BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

NORTH GEORGIA EMC,	)	
	)	
Petitioner,	)	
	)	Docket No. 55200
	)	
v.	)	
	)	
CITY OF CALHOUN,	)	
	)	
Respondent.		

ANSWER AND DEFENSES OF RESPONDENT CITY OF CALHOUN

Respondent CITY OF CALHOUN, Georgia ("Calhoun") responds to the individually numbered paragraphs of the PETITION ("Petition") of Petitioner NORTH GEORGIA ELECTRIC MEMBERSHIP CORPORATION ("NGEMC") filed with the GEORGIA PUBLIC SERVICE COMMISSION ("Commission") in the above-captioned matter as follows:

PRELIMINARY RESPONSE

Calhoun denies any and all allegations in the Petition that Calhoun has violated the Territorial Act,[1] Territorial Agreement, or any other law. Calhoun is operating in full compliance with this Commission's prior ruling and order entered on or about May 17, 2022 in Docket No. 42514 (the "2022 Ruling"). The 2022 Ruling conclusively resolved the question presented in NGEMC's present Petition: whether Calhoun may extend electric services to certain properties when it has (i) legally annexed an area; and (ii) provided municipal services to that area. The 2022 Ruling specifically held, as follows:

[1] Capitalized terms not defined herein shall have the meaning set forth in the Petition.

> In its Petition, the City also asks that "[i]f the PSC determines that the Agreement was adopted in its entirety as part of the PSC's Order in 1975, the City seeks declaratory relief that, under the Agreement, it has the right to extend electric service lines outside of the Box when it has (a) legally annexed the property; and (b) provided municipal services to the property." Petition for Declaratory Ruling, Para 37. This question, too, has already been answered by the Commission.
>
> In Docket 14496, **the Hearing Officer noted multiple times that the Agreement permitted "the expansion of the Box by CALHOUN's annexation of and provision of municipal services to a new areas."** Initial Decision, Conclusions of Law Para. 6, pp. 16-17; see also Findings of Fact Para. 5, pp. 6-7 ("**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 territory**"; Findings of Fact Para 25, p. 14 (**The Hearing Officer described the Box as "ever-expanding … as a result of CALHOUN's annexations**"); and Conclusions of Law Para 11, p. 20 (**Calhoun's promise not to extend its lines applies to "outside the Box, as expanded by future annexation and extension of other municipal services**").
>
> The Commission adopted the prior Hearing Officer's Findings of Fact and affirmed his Conclusions of Law as well as his ultimate conclusion in a Final Order on March 4, 2004. Docket 14496 Final Order, p. 15. **Because the prior Commission Order has already addressed this issue, no declaratory relief is warranted**.

See 2022 Ruling, emphasis added.

NGEMC failed to appeal the 2022 Ruling and it remains controlling precedent, despite NGEMC's present attempt to collaterally attack the validity of same or (incorrectly) frame it as non-binding dicta. For the foregoing reasons, Calhoun submits that the Petition should be denied in its entirety because the aforementioned prior orders of this Commission, including the 2022 Ruling, have already resolved the present issue and should control.

However, if the Commission's determination in this proceeding is in any way inconsistent with the 2022 Ruling, Calhoun expressly reserves the right to respond, in full, to the allegations

contained in the Petition, including, but not limited to, by (i) demonstrating that the arguments set forth in NGEMC's Petition are unsupported by the Territorial Act or Territorial Agreement and are contrary to cannons of contractual interpretation and public policy, and (ii) asserting the alternative arguments raised by Calhoun in Docket No. 42514, all of which are expressly incorporated into this Answer by reference, and to seek further relief from this Commission. Calhoun otherwise reserves all rights.

RESPONSE TO PETITION

1.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 1 of the Petition.

2.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that it lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Petition.

3.

Calhoun incorporates by reference its Preliminary Response. Calhoun admits that it is a municipal corporation established by local act of the State of Georgia since January 12, 1852 and denies all other allegations in paragraph 3 of the Petition.

4.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a

response is required, Calhoun admits that NGEMC and Calhoun provide electric services but denies all other allegations in paragraph 4 of the Petition.

I. BACKGROUND

5.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 5 of the Petition.

