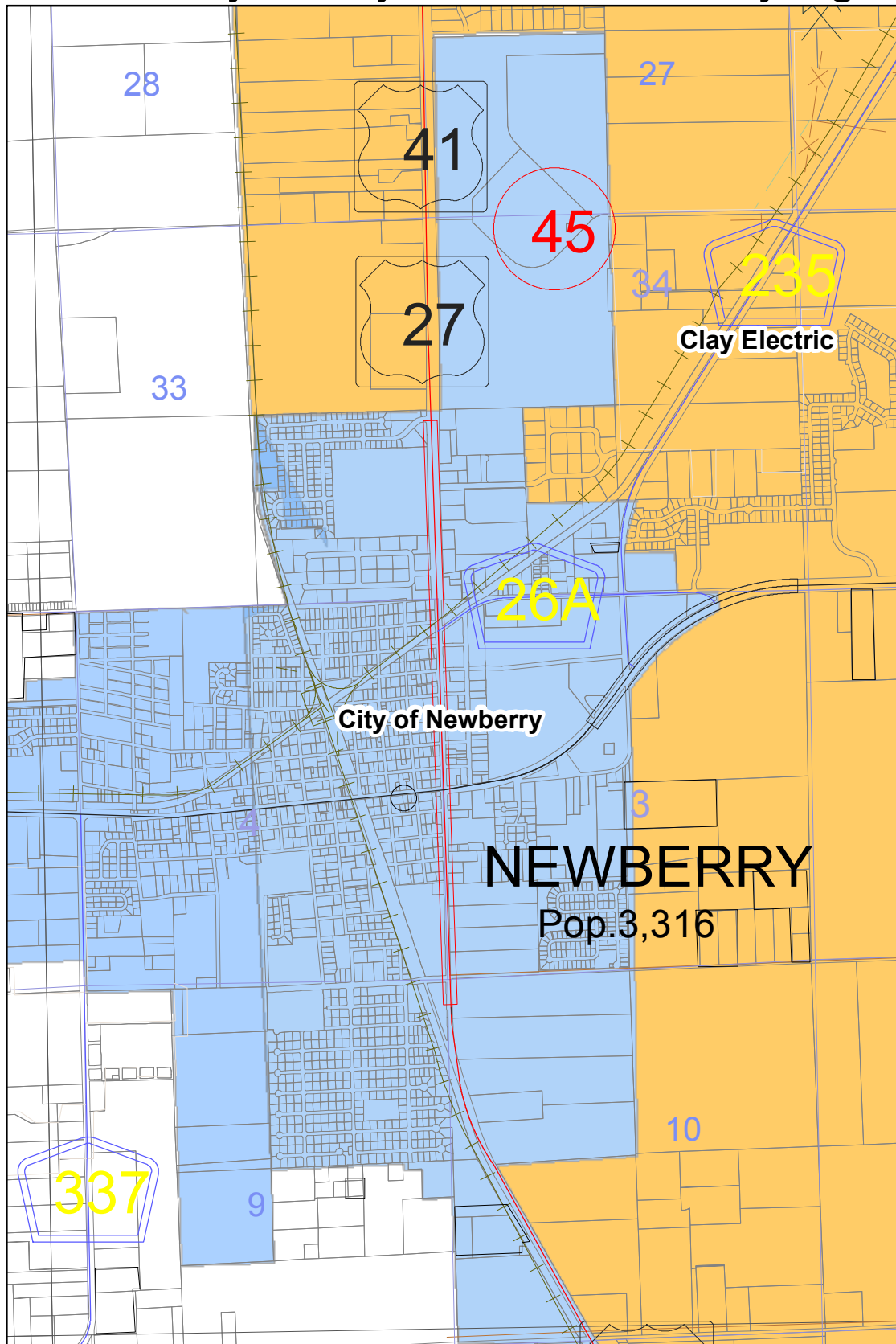


Territory

- City of Newberry
- Clay Electric



City of Newberry - Clay Electric Territory Agreement



Territory



-  City of Newberry
-  Clay Electric



EXHIBIT B

**CUSTOMERS TO BE TRANSFERRED
FROM CLAY ELECTRIC TO CITY OF NEWBERRY**

EXHIBIT B

Exhibit B

Extra-Territorial Customers served by CEC

to be Transferred to the City of Newberry

No.	County	Customer	Premise Address	CEC Meter #
1	Alachua	Don Green	2301 SW SR 45 32669	84483
2	Alachua	Norfleet Const Grp LLC	2301 SW SR 45 32669	8772579

