IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAWNEE ELECTRIC MEMBERSHIP CORPORATION, Petitioner, v. GEORGIA PUBLIC SERVICE COMMISSION, TRICIA PRIDEMORE, TIM ECHOLS, FITZ JOHNSON, LAUREN "BUBBA" MCDONALD, and JASON SHAW, in their Capacities as Members of the Georgia Public Service Commission, Respondents.	)	CIVIL ACTION FILE NO. _____

PETITION FOR REVIEW OF SAWNEE EMC

Sawnee Electric Membership Corporation ("Sawnee EMC"), pursuant to the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19, hereby petitions this Court for judicial review of the final decision by the Georgia Public Service Commission (the "Commission") in a proceeding styled by the Commission as *Sawnee Electric Membership Corporation v. Georgia Power Company*, Docket No. 43899. Judicial review is necessary to correct the Commission's erroneous interpretation of the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 ("Territorial Act").

INTRODUCTION

This case involves a dispute between Sawnee EMC and Georgia Power Company over the right to provide electric service to an electric vehicle ("EV") charging station (the "Premises") located in Sawnee EMC's assigned service territory. In 1973, the Territorial Act established geographic areas within which an assigned electric supplier has the exclusive right to

provide electric service to customers, subject to certain statutory exceptions. This case is about one of those exceptions, the so-called "large load" exception. That limited exception permits qualifying premises to choose a non-territorially assigned electric supplier (i.e., "customer choice"), if the electrical service is to:

> one or more new premises . . . if utilized by one consumer and having single-metered service and a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater (excluding redundant equipment) . . . .

O.C.G.A. § 46-3-8(a).

Here, Georgia Power extended service to the Premises within Sawnee EMC's assigned territory on a claim that the EV charging station constitutes a "large load." But the Premises, which does not have a "connected load" of 900 kW and is not "utilized by one consumer," does not qualify for the large load exception.

In the proceeding below, the Commission's Hearing Official erred in finding that the Premises has a "connected load" of more than 900 kW based on the aggregate nameplate rating of certain equipment in the charging station called "rectifiers." But rectifiers do not constitute "connected load" because rectifiers do not consume electricity—they only convert electricity from alternating current (AC) to direct current (DC) and pass the same electricity downstream to other equipment that actually consumes the electricity. Here, the downstream equipment that actually consumes the electricity are the batteries of the EVs that pull up and plug into the charging station's electricity dispensers. In addition, the rectifiers on the Premises are essentially inert and inactive unless and until an EV owner drives onto the Premises and plugs in to charge their car battery. Rectifiers are like internal transformers and receptacles, which, because they do not consume electricity, are not counted as connected load under settled Commission precedent.

When the rectifiers are excluded from the load count for the Premises, the Premises does not qualify for the large load exception.

The Hearing Official also erred in finding that the Premises are "utilized by one consumer," despite there being many consumers of the electricity. The Premises operates by dispensing electricity to the many EV owners who plug the charging station's dispensers into their cars. The Georgia Supreme Court has held that the "consumer" of electricity under the large load exception is the "the user of the final product and not a buyer for resale." *Sawnee EMC v. Ga. Public Serv. Comm'n*, 273 Ga. 702, 705 (2001). In this case, the consumers are clearly the EV owners who use the electricity, not the charging station itself, which merely converts the same electricity from AC to DC.

Despite the errors in the Hearing Official's Initial Decision, the Commission affirmed and adopted the Initial Decision. Sawnee EMC seeks judicial review of the Commission's decision, which misinterpreted the Territorial Act's large load exception and failed to apply Georgia law and settled Commission and judicial precedent regarding the meaning of the terms "connected load" and "consumer."

PROCEDURAL HISTORY

1. Sawnee EMC is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Cumming, Georgia.

2. Sawnee EMC is an electric supplier governed by the provisions of the Territorial Act.

3. Tricia Pridemore, Tim Echols, Fitz Johnson, Lauren "Bubba" McDonald, and Jason Shaw are members of the Commission and are made parties hereto in their official capacities as members of the Commission.

4. This Court has jurisdiction over these proceedings for review pursuant to the Georgia Administrative Procedure Act. O.C.G.A. § 50-13-19. O.C.G.A. § 50-13-19(b) vests exclusive jurisdiction to hear petitions for judicial review concerning Commission decisions in the Superior Court of Fulton County.

5. By this Petition, Sawnee EMC seeks judicial review of the Commission's August 23, 2022, Order Affirming and Adopting Hearing Officer's Initial Decision. A copy of the Commission's order is attached hereto as Exhibit "A." A copy of the Initial Decision is attached hereto as Exhibit "B."

6. This Petition is filed within thirty (30) days of the filing of the Commission's Order. O.C.G.A. § 50-13-19(b).

FACTUAL BACKGROUND

7. The Premises at issue is an EV charging station located in the parking lot of the John's Creek Town Center Shopping Mall, at 3630 Peachtree Parkway, Suwanee, Georgia 30024, within Sawnee EMC's service territory.

8. The charging station consists of six power cabinets that are connected to four electric vehicle dispensers. Each power cabinet contains equipment called a rectifier for converting alternating electric current (AC) to direct current (DC). The nameplate input rating of each of the six rectifiers is 190 kW, totaling 1,140 kW for all six.

