

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** October 21, 2021

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

**FROM:** Division of Economics (Guffey) *JGH*  
Office of the General Counsel (Sandy, Crawford) *JSC*

**RE:** Docket No. 20210131-EU – Joint petition for approval of territorial Agreement in Calhoun, Jackson, and Washington Counties between Gulf Coast Electric Cooperative, Inc. and West Florida Electric Cooperative Association, Inc.

**AGENDA:** 11/02/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On August 5, 2021, Gulf Coast Electric Cooperative, Inc. (Gulf Coast) and West Florida Electric Cooperative Association, Inc. (West Florida), collectively the joint petitioners, filed a petition seeking Commission approval of a Territorial Agreement (Agreement) delineating their respective retail service boundaries in Calhoun, Jackson, and Washington counties. The proposed Agreement is the joint petitioners' first Agreement applicable to the petitioners' service boundaries specific to Calhoun, Jackson, and Washington counties.<sup>1</sup> The Agreement is Attachment A and composite maps depicting the proposed boundaries is Attachment B to this recommendation.

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<sup>1</sup> Responses 1 and 2 in Staff's First Data Request, Document No. 11046-2021.

Docket No. 20210131-EU

Date: October 21, 2021

The joint petitioners assert that Gulf Coast and West Florida each have electric facilities adjacent to each other in Calhoun, Jackson, and Washington counties. The joint petitioners negotiated the proposed Agreement to establish defined retail area service boundaries in order to avoid duplication of facilities and expenditures, avoid hazardous conditions, and serve their current and future customers in a safe manner.

During the review process, staff issued two data requests to the joint petitioners to which responses were received on September 10, 2021 and September 21, 2021. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Territorial Agreement in Calhoun, Jackson, and Washington counties between Gulf Coast Electric Cooperative, Inc. (Gulf Coast) and West Florida Electric Cooperative Association, Inc. (West Florida)?

**Recommendation:** Yes, the Commission should approve the proposed Territorial Agreement in Calhoun, Jackson, and Washington counties between Gulf Coast and West Florida. The approval of this Agreement will not be a detriment to the public interest and it will enable Gulf Coast and West Florida to avoid duplication of facilities and expenditures, avoid hazardous conditions, and serve their current and future customers in a safe manner. The proposed Agreement between Gulf Coast and West Florida should become effective on the date the Commission order approving the Agreement becomes final and no longer subject to judicial review. (Guffey)

**Staff Analysis:** Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), F.A.C., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the Agreement will cause a detriment to the public interest, the Agreement should be approved.<sup>2</sup>

### The Proposed Territorial Agreement

In response to staff's first data request, the joint petitioners stated Gulf Coast does not currently serve in any municipalities within the service territory subject to this Agreement, but over the term of the Agreement, Gulf Coast estimates that it will serve approximately 5,383 customers.<sup>3</sup> Currently, West Florida provides service in the Town of Grand Ridge (in Jackson County), and in the Town of Wausau (in Washington County) and over the term of the Agreement, West Florida estimates it will serve approximately 18,370 customers (including existing customers in Grand Ridge and Wausau) within its service territory in Calhoun, Jackson, and Washington counties.<sup>4</sup> In responses to staff's second data request, the joint petitioners confirmed that both Gulf Coast and West Florida have the capacity and ability to serve their expected future customers without negatively impacting their existing customer base. The joint petitioners also affirm that the proposed Agreement would enhance the service reliability by avoiding any potential uneconomic duplication of facilities and hazardous conditions.<sup>5</sup>

Pursuant to Paragraph 5 of the petition, there are no customer transfers contemplated in this Agreement. Therefore, no notice to customers is required pursuant to Rule 25-6.0440, F.A.C. Pursuant to Section 3.1 of the Agreement, there will be no electric facilities transferred between the two cooperatives.<sup>6</sup> Section 1.10 of the Agreement states that, as of the date of this

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<sup>2</sup> *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

<sup>3</sup> Responses 3 and 5 to Staff's First Data Request, Document No. 11046-2021.

<sup>4</sup> Responses 4 and 6 to Staff's First Data Request, Document No. 11046-2021.

<sup>5</sup> Responses 2 and 4 to Staff's Second Data Request, Document No. 11323-2021.

