BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

NORTH GEORGIA EMC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. _____
	)	
CITY OF CALHOUN,	)	
	)	
Respondent.	)	

PETITION OF NORTH GEORGIA EMC

North Georgia Electric Membership Corporation ("**North Georgia EMC**") respectfully files this Petition with the Georgia Public Service Commission (the "**Commission**") and shows the Commission as follows:

1.

This Petition is filed pursuant to the rules of the Commission and the provisions of the laws of Georgia vesting in the Commission jurisdiction over the parties and their actions with regard to matters arising under the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 (the "**Territorial Act**").

2.

North Georgia EMC is an electric membership corporation organized and existing under the laws of the State of Georgia with its principal office and place of business located in Dalton, Georgia.

3.

Respondent the City of Calhoun (the "**City**") is an electric supplier doing business in the State of Georgia.

4.

North Georgia EMC and Calhoun are "electric suppliers" as defined in the Territorial Act, O.G.C.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 Territorial Act through appropriate orders.

I. BACKGROUND

5.

This case arises from the latest in a long series of attempts by the City of Calhoun to renege on a territorial agreement it entered into over 45 years ago.

6.

This time, once again, the City has extended its electric lines and supplied electric service to a new premises in violation of the parties' territorial agreement and North Georgia EMC's rights under the Territorial Act.

A. The Territorial Agreement Contains Two Geographical Restrictions Applicable to the City.

7.

Following passage of the Territorial Act in 1973, the City, North Georgia EMC, and Georgia Power Company entered into a binding "**Territorial Agreement**" on April 8, 1975. A true and correct copy of the Territorial Agreement is attached as **Exhibit A** hereto.

8.

The Territorial Agreement was a bargained-for exchange of promises pursuant to which North Georgia EMC gave up some of its substantial rights under the Territorial Act. In exchange, the City also gave up certain rights. These are reflected in two geographical restrictions applicable to the City.

9.

First, the Agreement delineated a large geographical area beyond which the City agreed not to "extend its lines at any time." The parties described the perimeter of this area in detail, using land lot numbers, named waterways, and state and federal highways:

> *The parties agree that the City of Calhoun shall not extend its lines at any time* north of the northern boundary of LL's #97, 96, 95; east of I-75; south of the southern boundary of LL's #303, 303, 301, 300, 299, and 298; and west of a line that extends along the west boundary of LL's #298, 297, 262 to the city limit line just below LL #243; thence west to the center line of Ga. 53 Spur, thence along the center line of Ga. 53 Spur to Terrell Farm Road; thence along the present city limit line to where it intersects center line of the Oothcalooga Creek as it presently exists; thence along center line of the creek to where it intersects center line of the Oostanaula River as it now exists; thence north along center line of the river as it presently flows to the center line of Georgia Highway 143; thence along the present city limit line to the center of the Oostanuala River; thence along center line of Oostanaula River as it presently flows to point of beginning where the center line of the river intersects north boundary of LL #97.

Territorial Agreement at 2 (emphasis added). This perimeter will be referred to as the "**Outer Boundary**" and is shown in yellow on **Exhibit B** attached hereto.

10.

The geographical area within the Outer Boundary is significantly larger than the area assigned to the City under the Territorial Act. Under the Outer Boundary provision, the City agreed never to extend its lines "at any time" beyond the specifically delineated perimeter of this area.[1]

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[1] In prior proceedings, this perimeter has sometimes been referred to as "the Box." However, because this shorthand phrase has not always been used consistently (see discussion below), North Georgia EMC will use the phrase "Outer Boundary."

11.

Second, the Territorial Agreement describes another geographical perimeter, namely, the boundaries of the City of Calhoun. Specifically, the Agreement provides as follows:

> The City of Calhoun agrees not to extend its electric facilities outside the boundaries of the City of Calhoun to serve any additional consumer.

Territorial Agreement at 2. This boundary will be referred to hereinafter as the "**City Limits Boundary**."

12.

Recognizing that municipal boundaries can be enlarged by annexation, the parties addressed the effect of annexation on electric service rights. In the provision immediately following the sentence quoted above, the Agreement provides:

> The City further agrees it will not serve electricity to any area in Gordon County or the State of Georgia until said area has been legally annexed to the City of Calhoun and all municipal services provided including: fire protection, garbage collection, water, police protection, planning and zoning, city schools, and sanitary sewers. Also, property owners in such area must be paying, or subject to pay, city taxes. NGEMC agrees that sanitary sewer will only be provided where feasible and, if feasible, construction on said sanitary sewer services must be under construction within twelve months from date of annexation and must be completed in a reasonable period of time.

Id. 2-3. This will be referred to hereinafter as the "**Annexation Provision**."

13.

The Annexation Provision is written in terms of a prohibition, *i.e.,* the City "will not serve electricity to any area . . . ." The prohibition remains in place "until" the City annexes an area, provides specified city services therein, and subjects the property owners in such area to city taxation. If and only if those conditions are met, then the "will not serve" prohibition is lifted, meaning the City is no longer prohibited from providing electric service in such an area within the new city limits.

14.

The Territorial Agreement also addressed the effect of such annexation/provision of city services on North Georgia EMC's electric service rights: "After legal annexation and the provision of services as provided above, NGEMC will relinquish all its corridor rights inside the annexed area, but will retain its right to serve existing customers." *Id.* at 3.

B. As Previously Recognized by the City, Annexation Service Rights Arise Only Within the Outer Boundary, Beyond Which the City Agreed Not to Extend its Lines "at Any Time."

15.

Giving effect to both geographical restrictions set forth in the Territorial Agreement, as is required when construing contracts,[2] the City agreed *both* (1) that it was prohibited from extending its lines *at any time* beyond the Outer Boundary, and (2) that *within* that Outer Boundary, it was prohibited from extending service beyond the City Limits Boundary unless and until the City had annexed an area and provided certain delineated city services therein. This, in fact, is how the City has long construed these provisions.

