

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Tampa Electric)
Company and City of Bartow Electric Utility)
for Approval of First Amendment to Territorial)
Agreement)
_____)

DOCKET NO. _____

FILED: January 9, 2023

JOINT PETITION FOR APPROVAL OF FIRST AMENDMENT TO A TERRITORIAL AGREEMENT

Tampa Electric Company ("Tampa Electric" or "the company") and City of Bartow, Electric Department ("Bartow") (hereinafter collectively "Petitioners"), pursuant to Section 366.04(2)(d), Florida Statutes and Rule 25-6.0440, Florida Administrative Code, hereby jointly petition for Commission approval of the First Amendment to the Parties' Territorial Agreement:

I. Preliminary Information

1. The Petitioners' names and addresses are:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

City of Bartow
Electric Department
450 North Wilson Avenue
Bartow, Florida, 33830

2. Any pleading, motion, notice, order, or other document required to be served upon any party to this proceeding shall be served upon the following individuals:

FOR TAMPA ELECTRIC COMPANY

Paula K. Brown
regdept@tecoenergy.com

J. Jeffrey Wahlen
jwahlen@ausley.com
Malcolm N. Means
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Manager, Regulatory Coordination
Tampa Electric Company
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Tampa, FL 33601

Virginia Ponder
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Ausley McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115
(850) 222-7560 (fax)

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FOR CITY OF BARTOW ELECTRIC UTILITY

Sean R. Parker, City Attorney
sean@bosdun.com
Boswell & Dunlap LLP
245 South Central Avenue
Bartow, FL 33830
(863) 533-7117
(863) 533-7412

3. Tampa Electric is an investor-owned public utility regulated by the Commission pursuant to Chapter 366, Florida Statutes, and is a wholly owned subsidiary of Emera, Inc. Tampa Electric's principal place of business is located at 702 North Franklin Street, Tampa, Florida 33602.

4. Tampa Electric serves approximately 800,000 retail customers in Hillsborough and portions of Polk, Pinellas, and Pasco Counties, Florida.

5. Bartow owns, operates, and maintains a municipal electrical distribution system that provides retail electrical services to customers within and adjacent to the City of Bartow, Polk County, Florida.

6. This petition is filed consistent with Rule 28-106.201, F.A.C. The agency affected is the Florida Public Service Commission ("Commission"), located at 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399.

7. This Petition represents an original proceeding and does not involve reversal or modification of an agency decision or any proposed agency action.

III. Applicable Law

8. Pursuant to Section 366.04(2)(d) of the Florida Statutes, the Commission has authority to “approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction.”

9. The Commission promulgated Rule 25-6.0440 of the Florida Administrative Code, to implement this authority. Rule 25-6.0440(1) states that all territorial agreements “must be submitted to the Commission for approval.” Furthermore, Rule 25-6.0440(1)(f) states that once a territorial agreement is approved, “any modification, changes, or corrections to [the] agreement must be approved by the Commission.”

V. Statement on Disputed Issues of Material Fact

10. In compliance with paragraph (2)(d) of Rule 28-106.201, F.A.C., the Petitioners state that they are not aware of any disputed issues of material fact at this time, and do not believe any disputed issues of material fact will arise in this docket but acknowledge the possibility that other parties could assert disputed issues of material fact during this proceeding.

V. Statement of Ultimate Facts Alleged and Providing the Basis for Relief

11. On April 16, 1985, the Petitioners entered into an agreement for the purpose of creating and establishing boundary lines between their respective electric service areas in Polk County (“the Territorial Agreement”).

12. On April 30, 1985, Bartow and Tampa Electric filed a joint petition seeking Commission approval of the Territorial Agreement.

13. On December 11, 1985, the Commission entered an Order approving the Territorial Agreement. *See* Order No. 15437, issued December 11, 1985, in Docket No. 850148-EU.

14. By its terms, the Territorial Agreement remains in effect until terminated or modified, and the Commission has not approved any modifications to or termination of the agreement.¹ A copy of the Territorial Agreement is included as “**Exhibit A**” to this Petition.

15. A new residential subdivision, known as the Ranches at Lake McLeod, is currently under development near Winter Haven, Florida. The proposed development would span across the current Tampa Electric – Bartow service area boundary line. The developer has settled on the final design and layout of the subdivision, and construction in the “North Ranch” phase of the development is underway.

