BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

Sandersville Railroad Company Hancock County, Georgia **In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation**	Docket No.: 45045

RESPONSE OF PROPERTY OWNER INTERVENOR APPLICANTS TO SANDERSVILLE RAILROAD COMPANY'S "OBJECTION TO RESPONDENTS' PURPORTED DATA REQUESTS"

The Property Owner Intervenor Applicants (the "Property Owners")[1] briefly respond to Sandersville Railroad Company's ("Sandersville Railroad") "Objection to Respondents' Purported Data Requests," filed with the Public Service Commission on July 28, 2023 (the "Objection"). Sandersville Railroad's Objection is based on a misconception—namely, that parties to a proceeding may not request that the Hearing Officer issue discovery requests. Nothing in the Procedural and Scheduling Order (the "Scheduling Order"), Georgia statutes, the Commission's rules, or its practice prohibits a party from requesting that the Hearing Officer issue discovery. Moreover, there is nothing that prevents the Hearing Officer from issuing such discovery requests if she so chooses—and she so chose here.[2] Instead, Georgia law, the Scheduling Order, and the

[1] The Property Owner Intervenor Applicants are William Blaine Smith and Helen Diane Smith; Marvin Smith, Jr., and Patricia Smith; Leo John Briggs and Georgia Ann Briggs; Joel Bradford Reed and Kathy Lynn Reed; Donna N. Garrett; Herus Ellison Garrett; Sally G. Wells; Verne Kennedy Hollis; and Thomas Ahmad Lee. Sandersville Railroad has named the Property Owner Intervenor Applicants as Respondents in its Amended Petition

[2] Sandersville Railroad alleges that Robert Baker, counsel for the Property Owners, sent a letter to the Hearing Officer on July 21, 2023. Mr. Baker did not send this letter. Rather, it was Renée Flaherty, another of the Property Owners' counsel, who sent the letter, an updated version of which she filed in this Proceeding on July 25, 2023, after she revised it to comport with Sandersville Railroad's Amended Petition. As for Sandersville Railroad's accusation that Mr. Baker knows "the type of discovery he seeks on behalf of his clients is improper," Objection 2,

Commission's own practice permits both the parties to make such a request and the Hearing Officer to agree to it. As such, the Property Owners respectfully request that the Hearing Officer overrule the Objection and affirm her subpoena and response date of August 16, 2023. Should Sandersville Railroad fail to timely comply with the Hearing Officer's subpoena, the Property Owners respectfully request that the Hearing Officer take such action as is necessary to compel production pursuant to O.C.G.A. §§ 46-2-57 and 9-11-37.

1. Sandersville Railroad does not cite to any provision in Georgia law that prevents parties, such as the Property Owners, from requesting that the Hearing Officer issue discovery to ensure that she and the Commission have all the facts and evidence necessary to render a fair and just order. That is because there is nothing in the Georgia statutes that prohibits parties from doing so. Instead, Georgia law specifically provides the Commission with significant discretion to conduct investigations and hearings:

> In the investigation, preparation, and hearing of cases, 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**.

O.C.G.A. § 46-2-51 (emphasis added).

2. This flexibility has, in past Commission proceedings, manifested itself in parties requesting that a Hearing Officer issue subpoenas and the Hearing Officer agreeing to do so. *See* Exhibits 1, 2, 3, and 4 to the Authentication Affidavit of William R. Maurer, attached to this

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this Response demonstrates that the type of discovery he has requested the Hearing Officer issue is proper and "will facilitate [the Commission's] efforts to ascertain the facts bearing upon the right and justice of the matters before it." O.C.G.A. § 46-2-51.

Response (request for subpoena, objection to request, and Hearing Officer's subpoena in Georgia Public Service Commission Docket No. 43899).[3] That is what has happened here.

3. Sandersville Railroad next argues that the Hearing Officer may not issue interrogatories, Objection 2. This argument is also incorrect. Georgia law authorizes the Commission "to issue an order permitting its employees and agents to take depositions and **otherwise obtain discovery** of any matter, not privileged, which is relevant to the subject matter involved in the investigation, proceeding, or petition before the commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in civil actions." O.C.G.A. § 46-2-57(a) (emphasis added). The Commission issued an order appointing the Hearing Officer to conduct a hearing "pursuant to O.C.G.A. § 46-2-58" in this proceeding on March 24, 2023. O.C.G.A. § 46-2-58 specifically authorizes the Hearing Officer to "[s]ign and issue subpoenas for discovery or trial." O.C.G.A. § 46-2-58(b). Among the types of discovery the Hearing Officer may issue under §§ 46-2-57 & 58 is "Interrogatories to Parties," O.C.G.A. § 9-11-33—exactly the kind of discovery the Hearing Officer has issued here.