16.

For example, in a case involving an Advance Auto Parts store, the City described the pertinent provisions of the Territorial Agreement as follows: "As between the City and North Georgia EMC, the City agreed to a service area, *outside of which it would not extend its lines* . . . and *inside of which* the City was entitled to serve electric customers if in the city limits, or upon annexation and the provision of certain delineated City services." Brief of City of Calhoun at 3,

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[2] *See Georgia Farm Bureau Mut. Ins. Co. v. Gaster*, 248 Ga. App. 198, 199, 546 S.E.2d 30 (2001) ("The contract is to be considered as a whole, and each provision is to be given effect and interpreted so as to harmonize with the others.").

City of Calhoun v. North Georgia EMC (Docket No. 5090-U) (the "***Advance Auto***" case) (emphasis added).)[3]

17.

In another case, the City extended electric service to a new Mohawk facility that was located beyond the Outer Boundary but inside an annexed area. The City initially argued that it could serve the new facility under the large load exception of the Territorial Act. After an evidentiary hearing, however, the City conceded that the connected load was less than 900 kW. In its proposed order submitted to the Hearing Officer, the City acknowledged that the question of which electric supplier had the right to serve the facility "is governed by the provisions of [the] Territorial Agreement," which the City described as follows:

> The Territorial Agreement provides, in part, that Calhoun has the right to serve areas annexed into Calhoun in which Calhoun is providing specified municipal services and property owners are subject to city taxes. *Calhoun also agreed not to extend its lines at any time, in any direction of the compass, beyond specifically delineated boundaries . . . .*

Proposed Order submitted by City of Calhoun, at 1-2, *North Georgia EMC v. City of Calhoun* (Docket No. 5628-U) (the "***Mohawk***" case) (emphasis added). The City acknowledged in its proposed order that the new Mohawk facility "may only be served by North Georgia EMC" and proposed that the City be ordered to "discontinue service" to the facility and "arrange for the orderly transfer of service [to North Georgia EMC] as soon as practicable." *Id.* at 2. Thus, in that case—even where the Mohawk facility was located in an annexed part of the City—the City asked the Commission to *order the City to discontinue serving a premises beyond the Outer Boundary* and transfer service to North Georgia EMC. The City thus candidly acknowledged that

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[3] The City qualified this statement by excepting customer choice loads above 900 kW, but in a subsequently decided case discussed below (Docket No. 14496), it was held that the City could not extend its lines beyond the Outer Boundary to serve such large loads.

its right under the Territorial Agreement to serve in annexed areas ends at the Outer Boundary, beyond which the City agreed not to extend its lines at any time "in any direction of the compass."

C. The Territorial Act Restricts the City's Right to Provide Service In Areas Assigned to North Georgia EMC

18.

In addition to the geographical restrictions set forth in the Territorial Agreement described above, restrictions applicable to geographic territories assigned under the Territorial Act also apply. In July 1975 (a few months after the Territorial Agreement was signed), the parties agreed to and signed the territorial assignment map (attached as **Exhibit C**), which depicts the agreed-upon geographical areas assigned to the City, North Georgia EMC, and Georgia Power. The assignment of territory as depicted on the territorial map was approved by the Commission on September 2, 1975. As provided in O.C.G.A. § 46-3-3(1), inside an assigned area, "the assignee electric suppler shall have the exclusive right to extend and continue furnishing service to new premises, except as otherwise provided in this part."

D. The City Continues a Long History of Trying to Renege on its Contractual Commitments under the Territorial Agreement.

19.

North Georgia EMC has consistently abided by its contractual commitments under the Territorial Agreement—and has done so at considerable cost: the revenues associated with loads given up by North Georgia EMC under the Agreement total tens of millions of dollars. The City, by contrast, has a decades-long history of trying to back out of its contractual commitments. In the process, the City has not hesitated to contradict both stipulations and representations it has made to the Commission. The City's arguments include:

- Even though the City relinquished its right to serve customer choice loads in the Territorial Agreement, it had no right to do so. (Docket No. 14496.)

- The Outer Boundary restriction is subject to the exceptions set forth in O.C.G.A § 46-3-8, including the large load exception. (*Id.*)

- The City's agreement to contract away the right to serve customer choice loads would violate federal antitrust laws. (*Id.*)

- The Commission never actually approved the Territorial Agreement, and the City's stipulations to the contrary should be disregarded. (Docket No. 42414.)

The Commission has rejected all of these arguments (and more).

20.

Now the City is at it again. Once more contradicting representations it has made to the Commission, and jettisoning its decades-long interpretation of the Territorial Agreement, the City contends that it has the right to serve a new Michael's Carpet building (the "**Premises**") located *beyond* the Outer Boundary—specifically, east of I-75—on the ground that the City has annexed the property on which the Premises is located. The City's newest theory is that under the Territorial Agreement, if the City annexes and provides municipal services to a piece of property, the Outer Boundary's restriction that the City "shall not extend its lines at any time" simply vanishes. What's more, the City apparently contends that annexation of the property on which the Premises is located—which is within the area assigned to North Georgia EMC—results in the relinquishment not only of North Georgia EMC's corridor rights, but *all* of North Georgia EMC's service rights in this area, thereby giving the City the exclusive right to serve the Premises. The City is wrong on both counts.

E. The City's Newest "Interpretation" Would Totally Rewrite the Outer Boundary Provision and Render it Superfluous.

21.

First, as discussed above, the City Limits Boundary and Outer Boundary are two distinct geographical restrictions set forth in the Agreement. They address different situations, using different terms, to effectuate different purposes.

22.