<sup>6</sup> Responses 1 and 3 to Staff's Second Data Request, Document No. 11323-2021.

Agreement, there are no extra-territorial customers.<sup>7</sup> If the parties discover extra-territorial member-customers, they will be transferred to the appropriate cooperative within 12 months of discovering the inadvertent service error pursuant to Section 2.4 of the Agreement.

The duration of this proposed Agreement is 30 years pursuant to Section 5.1. Thereafter, the Agreement may automatically be extended for succeeding 5-year terms. The Agreement may be terminated by either party after the expiration of the initial 30-year term or succeeding 5-year term by providing one year prior notification to the other party to terminate the Agreement.

### **Conclusion**

After review of the petition, the proposed Agreement, and the joint petitioners' responses to staff's data requests, staff believes that the proposed Agreement is in the public interest and will enable Gulf Coast and West Florida to serve their customers in an efficient manner. As such, staff believes that the Commission should approve the proposed Agreement in Calhoun, Jackson, and Washington counties between Gulf Coast and West Florida. The approval of this Agreement will not be a detriment to the public interest and it will enable Gulf Coast and West Florida to avoid duplication of facilities and expenditures, avoid hazardous conditions, and serve their current and future customers in a safe manner. The proposed Agreement between Gulf Coast and West Florida should become effective on the date the Commission order approving the Agreement becomes final and no longer subject to judicial review.

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<sup>7</sup> Pursuant to Section 1.10 Extra-Territorial Customers shall mean any person receiving retail electric service from either Gulf Coast or West Florida on the effective date of this agreement who are located in the territorial area of the other party established by this agreement.



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

**Recommendation:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Sandy, Crawford)

**Staff Analysis:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

Territorial Agreement Between  
Gulf Coast Electric Cooperative, Inc.  
And  
West Florida Electric Cooperative Association, Inc.  
Calhoun, Jackson and Washington Counties

**AGREEMENT**

**Section 0.1:** Gulf Coast Electric Cooperative, Inc. (“GCEC”) and West Florida Electric Cooperative Association, Inc. (“WFECA”) (collectively, the “Parties”, and individually, a “Party”) enter into this Territorial Agreement (the “Agreement”) on this 29th day of July, 2021.

**WITNESSETH:**

**Section 0.2:** WHEREAS, GCEC by virtue of Chapter 425, Florida Statutes, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, governmental agencies and political subdivisions, and to other persons, and pursuant to such authority, presently, furnishes electricity and power to members and customers in areas of Calhoun, Jackson, and Washington Counties, Florida<sup>1</sup>; and

**Section 0.3:** WHEREAS, WFECA by virtue of Chapter 425, Florida Statutes, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, governmental agencies and political subdivisions, and to other persons, and pursuant to such authority, presently, furnishes electricity and power to members and customers in areas of Calhoun, Jackson, and Washington Counties, Florida<sup>2</sup>;

**Section 0.4:** WHEREAS, the respective areas of service of the Parties are contiguous in many places in Calhoun, Jackson, and Washington Counties, and the Parties seek to minimize costs to their respective rate payers by avoiding duplication of generation, transmission and distribution facilities; and

**Section 0.5:** WHEREAS, the Florida Public Service Commission (“Commission”) has previously recognized that any such duplication of facilities results in needless and wasteful expenditures and may create hazardous conditions, both being detrimental to the public interest; and

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<sup>1</sup> GCEC also presently furnishes retail electric service in Bay, Gulf and Walton Counties; however, GCEC’s service areas in those counties are not contiguous to any WFECA service areas and therefore are not part of this Agreement.

<sup>2</sup> WFECA also presently furnishes retail electric service in Holmes County ; however, WFECA’s service areas in that county are not contiguous to any WFECA territorial areas and therefore are not part of this Agreement.

**Section 0.6:** WHEREAS, the Parties desire to continue to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous conditions, and in furtherance of such desire have established Territorial Boundary Lines to delineate their respective retail Territorial Areas in Calhoun, Jackson, and Washington Counties, subject to the approval of the Commission; and

**Section 0.7:** WHEREAS, the Commission is empowered by section 366.04(2)(d), Florida Statutes, to approve territorial agreements between electric utilities, including rural electric cooperatives, has often recognized the wisdom of such territorial agreements, and has held such agreements are advisable in the public interest.