16. Attached hereto as “**Exhibit B**” is a Project Area Map of the planned subdivision. The red line denotes the existing service area boundary. As depicted on this map, the existing service boundary cuts through the middle of home lots, across streets, and without regard to likely utility easement areas within the subdivision.

17. Tampa Electric and Bartow have held discussions regarding the provision of service to the new subdivision. These discussions led to a mutual agreement between Tampa Electric and Bartow to modify the existing service area boundary to facilitate the most efficient, reliable, and economic means of providing service to the new subdivision.

18. The proposed boundary line would follow planned streets and along lot lines within the subdivision. This proposed boundary line is designated in yellow on **Exhibit B**.

19. After the proposed boundary change, the adjacent “West Ranch” and “South Ranch” segments of the subdivision would be wholly within Bartow’s service area. Similarly, the adjacent “East Ranch” and “Central Ranch” segments and would be almost entirely within Tampa

¹ Bartow filed a petition to modify the Territorial Agreement in 2001, but later voluntarily dismissed the petition. *See* Order No. PSC-04-0376-FOF-EU, issued April 7, 2004 in Docket No. 20011333. Tampa Electric’s request for a declaratory statement regarding the Territorial Agreement, which was addressed in a companion docket, was also dismissed. *See* Order No. PSC-04-0063-FOF-EU, issued January 22, 2004 in Docket No. 20031017.

Electric’s service area. The “North Ranch” segment, located north of Bomber Road, is wholly within Tampa Electric’s service area and was not part of the negotiations leading to this boundary line amendment.

20. There are 1150 lots in the Ranches development. Under the proposed division of the development, Tampa Electric would serve 541 lots, including 140 in North Ranch, and Bartow would serve 469 lots.

21. The proposed boundary line will provide operational benefits, including allowing both utilities to have sufficient access to the various areas to be served. The Petitioners also believe that the proposed amendment will prove the most efficient and most cost effective for the affected utilities.

22. Since construction is only underway in the North Ranch segment, which is wholly within Tampa Electric’s current service area, no facilities or customers will need to be transferred between the Petitioners.

23. There is no reasonable likelihood that the boundary amendment will cause a decrease in reliability of electrical service to the future ratepayers of Bartow and Tampa Electric. To the contrary, the Petitioners settled on the proposed amended boundary line in part to promote safe and reliable service within all segments of the Ranches.

24. Given that the proposed boundary agreement follows a logical path along planned roads and lot lines and given that each utility will have contiguous service areas within the subdivision, the proposed change will eliminate potential uneconomic duplication of facilities.

VI. Compliance with Rule 25-6.0440(1)(a)-(f), Florida Administrative Code

25. Rule 25-6.0440(1)(a), F.A.C., requires a territorial agreement submission to include a map and written description of the area. The original service area boundary map and written

description of the boundary line between the Petitioners are included in the Territorial Agreement attached as **Exhibit A**. A map of the subdivision depicting the current boundary line and proposed boundary line are included as **Exhibit B**.

26. Rule 25-6.0440(1)(b), F.A.C. requires a territorial agreement submission to include the terms and conditions of the agreement. The terms and conditions of the original Territorial Agreement remain in effect and are included in **Exhibit A**. The only change proposed to the Territorial Agreement is to modify the boundary line within the proposed subdivision.

27. Rule 25-6.0440(1)(c)-(e), F.A.C. requires a territorial agreement submission to include information regarding any transferred customers. The proposed subdivision does not yet contain any occupied homes, so there are no customers to be transferred and this information is inapplicable here.

28. Rule 25-6.0440(1)(f), F.A.C. requires submission of an official Florida Department of Transportation General Highway County map depicting the boundary lines established by the Territorial Agreement. Such a map depicting the changes to the Petitioners' service area boundary is included as "**Exhibit C**."

WHEREFORE, Tampa Electric Company and City of Bartow Electric Utility respectfully request that the Commission approve this First Amendment to the Territorial Agreement.

DATED this 9th day of January, 2023.