The Outer Boundary is a geographical perimeter described by means of land lot numbers, named waterways, etc. The parties unambiguously agreed that the City "shall not extend its lines at any time" beyond the Outer Boundary. This set the outer limits beyond which the City may not extend its lines.

23.

The City Limits Boundary is not described by means of land lot numbers, waterways, etc. Instead, it is described simply as "the boundaries of the City of Calhoun." Such municipal boundaries are, by nature, subject to annexation, since municipalities in Georgia can annex territory and thereby change their corporate limits. The parties therefore addressed the effect of such an annexation, agreeing in the Annexation Provision that the City would not be prohibited from serving in an annexed area upon the provision of specified municipal services therein.

24.

Unlike the City Limits Boundary, the Outer Boundary is fixed. It is not subject to enlargement by annexation/provision of municipal services. Quite the opposite: the parties expressly agreed that the City would be prohibited from extending its lines beyond the Outer Boundary "at any time," which would obviously include at the time of any annexation.

25.

Second, the City's new interpretation would fundamentally change the "at any time" prohibition in the Outer Boundary provision. The Agreement states that the City "*shall not* extend its lines *at any time*" beyond the Outer Boundary. The meaning of that provision is clear: as the City has acknowledged, the parties agreed that the City would never, at any time, extend its lines "in any direction of the compass" beyond the Outer Boundary.

26.

Under the City's interpretation, this provision would be revised to say "the City of Calhoun *is permitted* to extend its lines *whenever* it annexes an area and provides municipal services provided therein." The City's interpretation would totally rewrite the Outer Boundary provision. Under the City's new interpretation, the City would be permitted to extend its lines *anywhere* beyond the Outer Boundary at *many* times, namely, whenever it annexes property and provides municipal services therein. Under bedrock principles of contract construction, such a construction is impermissible.[4]

27.

Moreover, if the City's interpretation were adopted, it would render the Outer Boundary provision meaningless. The City is restricted from extending its lines outside the 1975 City Limits Boundary until it annexes an area and provides municipal services therein. According to the City, it is likewise restricted from extending its lines beyond the Outer Boundary . . . but only until it annexes an area and provides municipal services therein. This interpretation would render

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[4] The terms used by parties in a contract must be given their intended meaning; they cannot be rewritten through "interpretation." *See, e.g.*, *Bearhoff v. Craton*, 350 Ga. App. 826, 834, 830 S.E.2d 362, 372 (2019) (courts are "not at liberty to ignore the specific terms of the parties' written agreement and rewrite or revise a contract under the guise of construing it.") (internal citations omitted).

the Outer Boundary provision entirely superfluous. If, as the City now contends, annexation and the provision of municipal services permitted the City to provide electric service anywhere it annexes, including beyond the Outer Boundary provision, then that provision would serve no purpose whatsoever. The Agreement would operate exactly the same way with or without the Outer Boundary provision. Such a reading is contrary to fundamental principles of contract construction. *See, e.g.*, *Milliken & Co. v. Ga. Power Co.*, 354 Ga. App. 98, 100, 839 S.E.2d 306, 309 (2020) ("Courts should not render any language in a contract as superfluous.") (citations omitted).

F. The City's Reliance on Non-Binding Dicta in a Prior Commission Decision is Wholly Misplaced.

28.

As ostensible support for the City's newly minted interpretation of the Territorial Agreement, the City has informed North Georgia EMC that it is relying on a recent Commission decision in which the City's request for declaratory relief on this point was *denied.*

29.

Specifically, in *City of Calhoun's Petition for Declaratory Ruling*, Docket No. 42414, the City sought two declaratory rulings: (1) a declaratory ruling that the Territorial Agreement was not actually adopted by the Commission, and (2) if the Agreement had been adopted, then a declaratory ruling that under the Agreement, the City "has the right to extend its lines outside of the Box when it has (a) legally annexed the property; and (b) provided municipal services to the property." (City's Petition for Declaratory Ruling ¶ 37). The Commission explicitly *denied* both requests. *In re: City of Calhoun*, Docket No. 42514 (Order Denying City of Calhoun's Petition for Declaratory Ruling May 17, 2022) (the "**Declaratory Ruling Order**").

30.

Thus, the purported right the City advances in the current dispute—the right, upon annexation/provision of municipal services to a property, to extend its lines beyond the Outer Boundary to such property—was *denied* by the Commission. The Commission's decision *denying* the City's request for the declaration of a purported right obviously provides no support for a subsequent *assertion* of such right.

31.

Instead of accepting that the Commission has *denied* the City the very right it asserts here, the City relies on references in the Declaratory Ruling Order to non-binding dicta from a prior Territorial Act case between the City and North Georgia EMC, namely, *North Georgia EMC v. City of Calhoun*, Docket No. 14496 (Initial Decision May 28, 2003) (the "***Kerry Foods***" case). That case—which was also decided against the City—concerned the City's extension of electric service to a new food manufacturing facility constructed by Kerry Foods. *Id.* at 16. The City acknowledged that the facility was located beyond the Outer Boundary and that the parties' Territorial Agreement clearly stated that Calhoun would not extend its lines at any time beyond such boundary. *Id.* at 11, 13. But the City argued nevertheless that the Outer Boundary was subject to the large load exception set forth in O.C.G.A. § 46-3-8. The City's position was that, *except* for customers that could be served under O.C.G.A. § 46-3-8, the Territorial Agreement "*should be interpreted as precluding it from serving any electric customers located outside of the* [*Outer Boundary*]." City's Post-Hearing Br. at 5 (emphasis added). This is consistent with the City's representations to the Commission in the *Advance Auto* and *Mohawk* cases described above.

32.