4. Finally, Sandersville Railroad argues that "Respondents' purported Data Requests were filed prematurely given that the [Scheduling Order] clearly provides that the 'Parties may submit Subpoenas with the Commission's Executive Secretary' on September 14, 2023[,] and that 'Objections to any Subpoenas must be filed with the Commission['s] Executive Secretary' on September 28, 2023." Objection 2. The Property Owners have not submitted any subpoenas, however. They have requested that the Hearing Officer, who is not a party, issue a subpoena (which she did). The Scheduling Order does not set a date prior to which the parties may not

[3] The Property Owners note that Robert Highsmith, counsel for Sandersville Railroad, was also counsel for one of the recipients of the requested subpoenas in Docket 43899.

request the Hearing Officer issue a subpoena. Moreover, even if the September 14, 2023, date applied to the Property Owners' request, that date is clearly a deadline by which the parties may submit a subpoena, not a date before which such subpoenas are disallowed.

REQUEST FOR RELIEF

WHEREFORE, the Property Owners respectfully request that the Hearing Officer overrule the Objection and affirm the August 16, 2023, response date set out in her subpoena. If Sandersville Railroad fails to timely comply with the Hearing Officer's subpoena, the Property Owners also respectfully request that the Hearing Officer take such action as is necessary to compel production pursuant to O.C.G.A. §§ 46-2-57 and 9-11-37.[4]

[4] Although Sandersville Railroad has already objected to the substance and procedure of the subpoena, it nonetheless alleges that it "will shortly file separate objections to the Subpoena." Objection 3. The Property Owners reserve the right to respond to any forthcoming *seriatim* objections filed by the railroad.

Dated: August 9, 2023

Respectfully Submitted:

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**Pro hac vice* applications pending

Counsel for Property Owner Intervenor Applicants

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2023, a copy of the foregoing *Response of Property Owner Intervenor Applicants to Sandersville Railroad Company's "Objection to Respondents' Purported Data Requests"* has been served via electronic mail and U.S. First-Class Mail on the following pursuant to GA. COMP. R. & REGS. 515-16-16-.02; 515-2-1-.04(4)(b), (3):

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Designated Hearing Officer

Sallie Tanner
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
Telephone: (404) 656-4501
Facsimile: (404) 656-2341
E-mail: stanner@psc.ga.gov

Executive Secretary of the Public Service Commission

Rob Trokey
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
E-mail: rtrokey@psc.state.ga.us

Director, Electric Unit of the Public Service Commission

Ray-Kelle Preston
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
E-mail: rpreston@psc.ga.gov

DATED this 9th day of August, 2023.

Grant E. McBride
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Tel.: 770-957-3937
Fax: 770-957-9165

Counsel for Property Owner Intervenor Applicants

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

Sandersville Railroad Company Hancock County, Georgia **In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation**	Docket No.: 45045

AUTHENTICATION AFFIDAVIT OF WILLIAM R. MAURER IN SUPPORT OF PROPERTY OWNER INTERVENOR APPLICANTS' RESPONSE TO SANDERSVILLE RAILROAD COMPANY'S "OBJECTION TO RESPONDENTS' PURPORTED DATA REQUESTS"

I, William R. Maurer, swear under the penalty of perjury under the law of Georgia that the foregoing is true and correct:

1. My name is William R. Maurer. I am a U.S. citizen and a resident of Redmond, Washington. I am over the age of 18 and fully competent to make this Affidavit based on my personal knowledge.

2. I am an attorney with the Institute for Justice, a nonprofit law firm with its headquarters in Arlington, Virginia.

3. I am the Managing Attorney of the Institute's Washington state office located in Seattle, Washington.

4. I am counsel for Intervenor-Applicants/Respondents William Blaine Smith and Helen Diane Smith; Marvin Smith, Jr., and Patricia Smith; Leo John Briggs and Georgia Ann Briggs; Joel Bradford Reed and Kathy Lynn Reed; Donna N. Garrett; Herus Ellison Garrett; Sally G. Wells; Verne Kennedy Hollis; and Thomas Ahmad Lee in the above-captioned proceeding.

