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DOCKET# 25112

Docket No. 25112

DOCUMENT# 103381

**REQUEST OF DAVE MORGAN, MICHAEL STIEFERMAN AND JEFF TURNAGE
FOR COMMISSION OPINION ON GEORGIA POWER COMPANY'S DECISION TO
LOCATE A SUBSTATION ON ASHFORD DUNWOODY ROAD**

ORDER DISMISSING PETITION

I. INTRODUCTION

On April 26, 2007, Dave Morgan, Michael Stieferman and Jeff Turnage ("Petitioners") filed a Petition before the Georgia Public Service Commission ("Commission") requesting that the Commission 1) clarify its jurisdiction over Georgia Power Company's ("Georgia Power" or the "Company") decision regarding the siting of electrical substations, and 2) reject the Company's application to site the Ashford Substation at the intersection of Perimeter Summit Parkway and Ashford Dunwoody Road in DeKalb County. Subsequently, the Commission requested the advice of the State of Georgia Attorney General's office concerning the Commission's jurisdiction. On May 12, 2007 the Petitioners filed an Emergency Motion to enjoin Georgia Power from clearing trees or beginning construction at the Ashford Substation site. On May 15, 2007 the Company filed its Response in Opposition to the Petitioners'

Emergency Motion, and on May 17, 2007 the Petitioners filed their Reply Brief. On May 21, 2007, the Commission received the written advice that it had previously requested from the Attorney General's office (the "Attorney General Letter").

II. DISCUSSION

The Petitioners argue that the Commission has exclusive jurisdiction to oversee and approve Georgia Power's decisions to site electrical substations, citing *City of Buford v. Georgia Power Co.*, 276 Ga. 590, 591 (2003). The Petitioners state that Georgia law grants the Commission "general supervision of all . . . electric light and power companies," an authority that includes the power to "examine the affairs of all companies under [the Commission's] supervision . . . with reference to their compliance with all laws, orders of the commission, and charter requirements." O.C.G.A. § 46-2-20(a), (e). According to the Petitioners, the Supreme Court of Georgia has construed these statutory provisions to vest in the Commission exclusive jurisdiction over the siting of electrical power substations. *Buford*, 276 Ga. at 591.

In response, Georgia Power argues that enjoining the construction of the Ashford Substation would exceed the Commission's authority and impair public utility service. The Company further argues that the Commission lacks jurisdiction and legal authority to grant the Petitioners' Emergency Motion, to undertake zoning-like regulation, or to select the location of lines and substations as urged by the Petitioners. According to the Company, the relief sought by the Petitioners is contrary to the public's interest in adequate and dependable electric service and consequently should be denied.

The Commission is sympathetic to the concerns raised by the Petitioners in this matter. The Commission may, however, exercise only such jurisdiction as has been granted to it by the

General Assembly. As the Petitioners' request represents the first instance in which the Commission has been requested to exercise jurisdiction over the siting of a substation, the Commission has sought the advice of the Attorney General's office regarding the Commission's jurisdiction in this area. Having carefully considered the arguments of the Petitioners and the Company, as well as the Attorney General Letter, the Commission concludes that it has no jurisdiction in the present case over the Company's siting of the Ashford Substation.

As stated in the Attorney General Letter, the Commission has general supervisory authority over electric utilities. O.C.G.A. § 46-2-20(a). The Commission also has the authority to require electric utilities subject to its jurisdiction to "maintain such public services and facilities as may be reasonable and just," O.C.G.A. § 46-2-20(c), as well as the authority "to allocate any utility service in such manner as it deems proper in order to protect the public health, safety or welfare . . ." O.C.G.A. § 46-2-71(a). However, no statutory provision exists that expressly grants the Commission authority over the siting of electric substations. The issue, as stated in the Attorney General Letter, is whether jurisdiction over the siting of electric substations may fairly be implied from the authority granted to the Commission.

As stated in the Attorney General Letter, the fact that this Commission has "plenary authority" to regulate utilities cannot be construed to indicate that our authority over utilities is unlimited. The Commission has only such powers as the Legislature has expressly, or by fair implication, conferred upon it. As the Attorney General Letter stated:

The boundaries of the Commission's plenary authority are best defined with reference to the accomplishment of the goals entrusted to the agency by the legislature. The Commission has jurisdiction to ensure that rates for electric service are just and reasonable (O.C.G.A. § 46-2-23(a), to ensure that the electric utility has procured adequate power and the proper mix of resources to meet the demands on its system (O.C.G.A. § 46-3A-1 *et seq.*), to allocate utility service in a manner that it deems will protect the public health, safety and welfare (O.C.G.A. § 46-2-71(a), and to administer the Georgia Territorial Electric Service Act ("Territorial Act"), O.C.G.A. § 46-3-1 *et seq.* The policies underlying the Territorial Act are "(1) to assure the most efficient,

economical, and orderly rendering of retail electric service within the state, (2) to inhibit duplication of the lines of electric suppliers, (3) to foster the extension and location of electric supplier lines in the manner most compatible with the preservation and enhancement of the state's physical environment, and (4) to protect and conserve lines lawfully constructed by electric suppliers . . ." O.C.G.A. § 46-3-2.