The Hearing Officer in *Kerry Foods* rejected the City's argument that the Outer

Boundary provision was subject to the exceptions set forth in O.C.G.A. § 46-3-8. He also ruled, alternatively, that the City had failed to demonstrate that the Kerry Foods building would have a connected load of 900 kW or greater. (Initial Decision 36-37). Unsurprisingly, Calhoun does not rely on the Hearing Officer's *rulings* in *Kerry Foods* for its current position, nor could it. Instead, Calhoun relies on certain non-binding *dicta* in the 38-page Initial Decision regarding "expansion" of "the Box" through annexation and the provision of municipal services.

33.

Notably, no facts were presented regarding annexation or the provision of municipal services to the facility in the *Kerry Foods* case. No issue was presented as to whether annexation and the provision of municipal services to the Kerry Foods property, or any other property, eliminated or otherwise affected the Outer Boundary restrictions (or "expanded" the "Box"). No such issue was briefed by the parties. Nor was the "expansion" idea relevant to the issue to be decided: whether the Kerry Foods building could be served under the large load exception. The Hearing Officer's statements about "expanding" the "Box" were classic non-binding dicta, which "is not binding on anyone for any purpose." *Alexander v. State*, 313 Ga. 521, 529, 870 S.E.2d 729, 737 (2022) (quoting *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010)). *See generally Zepp v. Brannen,* 283 Ga. 395, 397, 658 S.E.2d 567 (2008) (defining dicta as "a statement in an opinion 'concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand.'") (citations omitted).[5]

[5] "[D]icta is inherently unreliable for what a court will do once faced with a question squarely and once its best thoughts, along with briefs and oral argument, are focused on the precise issue." *United States v. Teague*, 953 F.2d 1525, 1535 (11th Cir. 1992) (Edmondson, J., concurring); *see also McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1314 (11th Cir. 1981) (Carnes, J. concurring) ("Deciding real issues presented by real parties in real time focuses judicial decision making in ways that making speculative pronouncements about hypothetical questions cannot.").

34.

The Hearing Officer's references to "expanding" the "Box" in *Kerry Foods* were also internally inconsistent. He first used, and defined, "the Box" at page 11 of the Initial Decision. He stated that Calhoun's representative had admitted that the City agreed not to extend its lines at any time "beyond *the City's territory* as defined in such Territorial Agreement and shown on maps presented at the hearing (hereinafter 'the Box')" (emphasis added). Thus, the Hearing Officer's definition of "the Box" was "the City's territory." The "City's territory" manifestly was *not* the geographic area bordered by the Outer Boundary. The only "territory" that could be said to be "the City's" would be that territory assigned to the City by the Commission under the Territorial Act. That area is depicted on the territorial map (Exhibit C). As noted above, the area assigned to the City is distinct from, and significantly smaller than, the area encompassed by the Outer Boundary. Thus, the Hearing Officer in *Kerry Foods* first used and defined the term "the Box" as being the "City's territory," *i.e.*, the area assigned to the City by the Commission.

35.

Elsewhere, however, the Hearing Officer apparently used "the Box" to refer to the Outer Boundary. *See, e.g.*, Initial Decision at 20. At other times, he seems to have used "the Box" to refer both to the City Limits Boundary and to the Outer Boundary. *Id.* at 16. This inconsistency had no bearing on resolution of the issue before the Hearing Officer because the Kerry facility was located beyond both the City Limits Boundary and the Outer Boundary.

36.

In addition to the inconsistencies noted above, the Hearing Officer in *Kerry Foods* was not always clear in describing what he viewed to be the characteristics of "the Box." His Initial Decision included unequivocal statements that the City was prohibited from extending its lines beyond the Outer Boundary. For example, he stated, "Certainly, the Territorial Agreement itself

(Exhibit P-2) contains no provisos or exceptions to or from the 'City of Calhoun shall not extend its lines' language on page 2 of such Agreement." *Id.* at 18.

37.

At other times, however, he alluded to the idea of "expanding" the "Box." The words "expand," "expanding," and other derivations thereof do not appear in the Territorial Agreement. His statements in this regard are an apparent reference to the Annexation Provision, which provides for the potential lifting of the prohibition on the City's right to provide service outside the 1975 City Limits Boundary upon annexation/provision of municipal services. Moreover, when the Hearing Officer's statements regarding his "expansion" idea are considered in context, it is clear that they pertain to the Annexation Provision.

38.

For example, at pages 16-17 of the *Kerry Foods* Initial Decision, the Hearing Officer stated that the Agreement permitted "the expansion of the Box by Calhoun's annexation of and provision of municipal services to a new area." This directly ties "expansion" with "annexation." At pages 6-7 of the *Kerry Foods* decision, the Hearing Officer stated that "[f]rom the plain language above, Calhoun has clearly limited its service in Gordon County to serving electric customers within the prescribed territory, . . . except for Calhoun's growth by annexation and the provision of other municipal services, as well as electricity, in the annexed area." Again, this dicta regarding "growth by annexation" is clearly a reference to the potential lifting of the prohibition on the City's right to provide service to property located outside the 1975 City Limits Boundary upon annexation and the provision of municipal services therein.

39.

The Hearing Officer's reference in *Kerry Foods* to the "ever-expanding Box" similarly referred to the operation of the Annexation Provision: "NGEMC also relinquished under the

Territorial Act outside the 1973 city limits of Calhoun (but inside the ever-expanding Box as a result of Calhoun's annexations) (1) NGEMC's exclusive right to serve new premises in exclusive corridors after annexation and (2) its right to serve new premises within overlapping corridors." (*Id.* at 14.)

40.

Likewise, at page 20 of the Initial Decision, the Hearing Officer referred to "Calhoun's promise not to extend its lines outside the Box, as expanded by future annexation and extension of municipal services." Once again, this dicta plainly refers to the Annexation Provision.

41.