5. Attached at **Exhibit 1** is a true and correct copy of "Sawnee EMC's Request for Issuance of Subpoenas," dated January 7, 2022, in Docket No. 43899 before the Georgia Public Service Commission. I obtained this document from official website of the Georgia Public Service Commission under the Docket 43899, available at https://psc.ga.gov/search/facts-docket/?docketId=43899. This document has not been altered or amended in any way. I obtained this document on August 7, 2023.

6. Attached at **Exhibit 2** is a true and correct copy of a letter from Steven J. Hewitson of the law firm Troutman Pepper to Ms. Sallie K. Tanner, Executive Secretary of the Georgia Public Service Commission, dated January 10, 2022, in Docket No. 43899 before the Georgia Public Service Commission. I obtained this document from official website of the Georgia Public Service Commission under the Docket 43899, available at https://psc.ga.gov/search/facts-docket/?docketId=43899. This document has not been altered or amended in any way. I obtained this document on August 7, 2023..

7. Attached at **Exhibit 3** is a true and correct copy of a subpoena issued by the Georgia Public Service Commission to the Georgia Power Company, dated January 10, 2022, in Docket No. 43899 before the Georgia Public Service Commission. I obtained this document from official website of the Georgia Public Service Commission under the Docket 43899, available at https://psc.ga.gov/search/facts-docket/?docketId=43899. This document has not been altered or amended in any way. I obtained this document on August 7, 2023.

8. Attached at **Exhibit 4** is a true and correct copy of a subpoena issued by the Georgia Public Service Commission to Electrify America, LLC, dated January 10, 2022, in Docket No. 43899 before the Georgia Public Service Commission. I obtained this document from official website of the Georgia Public Service Commission under the Docket 43899,

available at https://psc.ga.gov/search/facts-docket/?docketId=43899. This document has not been altered or amended in any way. I obtained this document on August 7, 2023.

Signed on this 8th day of August, at Seattle, Washington.

William R. Maurer

Sworn to before me this 8th day of August, 2023.

Hilary Loya
Notary Public, License #196142
State of Washington
My Comm. Expires Nov. 12, 2025

Notary Public

My commission expires 11/12/25

EXHIBIT 1

EVERSHEDS SUTHERLAND

Eversheds Sutherland (US) LLP
999 Peachtree St., N.E., Suite 2300
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D: +1 404.853.8578
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jamesorr@
eversheds-sutherland.com

Via Alternative Electronic Filing

January 7, 2022

Ms. Sallie K. Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334

RE: Sawnee Electric Membership Corporation vs. Georgia Power Company
Docket No. 43899

Dear Ms. Tanner:

On behalf of Sawnee EMC, I enclose for filing Sawnee EMC's Request for Issuance of Subpoenas. Please call me (404-358-4314) if you have any questions about this filing.

Sincerely,

James A. Orr

cc: Ms. Nancy Gibson, Hearing Officer
Parties of Record

Eversheds Sutherland (US) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SAWNEE EMC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 43899
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

SAWNEE EMC'S REQUEST FOR ISSUANCE OF SUBPOENAS

Pursuant to Scheduling Order in this matter (page 4) and O.C.G.A. § 50-13-13(a)(6) (authority of hearing officer to sign and issue subpoenas), Sawnee Electric Membership Corporation hereby requests that the Hearing Officer sign the attached subpoenas and return them to the undersigned for service.

Respectfully submitted this 7th day of January, 2022.

James A. Orr (Ga. Bar No. 554608)
Lee A. Peifer (Ga. Bar No. 367028)
Benjamin E. Reed (Ga. Bar No. 719210)
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leepeifer@eversheds-sutherland.com
benreed@eversheds-sutherland.com
Attorneys for Sawnee EMC

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SAWNEE EMC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 43899
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **SAWNEE EMC'S REQUEST FOR ISSUANCE OF SUBPOENAS** by email as follows:

Sallie K. Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30034
stanner@psc.state.ga.gov

Nancy G. Gibson
Hearing Officer
Georgia Public Service Commission
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I have also filed a copy of the forgoing with the Commission via the Commission's Alternative eMail procedure.

This 7th day of January, 2022.

James A. Orr (Ga. Bar No. 554608)
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Atlanta, Georgia 30309-3996
(404) 853-8000
jamesorr@eversheds-sutherland.com
Attorney for Sawnee EMC

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SAWNEE EMC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 43899
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

SAWNEE EMC'S REQUEST FOR ISSUANCE OF SUBPOENAS

Pursuant to Scheduling Order in this matter (page 4) and O.C.G.A. § 50-13-13(a)(6) (authority of hearing officer to sign and issue subpoenas), Sawnee Electric Membership Corporation hereby requests that the Hearing Officer sign the attached subpoenas and return them to the undersigned for service.

