Regarding Federal Involvement in Service Territory Disputes

More than 49 million Americans receive their electricity from a community-owned, not-for-profit public power utility, most of which are owned and operated by the local municipality they serve. In response to local growth and development, municipalities may expand their limits through state-authorized powers of annexation. In such cases, a public power utility has the desire, right, and responsibility to grow with its city and provide electric service to newly incorporated areas.

In many cases, the annexation of areas previously served by a rural electric cooperative can lead to territorial disputes. These local disputes are solved in accordance with state law. In 1988, this fact was reaffirmed by a joint American Public Power Association (APPA) and National Rural Electric Cooperative Association (NRECA) task force on service territory disputes, which concluded these disputes should be resolved at the local and state levels.

Despite this understanding, occasional attempts have been made to legislate on this issue at the federal level with the goal of restricting or prohibiting changes in service territory for rural electric cooperatives. These efforts have included a proposal to allow the administrator of the Rural Electrification Administration to veto any rural electric cooperative territorial changes that result from annexation, stand-alone legislation to preempt state laws and effectively freeze the service territory of municipal electric utilities, and efforts to outright prohibit the condemnation of electric cooperative territory when that territory is annexed by a municipality. Though these and other efforts have been unsuccessful, they are still an unacceptable attempt to preempt state and local laws, to ban competition by locking in existing service territories, and are inconsistent with the consensus reached by the APPA and NRECA task force.

Further, these efforts are detrimental to the interests of state and local governments. A municipality may expand to attract businesses or industries to the area for the benefit of the region, to incorporate a rapidly urbanizing area, or to ensure citizens are covered by the local health department or have access to vital services like sanitation, fire, and police. In a time of great economic uncertainty for states and local governments, annexation, which is rightfully governed by the states, may be necessary to grow the local economy or provide essential services and should not be hamstrung by federal interference.

Further, in a country as large and diverse as the United States, federal law would paint with too broad a brush to accommodate the diversity in electric utility industry structures and regulatory schemes that exist within the states. For this reason, electric utility service territories and other aspects of retail electric
service are, and always have been, regulated at the state level. This wise allocation of regulatory responsibility should be respected and maintained.

NOW, THEREFORE, BE IT RESOLVED: That the American Public Power Association (APPA) strongly supports the rights of public power utilities to provide electric service within their corporate limits and adjacent urban growth areas.

BE IT FURTHER RESOLVED: That APPA strongly opposes any legislation that would do any of the following:

- Preempt state annexation laws and home rule provisions as provided for by some state constitutions;
- Prohibit the condemnation of electric cooperative territory when that territory is annexed by a municipality;
- Mandate a level of compensation to the cooperative that would render the service territory acquisition uneconomic and discourage the city from exercising its right to serve annexed areas;
- Prevent a municipality from franchising an alternative supplier to compete with the electric cooperative, or prohibit the municipality from collecting a franchise fee from a cooperative as a condition to operate within the city limits;
- Mandate a new review and/or approval process for territory disputes irrespective of existing state laws or constitutional provisions; and
- Override or restrict, in any way, any local or state rules, regulations, ordinance, constitutional provisions or laws that have been established by a public body as a matter of public interest that govern the ability of public power utilities to serve all customers in their corporate limits and adjacent urban growth areas.

Adopted at the Legislative & Resolutions Committee meeting

March 2, 2021

Sunsets in March 2029