**Section 0.8:** NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, which shall be construed as interdependent, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1:** Incorporation. The above recitals are hereby incorporated into, and are part of, this Agreement.

**Section 1.2:** Territorial Boundary Line(s). As used herein, the term “Territorial Boundary Line(s)” shall mean the boundary lines described and depicted on the annotated maps attached hereto as **Composite Exhibit “A”**, which differentiate and divide the GCEC Territorial Areas from the WFECA Territorial Areas in Calhoun, Jackson, and Washington Counties.

**Section 1.3:** GCEC Territorial Area. As used herein, the term “GCEC Territorial Area” shall mean the geographic areas in Calhoun, Jackson, and Washington Counties allocated to GCEC as its retail service territory and labeled as “GCEC” on the maps contained in Composite Exhibit “A.”

**Section 1.4:** WFECA Territorial Area. As used herein, the term “WFECA Territorial Area” shall mean the geographic areas in Calhoun, Jackson, and Washington Counties allocated to

WFECA as its retail service territory and labeled as “WFECA” on the maps contained in Composite Exhibit “A.”

**Section 1.5:** Transmission Line. As used herein, the term “Transmission Line” shall mean any electric line of either Party having a rating of 69 kV or greater.

**Section 1.6:** Distribution Line. As used herein, the term “Distribution Line” shall mean any electric line of either Party having a rating of up to, but not including 69 kV.

**Section 1.7:** Person. As used herein, the term “Person” shall have the same inclusive meaning given to it in section 1.01(3), Florida Statutes.

**Section 1.8:** New Customer. As used herein, the term “New Customer” shall mean any person that applies to either GCEC or WEFC for retail electric services after the Effective Date of this Agreement at a Point of Use in the Territorial Area of either Party.

**Section 1.9:** Existing Customer. As used herein, the term “Existing Customer” shall mean any person receiving retail electric service from either GCEC or WFECA on the Effective Date of this Agreement.

**Section 1.10:** Extra-Territorial Customers. As used herein, the term “Extra Territorial Customers” shall mean any person receiving retail electric service from either GCEC or WFECA on the Effective Date of this Agreement who are located in the Territorial Area of the other Party established by this Agreement. As of the date of this Agreement there are no extra-territorial customers.

**Section 1.11:** 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, wherein such Party shall be entitled to provide retail service under this Agreement, irrespective of where the customer’s point of delivery or metering is located.

**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 on which the final Order of the Commission granting approval of this Agreement in its entirety becomes no longer subject to judicial review.

**ARTICLE II**  
**AREA ALLOCATIONS AND SERVICE TO CUSTOMERS**

**Section 2.1: Territorial Allocations.** Except as otherwise specifically provided herein, during the term of this Agreement, GCEC shall have the exclusive authority to furnish retail electric service within the GCEC Territorial Area and WFECA shall have the exclusive authority to furnish retail electric service within the WFECA Territorial area. The Territorial Boundary Line shall not be altered or affected by any change that may occur in the corporate limits of any municipality or county through annexation or otherwise unless such change is agreed to in writing by the Parties and approved by the Commission.

**Section 2.2: Service to New Customers.** The Parties agree that neither of them will knowingly serve or attempt to serve any new customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Section 2.3 of this Agreement.

**Section 2.3: Temporary Service.** The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer’s Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area, such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer’s Point of Use is located, the other Party may agree, in writing, to temporarily provide service to such New Customer. Prior to the commencement of temporary service, the Party providing such service shall inform the New Customer of the temporary nature of such service and that the other Party will ultimately serve the customer. In the event any such temporary service exceeds a period of one year, the Parties shall submit a list of said temporary services exceeding one year to the Commission for approval.

In conjunction with such discontinuance, the Party providing temporary service shall be compensated by the requesting Party in accordance with Section 3.4 for its distribution facilities

used exclusively to provide such service, which the other Party may elect to acquire, but the other Party shall not be entitled to compensation for any loss of revenues for the period during which such temporary service is provided.

Subject to the exceptions for temporarily providing service provided for in the immediately preceding paragraph, in the event that a New Customer or 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 such a request or application shall refer the New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the Commission, and shall notify the other Party of such request or application.