9. A rectifier converts, not consumes, electricity by changing the sine wave of the AC power using a process that includes rectifying the sine wave and smoothing the resultant positive sine waves. The conversion results in DC power that can be used to charge an electric vehicle's battery.

10. The rectifiers on the Premises are essentially inert unless and until a vehicle pulls up and is connected to the charger. That is because unless and until a vehicle pulls up and is connected to the charger, the rectifier is not operating to convert AC power to DC power.

11. Various auxiliary equipment at the charging station does consume some electricity, even when no electric vehicles are plugged into the dispensers, such as to operate LCD panels on the dispensers. The amount of this auxiliary energy consumption, however, would not approach 900 kW.

12. Each dispenser has two cords for charging electric vehicle batteries; one end of the cord is attached to the dispenser and the other end plugs into the vehicle. Each dispenser also has an LCD display that provides instructions and other information to the vehicle owner.

13. Over Sawnee EMC's objection, Georgia Power extended electric service to the Premises, which began operating in March or April 2021.

14. On May 21, 2021, Sawnee EMC filed a petition with the Commission requesting that it find that Sawnee EMC, and not Georgia Power, has the exclusive right under the Territorial Act to provide electric service to the Premises.

15. The matter was heard by the Commission's Hearing Officer on January 21, 2022.

16. On May 24, 2022, the Hearing Officer issued an Initial Decision ruling in favor of Georgia Power.

17. Sawnee EMC appealed the Hearing Officer's Initial Decision to the full Commission on June 23, 2022.

18. On August 23, 2022, the full Commission entered an Order summarily affirming and adopting the Hearing Officer's Initial Decision, which thereby became the final decision of the Commission.

19. The Order is a final agency decision appealable under the Administrative Procedure Act, O.C.G.A. § 50-13-19.

20. Sawnee EMC is aggrieved by the Order in that it denies Sawnee EMC its statutory right under the Territorial Act to provide electric service to the Premises.

21. Sawnee EMC has exhausted all of its administrative remedies and requests that the Commission's clearly erroneous Order be overturned.

BASIS FOR SEEKING JUDICIAL REVIEW

22. For all of these reasons and as will be more fully set forth in Sawnee EMC's briefing and argument to this Court, the Commission's Order should be overturned pursuant to O.C.G.A. § 50-13-19(h) because it is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or

(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

REQUEST FOR ORAL ARGUMENT AND OPPORTUNITY TO SUBMIT BRIEFS

Pursuant to O.C.G.A. § 50-13-19(g), Sawnee EMC requests oral argument and the opportunity to submit briefs in this matter.

WHEREFORE, Sawnee EMC respectfully requests that the Court:

1. Enter a scheduling order establishing a briefing schedule and setting a hearing for oral argument;

2. Reverse the Commission's Order;

3. Find that the Premises does not qualify for customer choice under the large load exception to the Territorial Act and that Sawnee EMC has the exclusive right to provide electricity to the Premises.

4. Grant to Sawnee EMC such other relief as the Court may deem just and proper.

Respectfully submitted this 22nd day of September 2022.

/s/ James A. Orr
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Attorneys for Petitioner Sawnee EMC

EXHIBIT A

FILED
AUG 23 2022
EXECUTIVE SECRETARY
G.P.S.C.

DOCKET# 43899
DOCUMENT# 191311

COMMISSIONERS:
TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

REECE McALISTER
EXECUTIVE DIRECTOR

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DOCKET NO. 43899

IN RE: Sawnee Electric Membership Corporation v. Georgia Power Company

ORDER AFFIRMING AND ADOPTING HEARING OFFICER'S INITIAL DECISION

This proceeding was initiated by Sawnee Electric Membership Corporation ("Sawnee") upon its submission, on May 21, 2021, to the Georgia Public Service Commission ("Commission") of Sawnee EMC's Petition with Regard to Matters arising under the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 ("Petition"). The Petition alleged that the Georgia Power Company ("Georgia Power") violated the Georgia Territorial Act ("the Act") by installing four electric vehicle ("EV") charging stations in territory exclusively assigned to Sawnee. Georgia Power claimed that it was rightfully serving the Premises under the Act's large load exception. The Commission assigned the matter to a Hearing Officer pursuant to 50-13-13(5) on July 7, 2021.

The Hearing Officer issued an Initial Decision on May 21, 2022 denying Sawnee's Petition and finding that Georgia Power had met its burden of proof in support of the use of the Act's large load exception[1].

On June 23, 2022, Sawnee EMC filed an Application for Full Commission Review of the Hearing Officer's Initial Decision pursuant to O.C.G.A. § 50-13-17(a).

On July 29, 2022, Georgia Power filed a Response to Sawnee EMC's Application for Full Commission Review. Responses were also received from Electrify America, LLC and Tesla, Inc.

[1] At the request of the parties, the hearing was delayed from November, 2021 to January, 2022 and a Revised Notice of Hearing was issued on November 19, 2021:
https://services.psc.ga.gov/api/v1/External/Public/Get/Document/DownloadFile/187719/69545

The Commission heard arguments from the parties during its Energy Committee on August 11, 2022 and voted to affirm and adopt the Hearing Officer's Initial Decision in its Administration Session on August 16, 2022.

WHEREFORE IT IS ORDERED that Commission affirms the Initial Decision of the Hearing Officer issued on May 21, 2022 and hereby adopts the Initial Decision in its entirety. By affirming the Initial Decision, the Commission expressly adopts the Hearing Officer's findings of facts and conclusions of law set forth in the Initial Decision.