Respectfully submitted this 7th day of January, 2022.

James A. Orr (Ga. Bar No. 554608)
Lee A. Peifer (Ga. Bar No. 367028)
Benjamin E. Reed (Ga. Bar No. 719210)
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benreed@eversheds-sutherland.com
Attorneys for Sawnee EMC

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SAWNEE EMC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 43899
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **SAWNEE EMC'S REQUEST FOR ISSUANCE OF SUBPOENAS** by email as follows:

Sallie K. Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30034
stanner@psc.state.ga.gov

Nancy G. Gibson
Hearing Officer
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
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Griffin, Georgia 30223
ngalloway@gallyn-law.com
tlyndall@gallyn-law.com

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

This 7th day of January, 2022.

James A. Orr (Ga. Bar No. 554608)
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Atlanta, Georgia 30309-3996
(404) 853-8000
jamesorr@eversheds-sutherland.com
Attorney for Sawnee EMC

COMMISSIONERS:

TRICIA PRIDEMORE, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
FITZ JOHNSON
JASON SHAW
LAUREN "BUBBA" McDONALD, JR.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE MCALISTER
EXECUTIVE SECRETARY

Georgia Public Service Commission

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(800} 282-5813

244 WASHINGTON STREET, S.W.
ATLANTA GEORGIA 30334-5701

FAX: (404} 656-2341
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SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

GEORGIA – FULTON COUNTY
DOCKET NO. 43899

SAWNEE ELECTRIC MEMBERSHIP CORPORATION V. GEORGIA POWER COMPANY

TO: ELECTRIFY AMERICA, LLC

GREETINGS:

You are required to appear at the Hearing Room of the Georgia Public Service Commission, First Floor, 244 Washington Street S.W., Atlanta, Georgia 30334 on the 21st day of January, 2022, at 10:00 a.m., and continuing as necessary to testify at the hearing in the above entitled action pending before the Georgia Public Service Commission and to bring with you:

- See Exhibit "A" attached

As a corporate entity, you should designate one or more persons to testify regarding the authenticity of each document and the facts relevant to its creation.

HEREIN FAIL NOT, UNDER PENALTY OF LAW, BY ORDER OF THE GEORGIA PUBLIC SERVICE COMMISSION, this _____ day of _____, 2022.

_____
Nancy Gibson (Hearing Officer)
GEORGIA PUBLIC SERVICE COMMISSION

RETURN OF SERVICE

Received this subpoena at _____, 2022 and on _____, 2022, at _____ served it on the within named _____ by delivering a copy to him/her and tendering to him/her the fee for attendance and mileage as required by law[2]

_____ _____

By: Date:

Fees:

Service _____ $_____Mileage_____ $_____

Total _____ $_____

I certify that the foregoing is true and correct. Executed on _____, 2022.

_____

[2] For a subpoena issued in behalf of a party other than the Georgia Public Service Commission to be valid, service and mileage fees must be tendered to the witness upon service of the subpoena (O.C.G.A. Section 24-10-24).

EXHIBIT A TO ELECTRIFY AMERICA, LLC SUBPOENA

Definitions and Instructions

The term "Electrify America" refers to Electrify America, LLC.

The term "Premises" refers to the electric vehicle charging facilities, including dispensers and power cabinets, installed at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024.

The term "concerning" means, without limitation, relating to, regarding, referring to, reflecting, consisting of, evidencing, or constituting.

When a document is requested herein, the request includes any writings, emails, photographs, and any document maintained in a graphic, electronic, or other medium of any kind or nature.

Requests

1. All documents concerning alternating current (AC) meter readings, metered demand, usage data or load data at the Premises for the period March 1, 2021 through December 31, 2021.
2. All documents concerning direct current (DC) meter readings, metered demand, usage data or load data at the Premises for the period March 1, 2021 through December 31, 2021.
3. All documents that support Electrify America's testimony that "there are consumer vehicles already on the road that are capable of drawing 300 kW or more at peak charging power." (Pre-filed Rebuttal Testimony of Jigar J. Shah on behalf of Electrify America at 4:18-5:1.)
4. Documents reflecting the peak charging capacity of consumer vehicles on the road in the United States as of March 23, 2021, including but not limited to the make and model of such vehicles.
5. All documents concerning any limitation, restraint, or restriction on the maximum power or demand that can be used at the Premises at any given time, including but not limited to any documents regarding the Open Charge Point Protocol (OCCP) including OCPP setup, provisioning, configuration, and operational parameter changes related to the charging site; load-balancing settings; settings related to local and/or centralized charging control; and maximum power or current limitations (such as the ChargePointMaxProfile) for the Premises.