The only plausible basis in the Territorial Agreement for the Hearing Officer's "expansion" references in *Kerry Foods* was the Annexation Provision related to the City Limits Boundary. Thus, it is not surprising that the Hearing Officer's dicta regarding "expansion" repeatedly refers to annexation and the provision of municipal services. While his use of the term "the Box" was at times inconsistent, and his statements regarding the "expanding" "Box" were not always clear, these statements plainly referred to potential changes in the City Limits Boundary through annexation of property and the provision of municipal services therein. Thus, any so-called "expansion" would pertain only to the City Limits Boundary—*not* to the Outer Boundary.

42.

And that is how the City itself has read the Agreement and *Kerry Foods* Initial Decision. In a brief to the Superior Court of Fulton County in support of its appeal of the *Kerry Foods* decision, the City, after defining "the Box" in reference to the "shall not extend its lines at any time" provision, stated that "[t]he Territorial Agreement limited Calhoun's *future expansion* of exclusive territory to territory annexed *within the Box* to which other city services have been

provided." (City's Initial Brief to Superior Court, at 18) (emphasis added).[6] Thus, the City—after issuance of the *Kerry Foods* Initial Decision—confirmed its long-held understanding that any "expansion" rights were limited to annexations *within* the Outer Boundary.

43.

As demonstrated above, in multiple proceedings over multiple years, both before and after the *Kerry Foods* decision, the City has represented to the Commission and the courts that the City's right under the Territorial Agreement to extend electric service to customers upon annexation and the provision of municipal services could arise only *within* the Outer Boundary and did not extend *beyond* the Outer Boundary. (*See* ¶¶ 16, 17 and 31 above.) Once again, the City now has taken a position that flies in the face of its prior representations to the Commission in yet another attempt to renege on its contractual commitments. The City's newfound position contradicts the plain words of the Territorial Agreement and should be rejected.

G. In Any Event, Annexation Would Not Result in the Re-assignment of Territory from North Georgia EMC to the City.

44.

Even if the City's annexation of the Premises could eliminate the Outer Boundary restrictions in that area (though it manifestly could not), the City still would have no right to extend electric service to the Premises. As demonstrated above, even when the Annexation Provision applies, it alters electric service rights in only two respects: (1) the City is no longer prohibited from extending electric service in an annexed area, and (2) North Georgia EMC relinquishes corridor rights as to new premises (but not existing customers) in the annexed area.

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[6] As discussed above and below, annexation and the provision of municipal services would simply lift the prohibition on the City's right to serve new premises in annexed areas (and result in the relinquishment of certain North Georgia EMC corridor rights). Thus, contrary to the City's characterization, it would not grant the City any new territory, much less "exclusive territory."

What the Annexation Provision does *not* do is effectuate a re-assignment of the annexed area from North Georgia EMC to the City.

45.

O.C.G.A. § 46-3-7 of the Territorial Act addresses the effect of annexation on territorial assignments. Subpart (1) and subparts (2) (A), (B), and (C) address annexations to "wholly new municipalities" (coming into existence after March 29, 1973) and annexations that result from mergers, consolidations, or other combinations of municipalities. Subpart (D) provides that as to geographic areas annexed other than by merger, consolidation, etc., "so much of such geographic area, if any, as was already assigned to an electric supplier shall continue to be so assigned."

46.

Thus, a typical municipal annexation results in no change to territorial assignments. The annexed area continues to be assigned to the electric supplier to whom it was assigned prior to annexation. Nothing in the Territorial Agreement purports to override this provision of the Territorial Act. Nor could it. O.C.G.A. § 46-3-8(d) expressly addresses, and limits, the circumstances in which assigned territory may be re-assigned. First, this section grants only the Commission the authority to re-assign assigned territory. Thus, any re-assignment of territory could only be accomplished by Commission order. Second, the Commission is authorized to re-assign territory only in very narrow circumstances, namely "[i]f it determines that an assignee electric supplier has breached the tenets of public convenience and necessity therein." Obviously, the Commission has made no such determination here; nor would it have any basis for doing so.

47.

Accordingly, although the property on which the Premises is located purportedly has been annexed to the City, that would not change the underlying territorial assignments. The Premises is located within North Georgia EMC's assigned area. This means that, absent some

exception not applicable here, North Georgia EMC retains the exclusive right—before and after annexation—to serve the Premises. *See* O.C.G.A. § 46-3-3(1) ("'Assigned area' means an enclosed geographic area assigned to only one electric supplier by the commission or by this part, and inside which the assignee electric supplier shall have the exclusive right to extend and continue furnishing service to new premises, except as otherwise provided in this part.") Thus, even if annexation of the property on which the Premises is located had eliminated the Outer Boundary in that area—though it did not—North Georgia EMC would have retained the exclusive right to serve the Premises.

II. THE CITY OF CALHOUN BREACHED THE TERRITORIAL AGREEMENT

48.

Over North Georgia EMC's objection, on or about May 23, 2023, the City began providing electric service to the Premises.

49.

The Premises is located outside the boundaries beyond which the City agreed "not to extend its lines at any time" and inside North Georgia EMC's assigned service area.

50.

The City has no right to extend its lines or supply electric service to the Premises, and the City's extension of its lines and provision of electric service to the Premises is unlawful.

51.

North Georgia EMC has the exclusive right to serve the Premises under the Territorial Agreement and the Territorial Act and is ready, willing, and able to do so.

WHEREFORE, North Georgia EMC prays that the Commission:

(1) Find and determine that the City is in violation of the provisions of the Territorial Act and the Territorial Agreement by extending its lines and electric service to the Premises;

(2) Find and determine that North Georgia EMC is the sole lawful supplier of electric service to the Premises;

(3) Order the City immediately to cease and desist from furnishing electric service to the Premises;

(4) Order the City to disconnect the electric service provided by it to the Premises and transfer such service to North Georgia EMC; and

(5) Afford North Georgia EMC such other and further relief as the Commission shall deem just and proper.