Respectfully submitted,



J. JEFFRY WAHLEN
MALCOLM N. MEANS
VIRGINIA PONDER
Ausley McMullen

Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY



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245 South Central Avenue
Bartow, FL 33830
(863) 533-7117

ATTORNEY FOR CITY OF BARTOW

EXHIBIT A

**TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
TAMPA ELECTRIC COMPANY
AND
THE CITY OF BARTOW, FL.**

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of APRIL, 1985, by and between TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as "TECO" and the CITY of BARTOW - Electric Department, a city incorporated and existing under the laws of the State of Florida, herein referred to as "BARTOW";

WITNESSETH:

Section 0.2 WHEREAS, TECO is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.3 WHEREAS, BARTOW is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.4 WHEREAS, the areas in which each party is supplying retail electric service are in close proximity and abut in Polk County, TECO and BARTOW desire to cooperate in the public interest in supplying service in a manner so as to avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.

Section 0.5 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 **TERM:** After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The boundary line delineating the retail electric service areas of the parties is marked on the map attached hereto and labeled Exhibit A, and said boundary line is further described in (a) and (b) as follows:

WINTER HAVEN

(a) Commence at the southeast corner of the northeast 1/4 of Section 30, Township 29, Range 26 east, run thence north along the east boundary of said Section 30 to the northeast corner of said Section 30, run thence west along the north boundary of said Section 30 to the southeast corner of the southwest 1/4 of Section 19, Township 29 south, Range 26 east, run thence north to the southeast corner of the southwest 1/4 of Section 18, Township 29 south, Range 26 east, run thence west along the south boundary of said Section 18 to the southwest corner of said Section 18, run thence north along the

west boundary of said Section 18 to the intersection of the said west boundary and the south right-of-way of State Road 559, run thence westerly in a straight line along the projected right-of-way of State Road 559 to the easterly right-of-way of line of State Road 555, run thence southwesterly along said right-of-way line to a point 900 feet west of the east boundary of Section 22, Township 29 south, Range 25, run thence south parallel to and 900 feet west of the east boundary of said Section 22 to the south boundary of said Section 22, run thence west along the south boundaries of Sections 22 and 21, Township 29 south, Range 25 east, to the southwest corner of said Section 21, run thence north along the west boundary of said Section 21 into Lake Hancock to a point of intersection with the westerly projected north boundary of Section 22, Township 29 south, Range 25 east, run thence west along the projected north boundary of said Section 21 to a point in Lake Hancock located 1,900 feet east of the southeast corner of Section 13, Township 29 south, Range 24 east, for a point of termination. All lying in Polk County, Florida.

PLANT CITY

(b) Commence at the southeast corner of the southwest 1/4 of Section 3, Township 31 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of Section 15, Township 30 south, Range 24 east, run thence east along the north boundaries of Sections 15 and 14, Township 20 south, Range 24 east, to the northeast corner of the northwest 1/4 of said Section 14, run thence

north to the center of Section 2, Township 30 south, Range 24 east, run thence west to the center of Section 3, Township 30 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 3, run thence east along the north boundary of said Section 3 to the southeast corner of the southwest 1/4 of Section 34, Township 29, south Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 34 for a point of termination. All lying in Polk County, Florida.

Section 2.2 The area generally north of said boundary line (a) and generally west of said boundary line (b) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to service to retail customers.

Section 2.3 The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s). By the execution of this AGREEMENT, the parties acknowledge that TECO may continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW.

Section 2.5 This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale," which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

Section 2.6 Nothing in this AGREEMENT is intended to affect the power plants, transmission lines, or substations of one party which are now located, or may in the future be located in the service area of the other party, and any problems between the respective parties involving these types of facilities shall be settled at the General Office level of the parties.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize and agree that both companies are subject to the jurisdiction of the Florida Public Service Commission (hereinafter called the "Commission") and further agree that this AGREEMENT shall have no force and effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. The parties further agree that the AGREEMENT, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by Order of the Commission. No modification or termination of this AGREEMENT by the parties hereto shall be effective unless and until approved by the Commission. Each party agrees to promptly notify the other in writing of any petition, application or request for modification of the AGREEMENT made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

TAMPA ELECTRIC COMPANY

BY: [Signature]
Secretary

BY: [Signature], 4-16-85
Vice President Date

ATTEST:

CITY OF BARTOW, FL

BY: [Signature]
City Clerk

BY: [Signature] APR 4 1985
Vice Mayor Date

Approved as to correctness
and form:

Approved as to substance:

By: [Signature]
City Attorney

By: [Signature]
City Manager

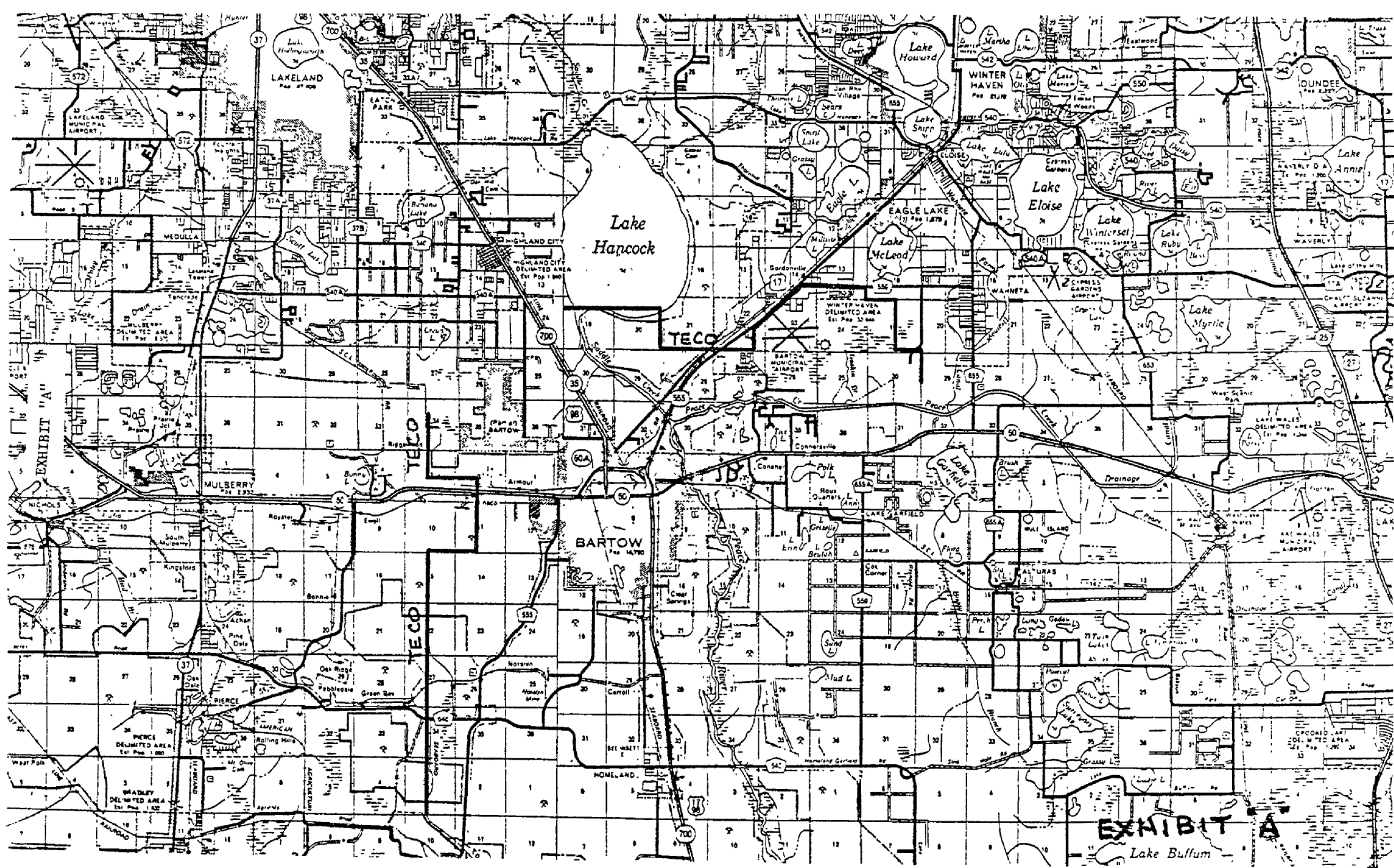


EXHIBIT A
Lake Bullum

EXHIBIT B

September 07, 2021

Tampa Electric Company
Winter Haven Engineering & Operations
1770 6th Street NW
Winter Haven FL, 33881

Attn: Greg Underwood

RE: Lake McLeod / Ranches Survey Proposal

Dear Greg:

As a follow up to your request for a boundary survey for establishing a new service territory boundary over and across the ranches in Winter Haven, FL (see sketch on page 2) please see below.