6. With respect to the 250 kVA transformer installed at Electrify America's Cookeville, Tennessee charging station (referenced in Mr. Shah's Rebuttal Testimony), all documents concerning any analysis, assessment, evaluation, study, consideration, or decision regarding what size transformer should be installed at that location, including but not limited to all documents concerning communications with the utility serving the charging station regarding what size transformer should be installed.

COMMISSIONERS:

TRICIA PRIDEMORE, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
FITZ JOHNSON
JASON SHAW
LAUREN "BUBBA" McDONALD, JR.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE MCALISTER
EXECUTIVE SECRETARY

Georgia Public Service Commission

(404} 656-4501
(800} 282-5813

244 WASHINGTON STREET, S.W.
ATLANTA GEORGIA 30334-5701

FAX: (404} 656-2341
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SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

GEORGIA – FULTON COUNTY
DOCKET NO. 43899

SAWNEE ELECTRIC MEMBERSHIP CORPORATION V. GEORGIA POWER COMPANY

TO: GEORGIA POWER COMPANY

GREETINGS:

You are required to appear at the Hearing Room of the Georgia Public Service Commission, First Floor, 244 Washington Street S.W., Atlanta, Georgia 30334 on the 21st day of January, 2022, at 10:00 a.m., and continuing as necessary to testify at the hearing in the above entitled action pending before the Georgia Public Service Commission and to bring with you:

- See Exhibit "A" attached

As a corporate entity, you should designate one or more persons to testify regarding the authenticity of each document and the facts relevant to its creation.

HEREIN FAIL NOT, UNDER PENALTY OF LAW, BY ORDER OF THE GEORGIA PUBLIC SERVICE COMMISSION, this _____ day of _____, 2022.

_____
Nancy Gibson (Hearing Officer)
GEORGIA PUBLIC SERVICE COMMISSION

RETURN OF SERVICE

Received this subpoena at _____, 2022 and on _____, 2022, at _____ served it on the within named _____ by delivering a copy to him/her and tendering to him/her the fee for attendance and mileage as required by law[2]

_____ _____

By: Date:

Fees:

Service _____ $_____Mileage_____ $_____

Total _____ $_____

I certify that the foregoing is true and correct. Executed on _____, 2022.

_____

[2] For a subpoena issued in behalf of a party other than the Georgia Public Service Commission to be valid, service and mileage fees must be tendered to the witness upon service of the subpoena (O.C.G.A. Section 24-10-24).

EXHIBIT A TO GEORGIA POWER COMPANY SUBPOENA

Definitions and Instructions

As used herein, the term "You" (including any derivatives thereof) means Georgia Power Company, as well as any of its agents, officers, representatives, departments, divisions, or affiliated organizations.

The term "Electrify America" refers to Electrify America, LLC.

The term "Premises" refers to the electric vehicle charging facilities, including dispensers and power cabinets, installed at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024.

The term "concerning" means, without limitation, relating to, regarding, referring to, reflecting, consisting of, evidencing, or constituting.

When a document is requested herein, the request includes any writings, emails, photographs, and any document maintained in a graphic, electronic, or other medium of any kind or nature.

Requests

1. All documents concerning Electrify America's solicitation of bids to serve the Premises and Your response thereto.
2. All documents concerning any analysis, assessment, evaluation, study, or consideration of whether the Premises would or does constitute a 900 kw customer choice load under the Georgia Territorial Electric Service Act.
3. All communications with Electrify America concerning the Premises.
4. All documents concerning Your design plans for extending electric service to the Premises.
5. All documents concerning Your extension of electric service to the Premises.
6. All documents concerning invoices or bills sent by You to Electrify America related to the Premises or electric service rendered thereto.
7. All documents reflecting meter readings, metered demand, load data or usage data for electric service rendered to the Premises.

EXHIBIT 2

Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308-2216

troutman.com

Steven J. Hewitson
steven.hewitson@troutman.com

January 10, 2022

VIA ELECTRONIC MAIL

Ms. Sallie K. Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334

Re: *Sawnee EMC v. Georgia Power Company*; Docket No. 43899

Dear Ms. Tanner:

On Friday, January 7, 2022, Sawnee Electric Membership Corporation ("Sawnee EMC") filed a Request for Issuance of Subpoenas in the above-referenced matter. One of the subpoenas Sawnee EMC sought to be issued is directed at Georgia Power Company ("Georgia Power"). For the reasons stated herein, Georgia Power objects to the issuance of the proposed subpoena.