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

ORDERED FURTHER, that jurisdiction over these matters 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 in its Administrative Session on the 16th day of August, 2022.

Sallie Tanner
Executive Secretary

8-23-22
Date

Tricia Pridemore
Chairman

8-23-22
Date

EXHIBIT B

FILED
MAY 24 2022
EXECUTIVE SECRETARY
G.P.S.C.

DOCKET# 43899
DOCUMENT# 190203

COMMISSIONERS:

TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
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LAUREN "BUBBA" McDONALD
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SAWNEE ELECTRIC MEMBERSHIP CORPORATION,	)	
Petitioner,	)	
v.	)	**Docket No. 43899**
GEORGIA POWER COMPANY,	)	
Respondent.	)	

INITIAL DECISION

APPEARANCES;

On behalf of Sawnee Electric Membership Corporation:

James Orr, Esq.
Lee Peifer, Esq.

On behalf of Georgia Power Company:

Steve J. Hewitson, Esq.
Allison W. Pryor, Esq.

On behalf of Tesla:

Bernice I. Corman, Esq.

On behalf of Electrify America:

Robert S. Highsmith, Jr., Esq.
Graham T. Coates, Esq.

I. Statement of Proceedings

This proceeding was initiated by Sawnee Electric Membership Corporation ("Sawnee") upon its submission, on May 21, 2021, to the Georgia Public Service Commission ("Commission") of the Petition of Sawnee EMC ("Petition"). The Petition alleged that the Georgia Power Company ("Georgia Power") violated the Georgia Territorial Electric Service Act ("the Act") by installing four electric vehicle ("EV") chargers at Johns Creek Town Center Shopping Mall located in Sawnee, Georgia.

Sawnee requested the Commission: find and determine that Georgia Power is in violation of the provisions of the Territorial Act by providing electric service to the chargers; find and determine that Sawnee EMC is the sole lawful supplier of electric service to the chargers; Order Georgia Power immediately to cease and desist from furnishing electric service to the chargers; and Order Georgia Power to disconnect the electric service provided by it to the chargers and transfer such service to Sawnee EMC.[1]

On June 21, 2021, Georgia Power denied the allegations claiming that the Premises satisfies the requirements of O.C.G.A. § 46-3-8(a) and qualifies for customer choice under the Territorial Act. The Company stated, notwithstanding the service territory assignments provided for by the Act, O.C.G.A.§46-3-8(a) permits any electric supplier to serve one or more new premises, if the premises (i) is utilized by one consumer; (ii) has single-metered connected service; (iii) has a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater; and (iv) is located outside the limits of a municipality.

Georgia Power contended that each of these criteria is met. "Georgia Power is only serving one consumer, Electrify America, at a single Premises located outside the limits of a municipality, and the Premises has single-metered connected service." The Company asserted that the connected load of the Premises at the time of initial full operation was greater than 900 kW and that the Premises consists of two 350 kW chargers and two 150 kW chargers, which are designed as an array, and the combined nameplate capacity of the four chargers together is 1,000 kW.[2]

On June 7, 2021, this matter was assigned to a Hearing Officer in accordance with O.C.G.A § 50-13-13(5). A Notice and Procedural and Scheduling Order was issued on June 27, 2021 setting out the rights of the parties and scheduling the hearing date for November 19, 2021.

Petitions for Intervention were filed by Tesla, Inc. ("Tesla") and Electrify America, LLC ("Electrify America") on August 25th, and 26th, 2021 respectively. Race Petroleum, Inc. ("Racetrac") submitted two Petitions for Intervention on September 23, 2010 and November 4, 2021. Sawnee filed an Objections to the Intervention. Race Trac later withdrew its Petitions on January 19, 2022.

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[1] Petition, p. 3.
[2] Georgia Power's Response and Answer to Sawnee EMC's Petition, p. 3.

All parties filed Direct Testimony on September 9, 2021: Sawnee submitted the testimony of Mr. Blake House, Vice President of Member Services for Sawnee EMC and Mr. Kevin Mara, a utility engineer and consultant who is the Executive Vice President of GDS Associates; Georgia Power presented the testimony of Ms. Stephanie M. Gossman, Electric Transportation Manager for Georgia Power, Mr. Harold V. Gresham, Interconnection Planning Supervisor for Georgia Power and Dr. John H. Matthews, President and Principal Investigator for an electrical engineering consulting firm John Matthews and Associates, Inc.; Electrify America presented the testimony of Jigar J. Shah, Manager for Distributed Energy and Grid Services for Electrify America; and Tesla sponsored the testimony of Patrick Bean, Global Charging and Energy Policy Lead for Tesla.

On November, 19, 2021, the parties submitted their Rebuttal Testimony: Sawnee presented Rebuttal Testimony of its previous Witnesses Mr. House and Mr.Mara; Georgia Power filed Rebuttal Testimony of Mr. Gresham and Mr. Mathews; Electrify America submitted Rebuttal Testimony of Witness Shay; and Tesla sponsored the Rebuttal of its` Direct Witness Mr. Bean.

At the request of Sawnee and Georgia Power, a Revised Hearing and Scheduling Order was issued on November, 19, 2021 setting the hearing date for January 21, 2022.