1) Survey Requirements:

- a) Specific Purpose Survey to define the new boundary. Sketch and description of new boundary. No tree location or topo.

2) Cost

- a) The cost of the Specific Purpose Survey is \$9,500.

3) Schedule

Six (6) weeks from NTP.

Clarifications:

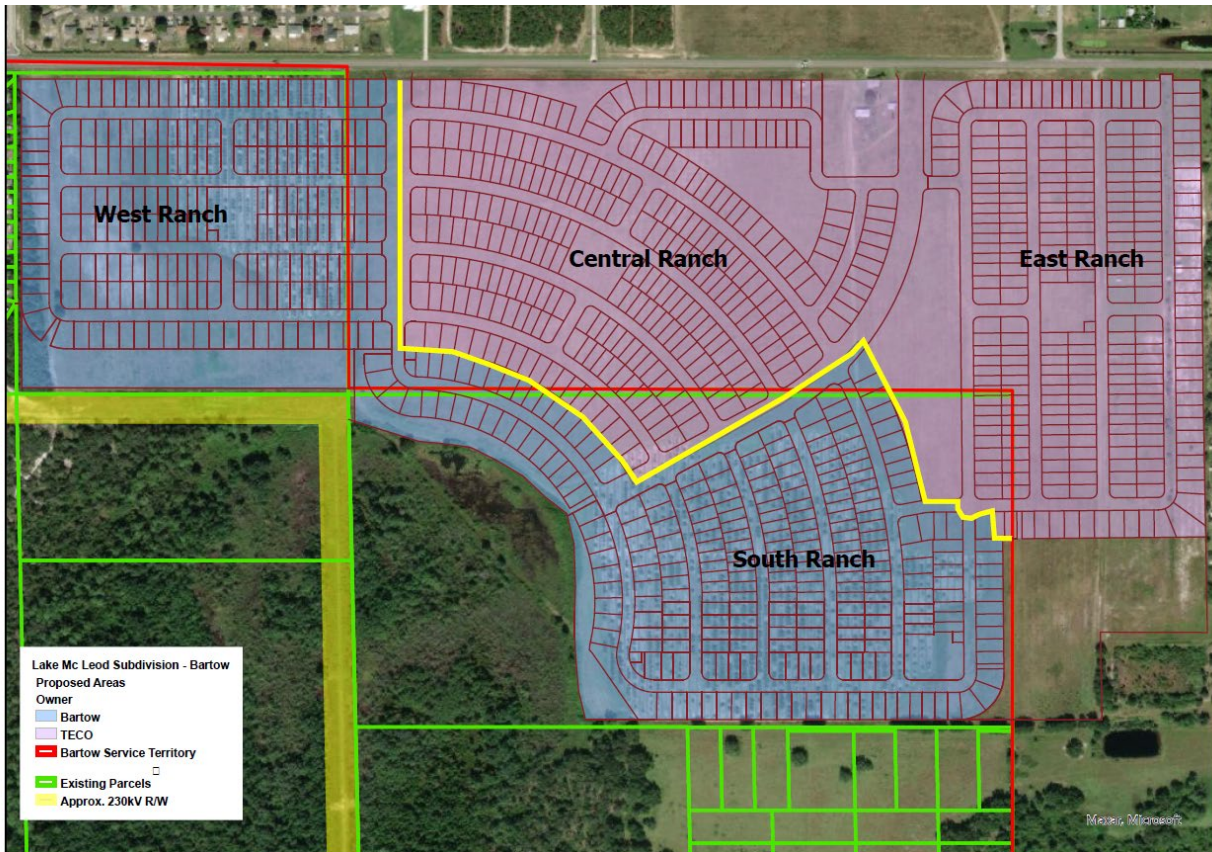
- 1) Title work to be performed by others.