EXHIBIT C

**WRITTEN DESCRIPTIONS OF THE TERRITORIAL AREAS
SERVED IN ALACHUA COUNTY**

EXHIBIT C

Alachua County - Written Description of the Territorial Boundary Lines

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Description</u>
28	9	17	Clay Electric Cooperative, Inc (CEC) serves the Eastern 1/2 of this section which is adjacent to US 41 and west of the CSX railroad. Newberry has no facilities in this section.
33	9	17	Clay Electric Cooperative, Inc (CEC) serves the NE 1/4 of this section which is adjacent to US 41 and west of the CSX railroad. Newberry has facilities in the SE 1/4 this section adjacent to US 41 and West of the CSX railroad.
27	9	17	Clay Electric Cooperative, Inc (CEC) serves all of this section except the SW 1/4 which is adjacent to US 41
34	9	17	Clay Electric Cooperative, Inc (CEC) serves the majority of the Eastern 1/2 of this section which is adjacent to SR 235. Newberry serves the majority of the W 1/2 of this section which is adjacent to US 41, State Road 235 and SR 26. All areas that are delineated on the map in this section are along parcel lines.
3	10	17	Clay Electric Cooperative, Inc (CEC) serves the majority of the Eastern 1/2 of this section which is adjacent to State Road 26 and 15th Ave. Newberry serves the Western 1/2 of this section which is adjacent to US 41, SR 26 and 15th Ave. All areas that are delineated on the map in this section are along parcel lines.

EXHIBIT C

Alachua County - Written Description of the Territorial Boundary Lines

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Description</u>
10	10	17	Clay Electric Cooperative, Inc (CEC) serves the majority of this section with the exception of the NW 1/4 of this section. Newberry serves the NW 1/4 of this section which is adjacent to US 41 and 15th Ave. All areas that are delineated on the map in this section are along parcel lines. This is the location of one transfer customer in the entire territorial agreement.

EXHIBIT D

**SAMPLE COPIES OF LETTERS PROVIDING NOTICE OF THE TERRITORIAL
AGREEMENT TO MEMBERS OR CUSTOMERS SUBJECT TO TRANSFER**

November XX, 2016

SERVICE LOCATION XXXXXXXX NEWBERRY, FL XXXXX

Dear XXXXXXXXXX;

Clay Electric Cooperative, Inc. (CEC) and The City of Newberry (Newberry) have entered into a new territorial agreement that designates electric service boundary lines within the city limits of Newberry located in Alachua County for both electric utilities. The new agreement comes after negotiating a previously expired agreement.

The new agreement will be sent to the Florida Public Service Commission (FPSC). If approved by the FPSC, your electric service will be transferred to Newberry within three years of approval by the FPSC.

This territorial agreement will enable each electric utility to service its customers more reliably and economically. The FPSC has previously recognized the benefits of territorial agreements and encourages utilities to enter into this type of agreement.

To provide you a rate comparison, from the most recent published rate available on the FPSC website, the residential rate of CEC for 1,000 Kilowatt-Hours(kWh) was \$111.90. For the same month, Newberry's residential rate for 1,000 Kilowatt-Hours(Kwh) was \$113.50. These rates of both utilities are subject to periodic change and may be raised or lowered in the future.

If you should have any questions or concerns about the agreement, please contact me at 352-372-8543 or at dthomas@clayelectric.com

Sincerely,

Derick R Thomas

Director of Member and Public Relations