Following these filings: Georgia Power submitted Objections to Certain Testimony Prefiled by Sawnee EMC; Sawnee filed Objections to the Prefiled Testimony of (Electrify America's witness) Jigar Shah, a Response to Georgia Power's Motion to Strike and a Memo in Support of Objections to Testimony; and Electrify America filed an Opposition to Sawnee EMC's Objections to the Pre-Filed Direct Testimony of Jigar J. Shah.

Under the Georgia Administrative Procedures Act, the rules of evidence as applied in the trial of civil nonjury cases in superior courts shall be followed, but evidence not admissible thereunder may be admitted if it is of the type commonly relied upon by reasonable prudent men in the conduct of their affairs. O.C.G.A. § 50-13-15(1). Evidentiary issues before the Commission are also 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."[3] 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*

[3] Electrify America's Opposition Two Sawnee's Objection to Prefiled Testimony of Jigar Shah, p. 3.

applicable in jury-trial cases are not applicable before quasi-legislative agencies. [citations omitted].[4]

Georgia Power objected to certain Sawnee testimony regarding projected metered demand and transformer size as irrelevant to determining a customer's eligibility for the large load exception. Sawnee filed an Objection to portions of Electrify America's testimony containing what it claimed to be unnecessary information regarding Electrify America's investment strategy, business plan, profitability. After hearing arguments from the parties, the Objections were denied. The Hearing Officer has the discretion to consider materials outside the strict rules of evidence in Administrative Proceedings and may determine the appropriate probative weight to give that testimony. Furthermore, in the event a Petition for Review is granted, it is imperative that the full Commission have the entire record and all unabridged filings, testimony and exhibits available to it.

A Request for Issuance of Subpoena to Georgia Power was filed by Sawnee on January 7, 2022. Georgia Power filed an Objection to the Issuance of Subpoena and Requested an Issuance of Subpoena to Sawnee on January 11, 2022.

Subpoenas were issued by the Hearing Officer to Georgia Power and Electrify America on January 11, 2022. A Subpoena to Sawnee was issued on January 12, 2022. Electrify America filled an Opposition to Sawnee's Objection to the Prefiled Testimony of Jigar Shah and a Letter to Support of Georgia Power's Request for Issuance of Subpoena on January 14, 2022.

At the conclusion of the hearing on January 21, 2011, Exhibits were tendered and admitted into evidence. Sawnee introduced SEMC Exhibits 1-10. Georgia Power proffered Exhibits GPC 1-2. Electrify America introduced Exhibit JS-1 and Tesla submitted Exhibit 1. The parties later filed Post-Hearing Briefs and answers to questions posed by the Hearing Office on March 18, 2022. Reply Briefs were submitted on April 8, 2022.

In rendering this decision, the Hearing Officer has carefully considered the Briefs of the parties, has read the transcript and examined each of the exhibits. Based upon this review of the evidence and arguments of the parties, the Hearing Officer concludes that Georgia Power has met its burden of proof to demonstrate it is serving one consumer and that the connected load of Electrify America EV facility is 900 kW or greater at initial full operation at the Premises. For the reasons discussed below, the Petition of Sawnee is denied.

II. Matter at Issue

Whether Georgia Power has the right, under O.C.G.A.§ 46-3-8(a), to serve the Premises located in Johns Creek Town Center, 3630 Peachtree Parkway, Suwanee, Georgia 30024 (the "Premises").

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[4] *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)).

III. Contentions of the Parties

Sawnee's witness Mara argued that the four separate chargers or dispensers convert AC power to DC power for use in charging the batteries installed in electric vehicles. "The main component of such a charger is the inverter. An inverter is a device that can convert alternating electric current (AC) to direct current (DC). It does so by changing the sine wave of AC power using a process that includes rectifying the sine wave and smoothing the resultant positive sine waves. The resulting DC power can be used to charge a vehicle's battery."[5] Sawnee stated that the inverter is essentially inert unless and until a vehicle pulls up and is connected to the charger. Unless and until a vehicle pulls up and is connected to the charger, the inverter is not converting AC power to DC power.[6] Sawnee proffered Exhibit No SEMC. 4, provided by Electrify America, indicating that the projected demand for the charging site is substantially below 900 kw.[7]

Georgia Power's witness Gresham described the Premises as consisting of an EV charging array, made up of six power cabinets served by Georgia Power that are connected to four EV charging dispensers. Two of the charging dispensers are 175 kW in size (labeled as 150 kW) and two are 350 kW in size. The Company explained that the charging dispensers are powered by the six power cabinets located on the adjacent equipment pad. Each of the 150 kW dispensers are connected to one power cabinet, whereas each of the 350 kW dispensers are connected to two power cabinets. All six of the power cabinets have the same capacity. Specifically, he testified that each power cabinet has an AC-rated input of 190 kW and a DC-rated output of 175 kW, resulting in a total AC connected load of 1,140 kW.[8]

Georgia Power asserted that the customer's projected demand does not impact the Company's calculation of connected load. The Company uses the nameplate capacity of the equipment being served at the premises to determine connected load for purposes of the Territorial Act. Mr. Gresham testified that connected load is not based on a customer's expected demand, how the customer plans to ultimately use or run the equipment, or the demand of the devices when in use. It is based upon the nameplate capacity of the equipment being served at the premises. Therefore, Georgia Power claimed, the projected monthly peak demand referenced by Witness House is irrelevant to the connected load calculation.[9]