6.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 6 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

7.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun admits that the document attached as Exhibit A to the Petition and as alleged in paragraph 7 of the Petition is the purported agreement of April 8, 1975 and denies all other allegations in paragraph 7 of the Petition.

8.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 8 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

9.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 9 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

10.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 10 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

11.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 11 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

12.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 12 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

13.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a

response is required, Calhoun denies the allegations in paragraph 13 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

14.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 14 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 15 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

16.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 16 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

17.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 17 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

18.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 18 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

19.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 19 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

20.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 20 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

21.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 21 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

22.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 22 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

23.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 23 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

24.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 24 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

25.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 25 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

26.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a

response is required, Calhoun denies the allegations in paragraph 26 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

27.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 27 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

28.

Calhoun incorporates by reference its Preliminary Response. Calhoun admits that the 2022 Ruling controls in this matter, but denies NGEMC's characterization of the 2022 Ruling and all other allegations in paragraph 28, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

29.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 29 of the Petition, specifically including NGEMC's characterization of the 2022 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

30.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 30 of the Petition, specifically

including NGEMC's characterization of the 2022 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

31.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun admits that the 2022 Ruling controls in this matter, but denies NGEMC's characterization of (i) the 2022 Ruling and (ii) the Initial Decision rendered in Docket No. 14496 on or about May 28, 2003 (the "2003 Ruling"), and all other allegations in paragraph 31. Calhoun further responds that it is operating in full compliance with all applicable law and the 2022 Ruling.

32.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies NGEMC's characterization of the 2022 Ruling and 2003 Ruling and all other allegations in paragraph 32.

33.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 33 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

34.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 34 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

35.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 35 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

36.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 36 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

37.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 37 of the Petition, specifically

including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

38.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 38 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

39.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 39 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

40.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 40 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

41.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a

response is required, Calhoun denies the allegations in paragraph 41 of the Petition, specifically including NGEMC's characterization of the 2003 Ruling, and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

42.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 42 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

43.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 43 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

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

44.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 44 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

45.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a

response is required, Calhoun denies the allegations in paragraph 45 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

46.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 46 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

47.

Calhoun incorporates by reference its Preliminary Response. Calhoun further responds that this paragraph constitutes legal conclusions to which no response is required. To the extent a response is required, Calhoun denies the allegations in paragraph 47 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

II. THE CITY OF CALHOUN BREACHED THE TERRITORIAL AGREEEMENT

48.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 48 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

49.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 49 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

50.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 50 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

51.

Calhoun incorporates by reference its Preliminary Response. Calhoun further denies the allegations in paragraph 51 of the Petition and asserts that Calhoun is operating in full compliance with all applicable laws and the 2022 Ruling.

52.

Except as expressly admitted herein, any remaining allegations of the Petition are denied.

DEFENSES

1.

The Petition fails to state a claim for which relief may be granted by the Commission.

2.

The Petition is barred by the doctrine of illegality in that NGEMC asserts a construction of the Territorial Agreement and/or Territorial Act which would be unenforceable as a matter of law.

3.

The Petition is barred by the doctrine of waiver.

4.

The Petition is barred by the doctrine of laches.

5.

The Petition is barred by the doctrine of unclean hands.

6.

NGEMC lacks the requisite standing to pursue the relief requested in said Petition.

7.

The Petition should be dismissed for failure to join an indispensable party.

8.

Calhoun specifically incorporates by reference each and every defense and argument asserted by Calhoun in Docket No. 42514.

WHEREFORE, Calhoun prays that the Commission:

(1) Dismiss NGEMC's Petition, in full;

(2) Uphold the 2022 Ruling; and

(3) Afford Calhoun such other and further relief as the Commission shall deem just and proper.

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



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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **ANSWER AND DEFENSES OF RESPONDENT CITY OF CALHOUN** upon the following by hand-delivery, with a copy by electronic service:

Sallie Tanner
Executive Secretary
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And upon the following by electronic service and U.S. Mail, postage paid, as follows:

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Mayor, City of Calhoun
P.O. Box 248
Calhoun, GA 30703

I have also filed a copy of the foregoing **ANSWER AND DEFENSES OF RESPONDENT CITY OF CALHOUN** with the Commission via the Commission's alternative email procedure.

Respectfully submitted this 26th day of June, 2023.



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