Respectfully submitted, this 26th day of May, 2023.

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Attorneys for North Georgia EMC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **PETITION OF NORTH GEORGIA EMC** as follows:

Honorable James F. Palmer
Mayor, City of Calhoun
P.O. Box 248
Calhoun, GA 30703

George P. Govingnon
Calhoun City Attorney
109 North Wall Street
Calhoun, GA 30703

And via e-mail to George P. Govignon at govignonlawoffice@gmail.com

I have also filed a copy of the foregoing with the Commission via the Commission's Alternative email procedure.

This 26th day of May, 2023.

James A. Orr

Exhibit A

TERRITORIAL AGREEMENT BETWEEN
CITY OF CALHOUN, NORTH GEORGIA ELECTRIC MEMBERSHIP CORPORATION AND GEORGIA POWER COMPANY

Georgia Power agrees to sell to NGEMC its poles, lines, and customers on Lovers Lane Road from Dews Pond Road south. Also, Georgia Power Company agrees to sell to NGEMC its poles, lines, and customers on road S-2670 from L & N Railroad east. Georgia Power Company also agrees to relinquish its corridor rights to NGEMC on its lines east of I-75 on Dews Pond Road and NewTown Road and related lines that pull off these roads, but shall retain the right to serve its existing customers on these lines or any customers of like type which may later be located on property occupied by its existing customers.

Georgia Power Company relinquishes its corridor rights within the Calhoun city limits as of this date except as shown below, but retains the right to serve all customers it is now serving inside the city and any customers of like type which may later be located on property occupied by its existing customers.

Georgia Power Company agrees to sell to the City of Calhoun a portion of its 3-phase line that extends south to serve Criterion Mills and Burton Carpet and Rugs and sells the two customers also. The portion of line to be sold extends from a point approximately 1600 feet south of the center of Dews Pond Road south to the end of the line.

On the east side of Calhoun and west of I-75, NGEMC grants to Georgia Power Company exclusive rights on the 1600-foot and 800-foot line corridors that it has under the 1938 agreement with NGEMC and subsequent amendments. Likewise, Georgia Power Company agrees to have these corridors reduced to 600 feet (300 feet either side of line) along the major roads, where lines were originally under the agreement, at such time as the City of Calhoun annexes any portion of these lines and provides other utilities to the area in accordance with paragraphs #8 and #9.

The City of Calhoun and NGEMC agree to grant an area to the northwest of town as an exclusive assignment to Georgia Power Company. This includes areas now within the city limit that fall within the exclusive area. That area is described as follows:

contd.

beginning at a point on center line of the Oostanaula River as it now exists and the north land lot line of LL #170 proceed east along the north land lot line of LL #170 and LL #169 to the center line of present U. S. Highway 41; thence north along center line of U. S. Highway 41 to center line of the L & N Railroad; thence north along center line of the L & N Railroad to center line of the Oostanaula River; thence south along center line of the river as it presently flows to point of beginning.

Within this exclusive area, NGEMC agrees to sell to Georgia Power Company its poles and lines along U. S. 41 from I-75 north and all customers except the Brown residence which is the last residence on east side of U. S. Highway 41 at the Oostanaula River. NGEMC shall also retain its customer east of U. S. Highway 41, the Calhoun Chemical Company. This exclusive area is shown on attached map, labeled "Exhibit A," and is bounded thereon in green.

The parties agree that the City of Calhoun shall not extend its lines at any time north of the northern boundary of LL's #97, 96, 95; east of I-75; south of the southern boundary of LL's #303, 302, 301, 300, 299, and 298; and west of a line that extends along the west boundary of LL's #298, 279, 262 to the city limit line just below LL #243; thence west to the center line of Ga. 53 Spur; thence along the center line of Ga. 53 Spur to Terrell Farm Road; thence along the present city limit line to where it intersects center line of the Oothcalooga Creek as it presently exists; thence along center line of the creek to where it intersects center line of the Oostanaula River as it now exists; thence north along center line of the river as it presently flows to the center line of Georgia Highway 143; thence along the present city limit line to the center of the Oostanaula River; thence along center line of Oostanaula River as it presently flows to point of beginning where the center line of the river intersects north boundary of LL #97. This area is shown bounded in yellow on "Exhibit A" Map.

The City of Calhoun agrees not to extend its electric facilities outside the boundaries of the City of Calhoun to serve any additional consumer. The City of Calhoun further agrees it will not serve electricity to any area in Gordon County or the State of Georgia until said area has been legally annexed to the City of Calhoun

and all municipal services provided including: fire protection, garbage collection, water, police protection, planning and zoning, city schools, and sanitary sewers. Also, property owners in such area must be paying, or subject to pay, city taxes. NGEMC agrees that sanitary sewer will only be provided where feasible and, if feasible, construction on said sanitary sewer services must be under construction within twelve months from date of annexation and must be completed in a reasonable period of time.

It is further agreed that should the feasibility of sanitary sewer to any area be questioned by either party, the city and the cooperative will enter a joint study by a consulting engineering firm selected by mutual agreement to determine if the proposed sanitary service is feasible. To be feasible, a project must amortize itself within twenty years.

After legal annexation and the provision of services as provided above, NGEMC will relinquish all its corridor rights inside the annexed area, but will retain its right to serve existing customers.

NGEMC also agrees to give up all its corridor rights inside the present city limits, but retains the right to serve its existing customers.

The City of Calhoun and NGEMC further agree to the following division of the following specific customers and areas:

1. The city to serve McDonald's and Kentucky Fried Chicken in Land Lot #274 in Gordon County.
2. The city to serve Venture Carpet's present plant on Highway 41 South.
3. The city to serve all new consumers in Spring Valley Subdivision that are in the city limits.
4. All present consumers in Spring Valley will retain present supplier.
5. The NGEMC (with the consent of owners of Bonanza) will let the City of Calhoun serve Bonanza on Highway 53.
6. The City of Calhoun will allow NGEMC to serve a consumer on the north side of Highway 53 to compensate for the loss of Bonanza.