Georgia Power's Witness Mathews testified that in order for electric service providers to decide whether they can compete for a given customer it is necessary to determine the connected load. As a result, the actual metered demand cannot be used to determine connected load simply because the building has not yet been constructed. He claimed the connected load must be determined based upon the building design documents including the electrical, mechanical, and

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[5] Tr. p. 66.
[6] *Id.*
[7] Tr., pp.26-27.
[8] Tr., p. 129.
[9] Tr., pp. 134-135.

plumbing plans prepared by the building design engineers. Mr. Mathews contended that the use of these design documents has been the cornerstone of such connected load studies. Since the actual load carried by a given item of equipment, for example an electrical motor, is unknown, the manufacturer's nameplate data, which lists the rated horsepower or input current and voltage, is used to determine the connected load for this piece of equipment. Therefore, Mr. Mathews argued, it is appropriate to use the nameplate capacity in determining the connected load for purposes of the Act's large load exception. This approach, Mr. Mathews claimed, has been well accepted by the Commission for the determination of connected load.[10]

Electrify America Witness Shay testified that an electric service provider's connected load calculation is based on the AC-connected load. He claimed that the Premises has 1140 kW (1.14 MW) of AC-connected load, above the 900 kW threshold required to qualify for the large load exception under the Territorial Act. Mr. Shay suggested that more than 900 kW of power cabinets were installed at the time of initial full operation and the power electronics contained with them draw above 900 kW AC at any moment depending on the aggregate load at the four DCFC charging ports. The differential, he argued, is between the 1.05 MW DCFC charging capacity and the 1.14 MW AC-load is from losses associated with the conversion from alternating current to direct current power to serve the charging ports in addition to ancillary equipment needed to maintain operations, such as networking and customer-facing screens and the switchgear was also designed to support such a draw at the time of initial full operation of the Premises.[11]

Mr. Shay took issue with Exhibit SEMC 4 by reiterating his claim that the Act specifically refers to "connected load" for purposes of determining eligibility for the large load exception and does not refer to average metered demand, which is typically less than the aggregate peak connected load of all electrical consuming equipment installed on a customer site. Mr. Shay testified that Electrify America has repeatedly used actual maximum connected load as determinative of eligibility under the Act's large load exception. Mr. Shay contended that the demand estimates provided in SEMC Exhibit 4 do not reflect the rated capacity of the electrical equipment installed at the Premises and have no relationship to the actual connected load as defined by the Territorial Act.[12] The Hearing Officer notes that all parties, including Electrify America, agreed that "connected load" is not defined in the Act. *See Footnote 23 below, p. 9.*

Tesla Witness Bean testified that retail electric service is where the electric supplier delivers electricity to the customer of record, which occurs at the electric supplier's meter. The customer of record (in this matter, Electrify America) then consumes that electricity or converts it into a good or service. DCFC operators take AC electricity from their electric supplier and convert it in specialized equipment to DC electricity for storage in electric vehicles.[13]

Mr. Bean asserted that the Act does not require specific levels of peak demand or electricity usage to qualify for the large load exemption. He stated O.C.G.A § 46-3-8(a) simply requires new premises utilized by one consumer have a connected load, which, at the time of initial full operation of the premises, is 900 kilowatts or greater. He pointed out that EVs are

[10] Tr., p. 145.
[11] Tr., p. 170.
[12] Tr., pp. 174-176.
[13] Tr., pp. 225-226

inherently mobile resources that come and go and claimed that it would be unreasonable and discriminatory to require EVs to be connected to a DCFC at initial full operation of the facility in order to qualify for the large load exemption. "The DCFC charging equipment is the connected load. DCFC charging equipment is installed with the intent of it being used when customer demand appears. This is no different than a factory with 900 kW of connected load. The equipment at the factory may not be operational at all times until demand materializes for the product that the factory produces."[14]

IV. Findings of Fact

Sawnee and Georgia Power are "electric suppliers" as defined in the Territorial Act, O.C.G.A. § 46-3-3(3), and, for purposes of this proceeding, are subject to the jurisdiction of the Commission to enforce the provisions of the Act.

This dispute concerns four electric vehicle chargers located at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024 (the "Premises"). The chargers are located in unincorporated Forsyth County, exclusively in the geographic service area assigned to Sawnee EMC pursuant to the Act. Georgia Power has served the Premises since it opened and began operation in 2021.[15] Sawnee claimed it has the exclusive right to serve the chargers and that Georgia Power's provision of service to the chargers is unlawful.[16]

Georgia Power asserted "[e]ach of these criteria (of the Act's large load exception) has been met, arguing that it is only serving one consumer, Electrify America, at a single Premises located outside the limits of a municipality, and the Premises has single-metered connected service. The Company claimed connected load of the Premises at the time of initial full operation is greater than 900 kW because t/he Premises consists of two 350 kW chargers and two 150 kW chargers, which are designed as an array, and the combined nameplate capacity of the four chargers together is 1,000 kW.[17]

On June 1, 2020, Electrify America solicited bids from Georgia Power and Sawnee for electric service at the Premises. In a series of emails, Electrify America informed both Georgia Power and Sawnee EMC that Electrify America sought bids for an electric vehicle charging station, noting that "[t]he load at the site will be 1,000 kilowatts."[18]

[14] Tr., pp. 226-227.
[15] Tr. p. 130
[16] Sawnee's Petition, pp. 2-3.
[17] Georgia Power's Response and Answer to Sawnee EMC's Petition, p. 3.
[18] GPC Exhibit 1.