We appreciate the opportunity to be of service. Please let me know if you have any questions or need any additional information regarding this proposal.



Mike Leahy, PE, PSM

Project Area Map



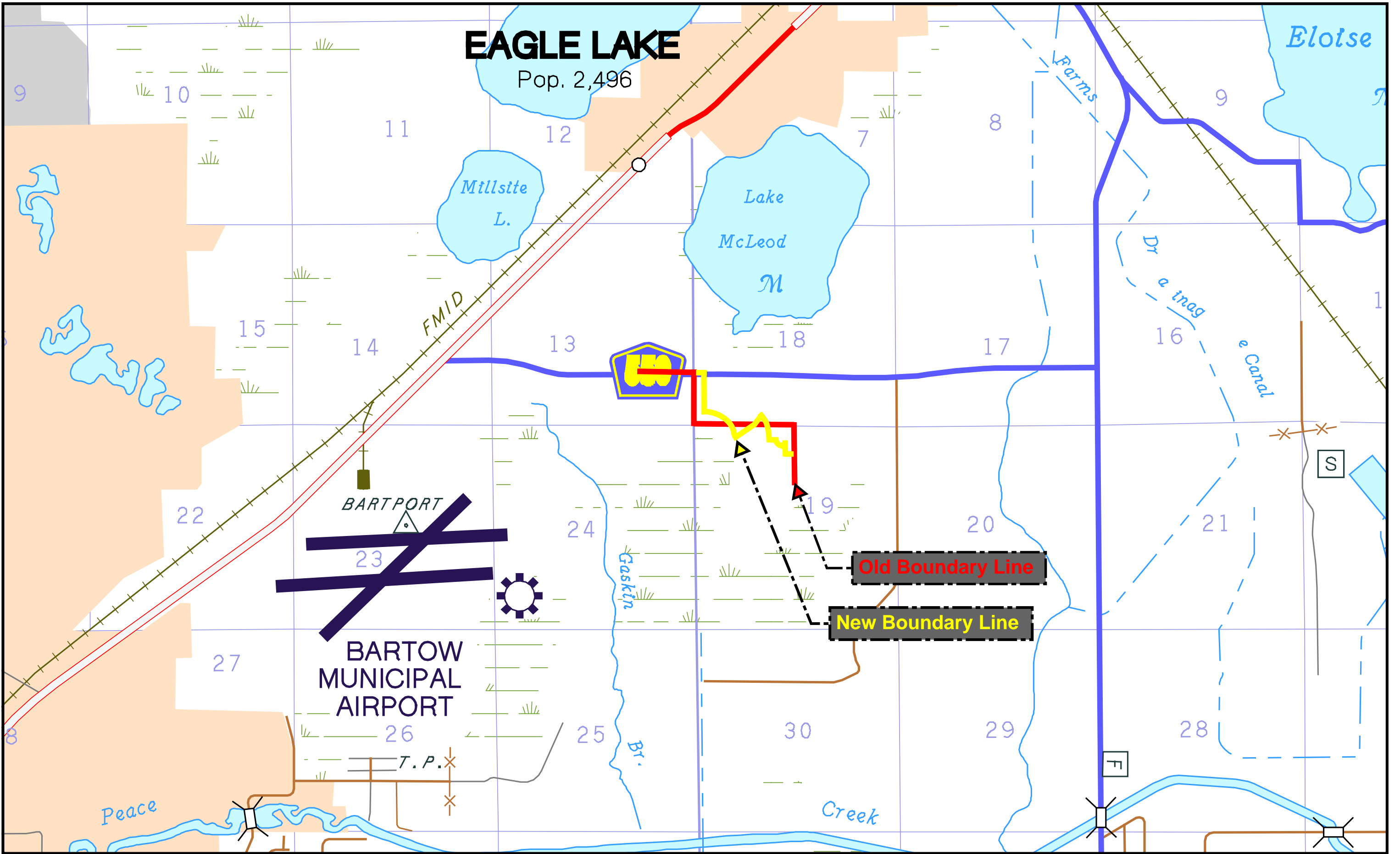
New boundary shown in yellow



EXHIBIT C

EAGLE LAKE

Pop. 2,496



BARTOW
MUNICIPAL
AIRPORT

Old Boundary Line

New Boundary Line