7. The city will allow NGEMC to serve Scottish Inn and the Scottish Inn Restaurant located at the intersection of I-75 and Redbud Road.

It is agreed that the transfer of any facilities will be compensated for as mutually agreed upon.

NGEMC agrees to dismiss all complaints against the City of Calhoun it now has pending before the Georgia Public Service Commission.

NGEMC and Georgia Power agree that this agreement does not replace or modify the 1938 agreement between the parties as amended, except as specifically set forth herein, and that said 1938 agreement as amended except as specifically set forth herein or otherwise modified in writing between the parties shall continue in full force and effect.

All parties agree to abide by the rights of others within the areas as described above and shown on attached map marked "Exhibit A" and dated April 8, 1975.

CITY OF CALHOUN

By J. C. Bartlett, MAYOR

NORTH GEORGIA ELECTRIC MEMBERSHIP CORPORATION

By Glenn [illegible], Manager

GEORGIA POWER COMPANY

By Wesley F. Johnson
DIV. MARKETING SUPERVISOR

April 8, 1975

Attachment

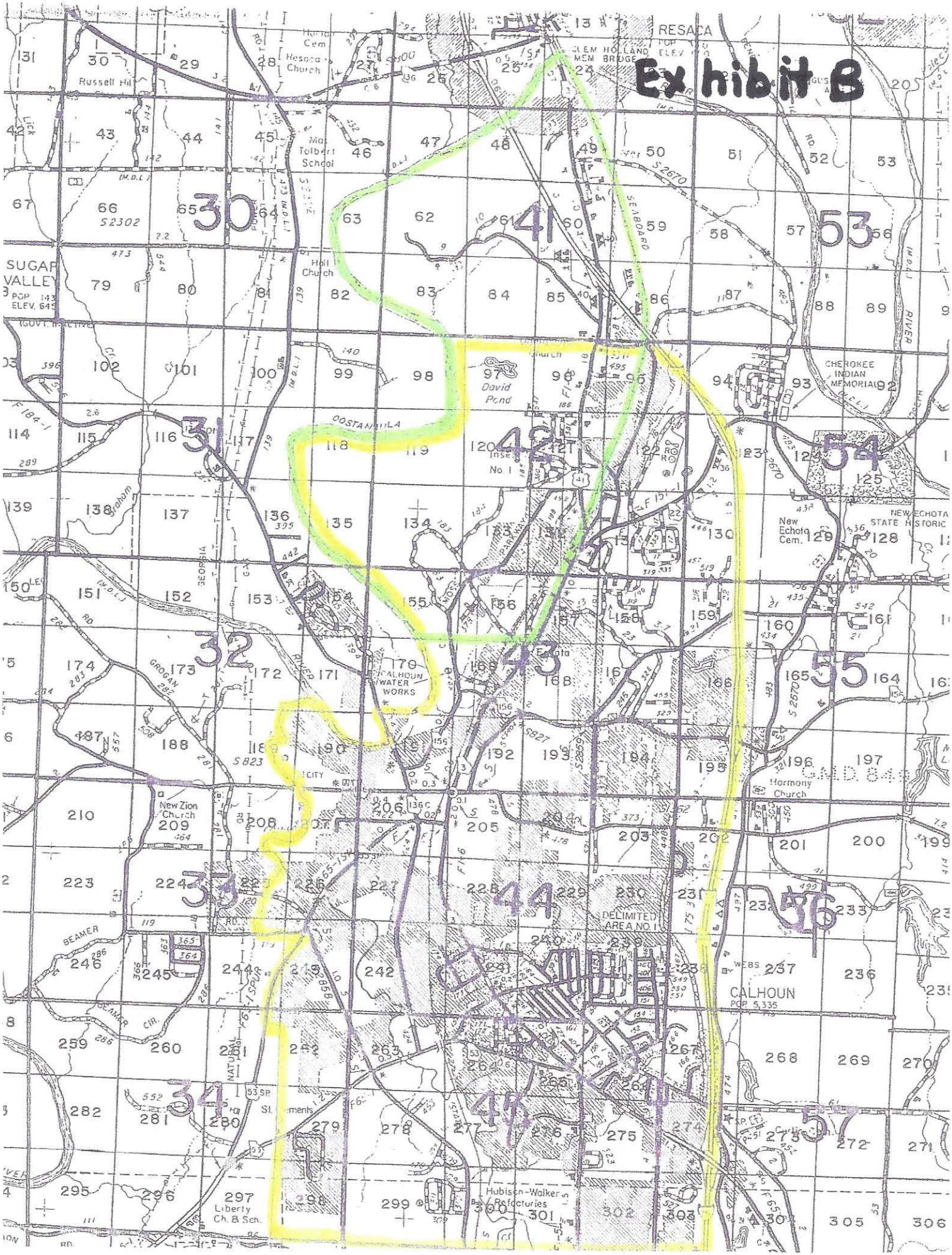
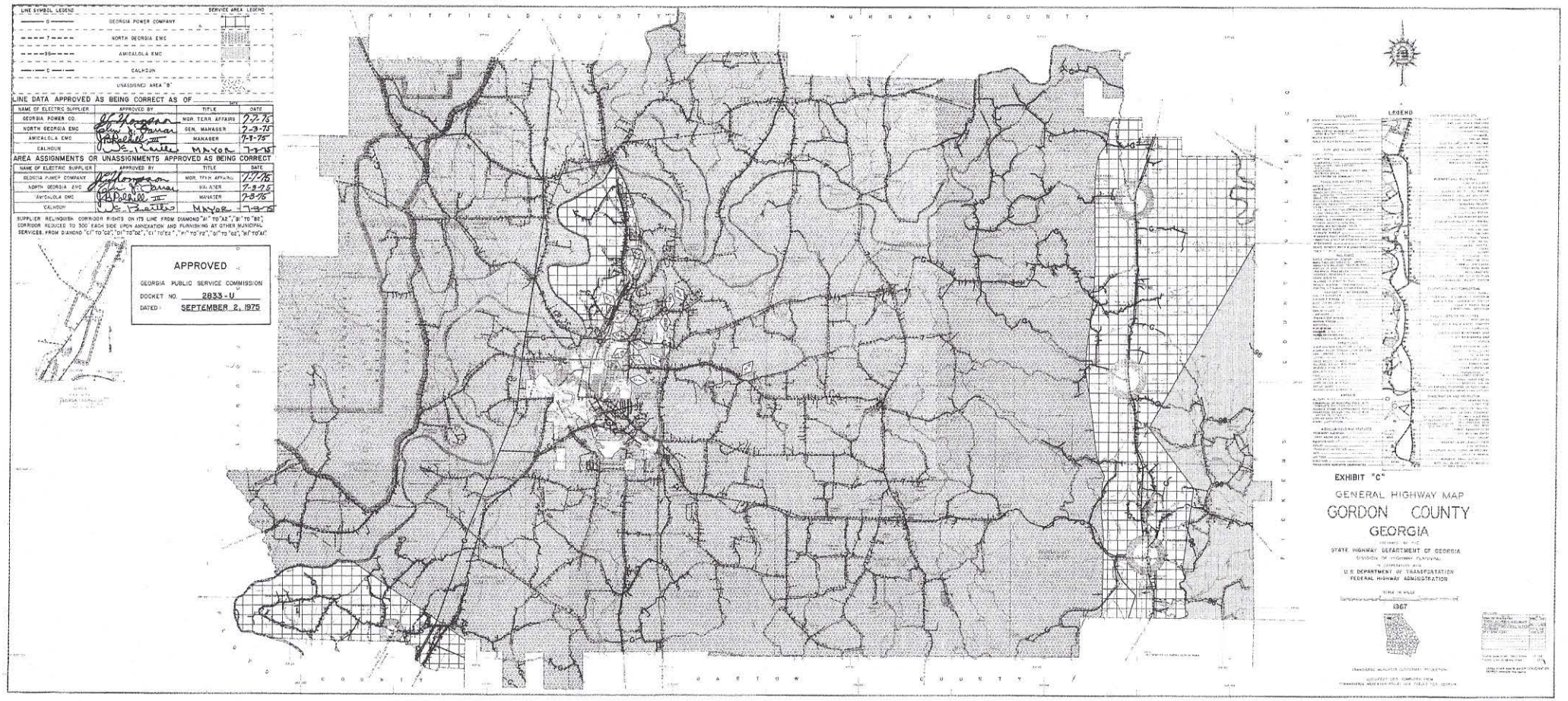