Both Georgia Power and Sawnee submitted bids for consideration. Sawnee EMC's bid offered to serve the Premises using the G23 rate intended for large commercial customers.[19] Electrify America selected Georgia Power as the electric supplier for the Premises under the Act's large load customer choice exception.

The electrical infrastructure installed at the Premises consists of six power cabinets from Signet EV Inc. that have an alternating current ("AC") rated input of 190 kilowatts ("kW") each connected to a 2,000-ampere switchboard with incoming utility service at 480 volts AC three-phase. The total aggregate nameplate capacity of the equipment installed on the Premises is 1,140 kW (1.14 megawatts) across the six power cabinets which have been physically installed and operational since the time of initial full operation of the charging station on March 23, 2021. Downstream of the six power cabinets are four customer-facing direct current fast charge ("DCFC") charging dispensers that are connected to either a single power cabinet or two power cabinets depending upon output rating. A single electric meter measures Electrify America's electric consumption at the Premises.[20]

This proceeding presents the Commission with a case of first impression concerning the application of the Territorial Act, O.C.G.A. §§ 46-3-3 through 46-3-15, in particular, O.C.G.A. § 46-3-8(a), referred to as the "Large Load" or "customer choice" exception to electrical vehicle charging stations.

V. Conclusions of Law

Both Sawnee EMC and Georgia Power are electric suppliers subject to the jurisdiction of this Commission for the purposes of enforcing the Territorial Act. The Commission has the statutory authority to hear complaints by one electric supplier against another alleging that the provision of electric service is in violation of the Territorial Act. O.C.G.A. §§ 46-3-12 and 46-3-13.

This matter was assigned to the Commission's undersigned Hearing Officer for hearing and initial decision pursuant to the provisions of O.C.G.A. §§ 50-13-13 and 50-13-17. By their agreement to schedule a hearing, counsel for the parties have waived statutory or regulatory deadlines for the rendering of a decision in this case.

The Premises at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024 is located in the geographic service territory assigned to Sawnee pursuant to the Act. Georgia Power may only serve the Premises pursuant to an exception to Sawnee EMC's territorial assignment rights.

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[19] Tr. p. 43-44.
[20] Tr., pp. 169-170.

Georgia Power asserted that it has the right to serve the Premises under the large load exception of the Territorial Act, O.C.G.A. § 46-3-8(a). Since the Premises is located outside the limits of the municipality, serves one consumer and has a connected load at the time of initial operation of 900 kW or greater, then that business operation may choose any electric supplier.

Georgia Power seeks the benefit of the statutory exception and therefore bears the burden of proving that each of the requirements of the large load customer choice exception have been met.[21] The Georgia Court of Appeals has held that the large load customer choice provision, being the exception to the general rule of competitive restriction provided for in the Territorial Act, must be strictly construed.[22]

Under the Act the exception for large load customer choice reads:

46-3-8. Exceptions, grandfather rights, and other rights.

(a) Notwithstanding any other provision of this part, but subject to subsections (b) and (c) of this Code section, after March 29, 1973, service to one or more new premises (but if more than one, such premises must be located on the same tract or on contiguous tracts of land), if utilized by one consumer and having single-metered service and a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater (excluding redundant equipment), may be extended and furnished, if chosen by the consumer. (emphasis added).

A. "Connected Load" under the Georgia Territorial Act

In response to a series questions posed in addition to the Briefing Schedule, all parties agreed the Territorial Act does not contain a statutory definition of "connected load."[23]

Sawnee argued that the main component of an electric vehicle charger of the type located on the Premises is a rectifier and that, with the exception of a limited amount of power used to operate LCD screens etc., the rectifiers operate to change AC power to DC power only if a vehicle owner pulls up and connects his or her vehicle to the charger. Sawnee compares rectifiers to electric receptacles and internal customer transformers. Like receptacles, Sawnee submits, rectifiers do

[21] *Barley v. Storev*, 120 Ga. App. 48 (19690; *Dalton Brick and Tile Company v. Huiet*, 102 Ga. App. 221 (1960); *Georgia Power Company v. Central Georgia Electric Membership Corporation*, Dkt. No. 3885, Initial Decision (1989).

[22] *City of Norcross v. Georgia Power Company*, 197 Ga. App. 891 (1990).

[23] *See;* Sawnee EMC' Response to the Hearing Officer's Questions, p.1; Georgia Power's, Appendix A- Responses to Hearing Officer Inquires, p. 1; Electrify America's Responses to Hearing Officer's Inquires, p. 1; and Tesla Responses to Hearing Officer's Inquires, p. 1.

not consume electricity and are not load. Instead, the consumption of electricity is at the load actually connected, e.g., a battery being charged.[24]

Georgia Power countered that the rectifiers are hard wired to the premises and convert AC to DC for the purpose of providing fast-charging service to EVs. In doing so, Georgia Power contends, the charging array entirely consumes the AC electricity to perform the work in converting the power to the DC power necessary to charge the vehicles.[25] It stated that without the rectifiers performing this crucial service the EV chargers will be unable to charge an EV, undermining the sole purpose of the Premises.

