**BEFORE THE PUBLIC SERVICE COMMISSION**

**STATE OF GEORGIA**

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| **SAWNEE ELECTRIC MEMBERSHIP CORPORATION,**    **Petitioner,**  **v.**  **GEORGIA POWER COMPANY,**  **Respondent.** | **Docket No. 43899** |

**ELECTRIFY AMERICA, LLC’S OPPOSITION**

**TO SAWNEE EMC’S OBJECTIONS TO THE**

**PRE-FILED DIRECT TESTIMONY OF JIGAR J. SHAH**

Comes now Electrify America, LLC (“Electrify America”), Intervenor in the above-referenced matter, and opposes Petitioner Sawnee Electric Membership Corporation’s (“Sawnee EMC”) Objections to the Pre-Filed Direct Testimony of Jigar J. Shah (“Objection”) filed with the Georgia Public Service Commission (“Commission”) on December 21, 2021.[[1]](#footnote-1) The portions of the Pre-Filed Direct Testimony of Jigar J. Shah (“Shah Direct Testimony”) to which Sawnee EMC objects address relevant supporting information regarding Electrify America, its business, its presence in the Georgia market, and the importance of the Georgia Territorial Service Act O.C.G.A. §§ 46-3-3 through 46-3-15 (“Territorial Act”) to the deployment of electric vehicle (“EV”) charging stations in Georgia. This information will assist the Hearing Officer in rendering a decision fully informed of the facts and circumstances at issue in this matter. Therefore, Sawnee EMC’s Objection to the relevancy of certain portions of the Shah Direct Testimony should be overruled.

**I. Argument and citation of Authority**

Under Georgia law, evidentiary issues before the Commission are governed by O.C.G.A. § 46-2-51 which provides that “the Commission shall not be bound by the strict technical rules of pleading and evidence but may exercise such discretion as will facilitate its efforts to ascertain the facts bearing upon the right and justice of the matters before it.” Confronted with objections to testimony or evidence, the Commission has always erred on the side of admissibility. This preference towards flexibility and admissibility has been further confirmed by the Georgia Supreme Court, which has explained:

[T]he Commission is not bound by the strict technical rules of pleading and evidence. It has been recognized by this court and by the courts of other jurisdictions that an administrative body such as the Public Service Commission may, in matters which come before it for determination, perform quasi-judicial functions as well as quasi-legislative functions . . . . The Commission is authorized by statute to adopt rules of evidence and procedure in carrying out its duties in the administration of Chapter 68 of the Code, and is not bound by strict rules of evidence in conducting its hearings. [citations omitted]. Similar statutes of other jurisdictions with respect to administrative agencies have been considered by the courts, and it has been generally held that the strict rules of evidence applicable in jury-trial cases are not applicable before quasi-legislative agencies. [citations omitted].[[2]](#footnote-2)

This bias towards liberal admissibility requirements for state public service commissions has similarly been adopted by the United States Supreme Court, which in *Consolidated Edison Co. v. National Labor Relations Board*, explained the purpose of such statutory grants to public service commissions “is to free administrative boards from the compulsion of technical rules so that the mere admission of matters which would be deemed incompetent in judicial proceedings would not invalidate the administrative order.”[[3]](#footnote-3)

Applying this precedent, Sawnee EMC bears the burden to overcome this presumption and establish that its objections should be sustained and the evidence which is the subject of the objections excluded. Sawnee EMC’s Objection has not met that burden, and as a result, should be overruled. Electrify America hereby directly responds to each of the Sawnee EMC’s objections.

**Objection: Shah Direct Testimony 4:11-5:10 (Relevance).**

**Response:** In the cited testimony, Electrify America’s witness Jigar J. Shah provided information regarding Electrify America’s background in developing a nationwide electric vehicle (“EV”) charging network and provided additional information regarding Electrify America’s business case for entering the Georgia market. This information is relevant to the Commission, in that it provides the Commission with valuable information regarding the status of the EV charging infrastructure marketplace in Georgia, the marketplace in comparison with other neighboring states, and how Georgia’s electric retail electric market impacts the buildout of EV infrastructure in Georgia. Because this matter involves whether EV charging infrastructure can participate in the retail marketplace via the Territorial Act, this information is relevant to the Commission’s analysis, and therefore the Commission should overrule Sawnee EMC’s objection of relevance.

**Objection: Shah Direct Testimony 9:14-10:7 (Relevance).**

**Response:** In the cited testimony, Electrify America’s witness Jigar J. Shah discusses the business impacts that could result if its EV charging systems are prohibited from qualifying for customer choice under the Territorial Act. These impacts to Electrify America’s business are material and relevant to this proceeding, as the Commission has full discretion to consider the market and economic impacts associated with its decision-making. Because the Commission has not yet addressed how EV charging stations may qualify for customer choice under the Territorial Act, this matter is an issue of first impression before the Commission and will set a precedent impacting nearly all EV charging infrastructure located within the state. For this reason, the Commission should be fully informed of the market impacts potentially associated with its decision. This information is therefore relevant to the Commission’s analysis, and the Commission should overrule Sawnee EMC’s objection of relevance.

**II. CONCLUSION**

For the foregoing reasons, Electrify America respectfully requests that the Commission overrule Sawnee EMC’s Objections to certain Pre-Filed Direct Testimony of Jigar J. Shah.

  Respectfully submitted this 14th day of January, 2022.

**HOLLAND & KNIGHT LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of Electrify America, LLC’s Opposition to Sawnee EMC’s Objections to the Pre-Filed Direct Testimony of Jigar J. Shah on the persons named below via email as follows:

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  Respectfully submitted this 14th day of January, 2022.

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1. Sawnee EMC subsequently filed a memorandum in support on January 5, 2022. [↑](#footnote-ref-1)
2. *Tamiami Trail Tours v. Ga. Public Serv. Com*, 213 Ga. 418 (1957) at 428–29 (citing *South View Cemetery Assn. v. Hailey*, 199 Ga. 478, 481 (34 S. E. 2d 863)). [↑](#footnote-ref-2)
3. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229 (59 Sup. Ct. 206). [↑](#footnote-ref-3)