**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 customer's Point of Use located within the Territorial Area of the other Party, service to such customer will be transferred to such other Party, and service by the other Party shall be established at the earliest practical time, but in any event, within twelve (12) months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be temporary service provided and governed in accordance with Section 2.3 above.

### **ARTICLE III** **OPERATION AND MAINTENANCE**

**Section 3.1: Facilities to Remain.** Except as expressly provided herein, a generating plant, transmission line, substation, distribution line or related facility now or hereafter constructed or used by either party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its customers by either of the Parties, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each Party shall operate and maintain all such plants, lines, substations or facilities in such a matter as to minimize any interference with the operations of the other Party.

**Section 3.2:** GCEC Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of GCEC to serve any facility of GCEC located in the WFECA Territorial Area; provided, however, that GCEC shall construct, operate, and maintain its lines and facilities in such a manner as to minimize any interference with the operations of WFECA in the WFECA Territorial Area.

**Section 3.3:** WFECA Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of WFECA to serve any facility of WFECA located in the GCEC Territorial Area; provided, however, that WFECA shall construct, operate and maintain its lines and facilities in such a manner as to minimize any interference with operations of GCEC in the GCEC Territorial Area.

**ARTICLE IV**  
**PREREQUISITE APPROVAL**

**Section 4.1:** Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that agency of this Agreement in its entirety shall be an absolute prerequisite to the validity, enforceability, and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

**Section 4.2:** No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 5.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document or on account of such nonattainment of approval.

**Section 4.3:** Supersedes Prior Agreements. Upon approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the



Parties regarding their respective retail service areas in Calhoun, Jackson and Washington counties.

**ARTICLE V**  
**DURATION**

**Section 5.1:** This Agreement shall become effective upon approval by the Commission and shall continue in effect until termination, or until supplemented and amended by mutual written agreement of the Parties and approval by the Commission, but in no event for a period exceeding thirty (30) years from the Effective Date. Thereafter, the Agreement may automatically be extended for succeeding periods of five (5) years except that this Agreement may be terminated by either Party after expiration of the thirty (30) year term period or succeeding five (5) year period upon one (1) year's written notice to the other Party.

**ARTICLE VI**  
**CONSTRUCTION OF AGREEMENT**

**Section 6.1:** Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of approving and actively supervising territorial agreements between and among electric utilities under its jurisdiction in order to avoid uneconomic duplication of facilities and to protect the public health and safety from potentially hazardous conditions.

**Section 6.2:** Other Electric Utilities. Nothing in this Agreement shall restrict or affect in any manner the right of either Party to establish its retail service area with respect to the retail service territory of any other electric utility not a party to this Agreement. The Parties understand that GCEC or WFECA may, from time to time and subject to Commission approval, enter into territorial agreements with other electric utilities that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to prevent GCEC or WFECA from designating any portion of its Territorial Area under this Agreement as the service area of such other electric utility.

**ARTICLE VII**  
**MISCELLANEOUS**

**Section 7.1:** Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the Parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the Parties and approved by the Commission in accordance with Article V, Section 5.1 hereof.

**Section 7.2:** Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties of their respective successors or assigns.

**Section 7.3:** Notices. Notices and other written communications contemplated by this Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier with confirmed receipt, or by confirmed facsimile transmittal, as follows:

To GCEC.:

Mr. John Bartley  
CEO and General Manager  
Gulf Coast Electric Cooperative, Inc.  
722 W. Highway 22  
P.O. Box 220  
Wewahitchka, Fl. 32465  
(850) 639-2216  
(850) 639-5061 [Fax]


To WFECA:

Mr. Ty Peel  
Executive Vice President & CEO  
West Florida Electric Cooperative Association, Inc.  
5282 Peanut Road  
Graceville, Fl. 32440  
(850) 263-3231  
(850) 263-3726

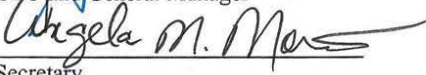
Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

IN WITNESS WHEREOF, the Parties hereby have caused this Agreement to be executed in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

GULF COAST ELECTRIC COOPERATIVE, INC.

By:   
CEO and General Manager

ATTEST:

By:   
Secretary

WEST FLORIDA ELECTRIC COOPERATIVE  
ASSOCIATION, INC.

By:   
Executive Vice President and CEO

ATTEST:

By:   
Secretary