Electrify America opined that its equipment is not "passing-through" general electric service, the product of general electric service is entirely "consumed" by Electrify America. "Electrify America consumes this general electric service and creates an entirely new product—EV charging services. This is exemplified by the fact that neither Georgia Power nor Sawnee can provide the same EV charging product that Electrify America provides to its customers."[26]

Tesla echoed Georgia Power and Electrify America by stating that "the load consumed by the rectifiers involved in the conversion process, which process is essential to EA's ability to provide charging services, and which services are essential to the very purpose of EA's premises, are required, by well-settled law, to be included in the premises load count.[27]

Sawnee claimed that Georgia Power cannot seek to bolster its load count by relying on the potential load of equipment that might be brought to the site and plugged in downstream of the rectifiers, i.e., the batteries contained in a third party's electric vehicle. Such load would not be part of the Premises. Instead, electric vehicles "are inherently mobile resources that come and go."[28] Sawnee stated that such load—owned and controlled by third parties who might decide to drive to the site and plug in—would not be the load of the "premises." Instead, it would be third-party load—the connected load of third parties' off-site equipment, not the connected load of the Premises.[29]

However, as Georgia Power pointed out none of the connected load is contingent upon equipment being brought to the Premises by third parties. Commission precedent has relied on the nameplate capacity of connected equipment to determine connected load. All connected load is contingent on the equipment operating and the nameplate rating , serving as the connected load test serves to remove the unknown contingency of how frequently and intensively the equipment is used.

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[24] Sawnee Brief. p. 11.
[25] Tr., p. 202, Georgia Power Brief, p. 16.
[26] Electrify America Brief, p. 7.
[27] Tesla Brief, p.9.
[28] Tr., p. 227.
[29] Sawnee Brief, p. 13.

Based on the Commission's previous rulings, the Territorial Act also anticipates that a determination as to the amount of electric load to be served can be probable in nature. In *Douglas County Electric Membership Corporation v. Georgia Power Company.* Dkt. No. 3686, (June 8, 1988) 7, the Commission held " ... the Territorial Act contemplates that a determination as to the amount of electric load to be served can be prospective in nature. This is, of course, consistent with sound utility engineering practice. Unless a utility can make an estimate of the load to be furnished to a premises, it would not be in a position to determine the size and nature of the electric facilities, including lines, transformers and sub-stations, necessary to serve the new load. Any other construction of the Act would also require a customer to wait until the premises are completed and operational before obtaining electric service. This is clearly an impractical result."[30]

In *Troup Elec. Mbrshp. Corp. v. Ga. Power Co.*, the Commission sought to calculate the connected load of a newly constructed school to determine whether the facility qualified for the large load exception under the Act. The Commission rejected several methods of calculations and found "[i]t is not the connected load of the empty structure nor the theoretical load if every receptacle were used. Rather, it is the actual load at the time the premises begin operation. This calculation would include those items that would be plugged into receptacles in the ordinary course of the operations of the entity occupying the premises."[31]

However, no need exists for the Commission to determine whether the electrical equipment, such as that erected at the Premises, is prospective in nature or whether it consumes or converts power for the appropriate commercial processes of an EV charging station. The power cabinets and charging apparatus are hard wired, have a collective nameplate ratings that exceed 900kW and are a vital, necessary part of the initial full operation of the Premises. Most compelling is the Commission decision *Sumter* which held "actual close physical inspection and name-plate data are generally always preferable and usually constitute the best evidence for calculation of connected load."[32]

The Commission opined in a case that followed "[t]he underlying rationale of the Troup Electric Membership Corporation case is that under the Territorial Act connected load is intended to mean the actual electric load that will be furnished to the premises at the time they begin operation.... [m]oreover, as a practical matter an electric supplier cannot wait until motors are on the site and installed before determining the premises' connected load for the purpose of designing the facilities to handle that load."[33]

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[30] *Douglas, p.7.*
[31] *(id.)*, p. 13.
[32] *Georgia Power Co. v. Sumter EMC*, Docket No. 7821, at 31 (Initial Decision, Aug. 5, 1998)., (emphasis added).
[33] *Ga. Power Co. v. Cent. Ga. Mbrshp*, Docket No. 3885, Initial Decision pp. 12-13 (1990), (emphasis added).

No previous case in Georgia has addressed whether a rectifier constitutes connected load. The plain language of the large load exception requires a determination of "load" that is "connected" or hard-wired to the Premises. Commission precedent dictates the best avenue for determining how much load is connected is the nameplate capacity on the installed equipment. The Hearing Officer finds and concludes that the six power cabinets and four rectifiers are "connected load" within the meaning of that term contained in the Act because the nameplate rating on the equipment exceeds 900 kW at initial full operation.

It is the conclusion of the Hearing Officer that the nameplate label of the connected electrical equipment is the determinative factor and the appropriate metric for determining "connected load" under the Territorial Act. The evidence demonstrates that all electrical equipment was fully installed on the date of the EV charging station at the system's initial full operation. Following the Commission's precedent in calculating connected load and because an electric supplier must be prepared to serve a facility as it is designed, Sawnee EMC's theory for calculating connected load would leave the Premises wholly underserved.

B. "One Consumer" under the Georgia Territorial Act

"Consumer" is also not statutorily defined in the Territorial Act. Sawnee argued that the Premises does not qualify for the large load exception for the reason that it is not "utilized by one customer" as required by the large load exception O.C.G.A.§ 46-3-8(a).