Exhibit B
RESACA
Resaca Church
Russell Hill
Mt. Tolbert School
SUGAR VALLEY
POP. 143
ELEV. 645
Hall Church
David Pond
CHEROKEE INDIAN MEMORIAL
OOSTANAULA
Inset No. 1
New Echota Cem.
NEW ECHOTA STATE HISTORIC
Graham
GEORGIA
CALHOUN WATER WORKS
GROGAN
New Zion Church
Harmony Church
BEAMER
DELIMITED AREA NO. 1
CALHOUN
POP. 5,335
Liberty Ch. & Sch.
Hubisen-Walker Refactories
30
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Exhibit C


LINE SYMBOL LEGEND
GEORGIA POWER COMPANY
NORTH GEORGIA EMC
AMICALOLA EMC
CALHOUN
UNASSIGNED AREA "B"
SERVICE AREA LEGEND
LINE DATA APPROVED AS BEING CORRECT AS OF
NAME OF ELECTRIC SUPPLIER | APPROVED BY | TITLE | DATE
GEORGIA POWER CO. | | MGR. TERR. AFFAIRS | 7-7-75
NORTH GEORGIA EMC | | GEN. MANAGER | 7-3-75
AMICALOLA EMC | | MANAGER | 7-3-75
CALHOUN | | MAYOR | 7-7-75
AREA ASSIGNMENTS OR UNASSIGNMENTS APPROVED AS BEING CORRECT
NAME OF ELECTRIC SUPPLIER | APPROVED BY | TITLE | DATE
GEORGIA POWER COMPANY | | MGR. TERR. AFFAIRS | 7-7-75
NORTH GEORGIA EMC | | MANAGER | 7-3-75
AMICALOLA EMC | | MANAGER | 7-3-75
CALHOUN | | MAYOR | 7-7-75
SUPPLIER RELINQUISH CORRIDOR RIGHTS ON ITS LINE FROM DIAMOND "A1" TO "A2", "B1" TO "B2", CORRIDOR REDUCED TO 300' EACH SIDE UPON ANNEXATION AND FURNISHING OF OTHER MUNICIPAL SERVICES. FROM DIAMOND "C1" TO "C2", "D1" TO "D2", "E1" TO "E2", "F1" TO "F2", "G1" TO "G2", "H1" TO "H2".
APPROVED
GEORGIA PUBLIC SERVICE COMMISSION
DOCKET NO. 2833-U
DATED: SEPTEMBER 2, 1975
WHITFIELD COUNTY
MURRAY COUNTY
GORDON COUNTY
CALHOUN COUNTY
LEGEND
EXHIBIT "C"
GENERAL HIGHWAY MAP
GORDON COUNTY
GEORGIA
STATE HIGHWAY DEPARTMENT OF GEORGIA
DIVISION OF HIGHWAY PLANNING
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
1967