Unless the Commission determines the decision to prohibit Georgia Power from building an electrical substation on its own land in a particular location bears a rational relationship to the accomplishment of the purposes that it was created to serve, as set forth above, it is unlikely that the courts would find that the Commission's jurisdiction extends to such an issue.

While circumstances may arise in future situations which demonstrate that the exercise of authority over the siting of a particular substation facility bears a rational relationship to the accomplishment of the purposes this Commission was created to serve, the Petitioners have provided no basis for us to make such a determination in this proceeding. The Petitioners simply state that Georgia law grants the Commission "general supervision of all . . . electric light and power companies," an authority that in the opinion of the Petitioners includes the power to "examine the affairs of all companies under [the Commission's] supervision . . . with reference to their compliance with all laws, orders of the commission, and charter requirements." According to the Petitioners, the Supreme Court of Georgia in the *Buford* case construed these statutory provisions to vest in the Commission exclusive jurisdiction over the siting of electrical power substations. The mere statement by Petitioners that this Commission has authority over the siting of substations does not act to demonstrate in any way how such authority might bear a rational relationship to the accomplishment of the purposes this Commission was created to serve. Unless such rational relationship can be demonstrated, this Commission must find that the Commission's jurisdiction does not extend to regulation of the Company's decision to site a substation at a particular site.

We also note that even if this Commission were to determine that we possessed jurisdiction to prohibit Georgia Power from locating a substation at the Ashford site, it is not clear what specific criteria we would follow for taking such action. There are no Commission rules or prior decisions to guide any decision we might be called upon to make regarding the appropriateness of any particular site. As noted in the Attorney General Letter, the Georgia Supreme Court noted in *Buford*, the Commission has no regulations governing the siting of substations.

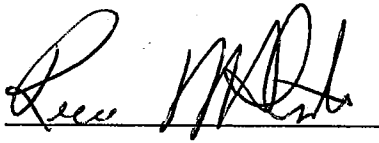
Therefore, for the reasons set forth above, the Commission finds that it does not possess the authority to regulate Georgia Power's decision to site the Ashford Substation at the intersection of Perimeter Summit Parkway and Ashford Dunwoody Road in DeKalb County. As such, the Petition filed by Dave Morgan, Michael Stieferman and Jeff Turnage is hereby **dismissed** for lack of Commission jurisdiction.

WHEREFORE IT IS ORDERED, that the Petition filed by Dave Morgan, Michael Stieferman and Jeff Turnage requesting that the Commission reject Georgia Power Company's application to site the Ashford Substation at the intersection of Perimeter Summit Parkway and Ashford Dunwoody Road in DeKalb County is hereby dismissed.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by this Commission.

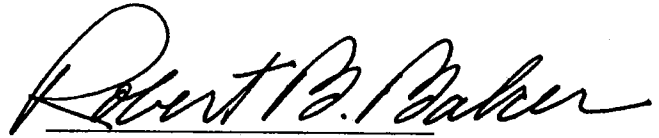
ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission during its Administrative Session on the 7th day of
June, 2007.



REECE MCALISTER
EXECUTIVE SECRETARY

6-20-07
DATE



ROBERT B. BAKER, JR.
CHAIRMAN

June 20, 2007
DATE

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of)

Request of Dave Morgan, Michael Stieferman and)
Jeff Turnage for Commission Opinion on Georgia)
Power Company's Decision to Locate a Substation on)
Ashford Dunwoody Road)

Docket No. 25112-U

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Dismissing Petition** in the above-referenced docket was filed with the Commission's Executive Secretary, and a copy of same was served upon all parties and persons listed below via hand-delivery where indicated by an asterisk, or by depositing same in the United States mail with sufficient postage thereon to insure delivery and addressed as follows:

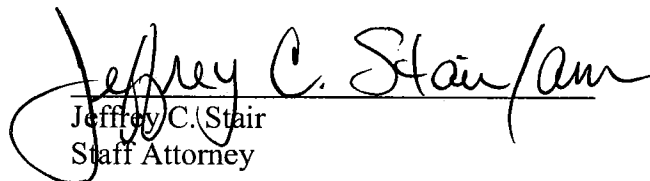
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So certified, this 25th day of June 2007.


Jeffrey C. Stair
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