Sawnee relied on the decision in *Sawnee*[34] and the appeal that followed. In the proceeding before the Commission it considered Georgia Power's provision of electric service to the landlord of a 380-unit apartment complex. The landlord then distributed electricity to each of the 380 apartments. No single apartment had a connected load of 900 kW, but if the connected loads of all the apartments were combined, it would have exceeded 900 kW.[35] Georgia Power argued that it was entitled to serve the apartment complex under the large load exception. One issue in the case was whether "Dominion, the landlord, is the electric consumer or whether each tenant in each apartment is the electric consumer."[36] Overruling the Hearing Officer's Initial Decision, the Commission found that the landlord, Dominion, had that relationship. "Dominion is the entity responsible for the payment to GPC for electrical service. Dominion made the application and contracted for service with GPC....The tenants do not have any obligation to or relationship with GPC." The Commission thus found that the apartment complex qualified for the large load exception.

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[34] *Sawnee EMC v. Ga. Power Co., Docket No. 5976-U (1997)*
[35] *Id.* at 8-9.
[36] *Id.*, p. 10.

Both the Commission and Sawnee appealed to the Georgia Supreme Court where it concurred, in a consolidated opinion, with the Hearing Officer that the consumers were the 380 individual tenants, who did not constitute "one consumer" as required under the large load exception.[37]

In this proceeding Sawnee concluded, based on *Sawnee,* that, aside from a minimal amount of power used by Electrify America to operate LCD panels and other ancillary equipment, electric vehicle owners who choose to drive up and plug their vehicles into Electrify America's charging station are the consumers.

However, the Supreme Court held that "[t]he undisputed facts show that Dominion.... owns and operates a 380-unit apartment complex located within the assigned service territory of the Sawnee Electric Membership Corporation. Nonetheless, Dominion selected and contracted with Georgia Power to supply electric service to the complex, applying the large-load customer choice exception to the territorial act. Pursuant to that contract, Georgia Power installed a master or pass-through meter which measures the electric usage for the entire complex. Georgia Power bills Dominion for the total usage based on the master meter reading..... Dominion installed separate meters in each individual apartment, and it employs an outside company to read the separate meters and bill each tenant for their individual usage." (emphasis added)[38] The Court held that the large-load customer choice exception does not apply to the complex because the 380 individual tenants, each with separate meters, do not constitute "one consumer" with "single metered service" as contemplated by OCGA § 46-3-8(a).

Sawnee's dependence on *Sawnee* to support its position that Electrify America is an entity other than the Supreme Court's interpretation of "one customer" under the Territorial Act has been aptly refuted. Electrify America cannot conceivably be considered a "landlord" any more than EV drivers as "tenants." The fact that the tenants were separately metered was essential the Court's ruling. In this case, Electrify America has one single meter which is not a master meter or pass thru meter, is contractually committed to Georgia Power for the electricity supply and is responsible for payment of that service. Georgia Power has no direct or indirect relationship with the EV driver. Further, Electrify America is offering, and the EV drivers are receiving, a very discrete service: vehicle charging. Electrify America is not offering, and the EV drivers are not receiving, retail electric service.

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[37] *Sawnee EMC v. Ga. Public Serv. Comm'n*, 273 Ga. 702, p. 705 (2001).
[38] *Id.*, p. 2.

The Hearing Officer finds and concludes that evidence provided in this proceeding demonstrated that Electrify America is one "consumer" in accordance with the Territorial Act large load, customer choice exception.

Georgia Power has met its burden of proof in supporting the use of the Territorial Act's large load exception and is lawfully serving Electrify America at the Premises. Georgia Power has extended service to new premises, utilized by one consumer and having single-metered service and a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater."

VI. Ordering Paragraphs

WHEREFORE, the Petition of Sawnee claiming that Georgia Power is in violation of the Georgia Territorial Act is DENIED as the Hearing Officer finds that Georgia Power is lawfully serving the Premises located at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024 under the Act's exception in accordance with O.C.G.A. § 46-3-8(a).

ORDERED FURTHER, that all Objections to Testimony and Exhibits are denied.

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

Pursuant to the provisions of O.C.G.A.§ 50-13-17(a), in the absence of an Application for Review made within 30 days from the date of this Initial Decision, or an Order by the Commission for review on its own motion, this Initial Decision shall, without further proceedings, become the Final Decision of the Commission.

SO ORDERED this 24 day of Nov., 2022.

Nancy G. Gibson
Hearing Officer,
Georgia Public Service Commission

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of:

SAWNEE ELECTRIC MEMBERSHIP CORPORATION	)	
Petitioner	)	
vs.	)	**Docket No. 43899**
GEORGIA POWER COMPANY	)	
Respondent	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Initial Decision** in the above-referenced docket were filed with the Commission's Executive Secretary, an electronic copy of same was served upon all parties and persons listed below via electronic mail, or unless otherwise indicated, as follows:

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So certified, this 24th day of May, 2022.

Nancy Gibson
Hearing Officer

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAWNEE ELECTRIC MEMBERSHIP CORPORATION, Petitioner, v. GEORGIA PUBLIC SERVICE COMMISSION, TRICIA PRIDEMORE, TIM ECHOLS, FITZ JOHNSON, LAUREN "BUBBA" MCDONALD, and JASON SHAW in their Capacities as Members of the Georgia Public Service Commission, Respondents.	)	CIVIL ACTION FILE NO. _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **PETITION FOR REVIEW OF SAWNEE EMC** upon the following by electronic mail and by United States mail with sufficient postage thereon:

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