The Revised Notice of Hearing and Scheduling Order ("Scheduling Order") directed that, by December 8, 2021, the parties were to "confer in advance of the Pre-Hearing Conference, and exchange documents proposed to be used at hearing as exhibits." (Scheduling Order at 3.) As directed by the Scheduling Order, the parties met via conference call on December 7, 2021 to confer regarding hearing exhibits. No mention was made by Sawnee EMC during that conference regarding this subpoena or the documents requested by the subpoena. Sawnee EMC could have asked during that conference for the documents it now seeks; but it did not. Rather, a month after the conference between parties, and only two weeks before the scheduled hearing in this matter, Sawnee EMC requests that the Commission issue a subpoena seeking documents that Sawnee EMC could have requested at any time since it filed this proceeding on May 21, 2021. The requested subpoena should not be issued because it is untimely and ignores the deadlines provided in the Scheduling Order.

Further, given the late stage of this proceeding, if the Commission issues the subpoena, Georgia Power's witnesses will be required to spend time locating and preparing for production the requested documents, when they should be preparing for the hearing, which is now less than two weeks away. In each of the subpoena's document requests, the subpoena asks that "all" documents or communications be located and produced. Given the breadth of the requests and the burden that would be involved in responding, the subpoena should not be issued because it is overly broad and unduly burdensome.

Finally, Request Nos. 6 and 7 in the subpoena seek information related to invoicing and billing for electric service to the Premises, and meter or load data at the Premises. As discussed

more fully in Georgia Power's Objections to Certain Testimony Prefiled by Sawnee EMC, filed on December 21, 2021, each of these requests seek information that is not relevant to whether the Premises in question in this proceeding qualifies for customer choice under the Georgia Territorial Service Act, O.C.G.A. §§ 46-3-3 through 46-3-15. Specifically, billing and metered load data do not assist the Hearing Officer in determining whether the premises had 900 kW or greater of connected load at initial full operation. *See N. Ga. EMC v. Calhoun*, Docket No. 14496, at 34-35 (Initial Decision, May 29, 2003) (explaining the "use of metered demand and billing to demonstrate 'connected load' has been firmly rejected by the Commission."); *Mitchell EMC v. Georgia Power Co.*, Docket No. 4863, at 4 (Initial Decision, July 14, 1994) ("[i]t is not possible to determine the connected load at any point in time on the basis of the actual billing data."). Accordingly, even if the Commission issues the requested subpoena, Request Nos. 6 and 7 should be removed from the subpoena prior to issuance.

For all these reasons, Georgia Power objects to the issuance of the subpoena requested by Sawnee EMC. Should the subpoena be issued, Georgia Power reserves it right to object to the subpoena as issued.

Sincerely,

Steven J. Hewitson

cc: Nancy Gibson, Esq., Hearing Officer
Parties of Record

EXHIBIT 3

FILED

JAN 11 2022

EXECUTIVE SECRETARY
G.P.S.C

DOCKET# 43899
DOCUMENT# 188228

COMMISSIONERS:

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

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
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SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

GEORGIA – FULTON COUNTY
DOCKET NO. 43899

SAWNEE ELECTRIC MEMBERSHIP CORPORATION V. GEORGIA POWER COMPANY

TO: GEORGIA POWER COMPANY

GREETINGS:

You are requested to appear at the Hearing Room of the Georgia Public Service Commission, First Floor, 244 Washington Street S.W., Atlanta, Georgia 30334 on the 21st day of January, 2022, at 10:00 a.m., and continuing as necessary to testify at the hearing in the above entitled action pending before the Georgia Public Service Commission and to bring with you:

- See Exhibit "A" attached

As a corporate entity, you should designate one or more persons to testify regarding the authenticity of each document and the facts relevant to its creation.

Nancy Gibson (Hearing Officer)
GEORGIA PUBLIC SERVICE COMMISSION

1/10/2022
Date

RETURN OF SERVICE

Received this subpoena at _____, 2022 and on _____, 2022, at _____ served it on the within named _____ by delivering a copy to him/her and tendering to him/her the fee for attendance and mileage as required by law[2]

_____ _____

By: Date:

Fees:

Service _____ $_____ Mileage _____ $_____
Total _____ $_____

I certify that the foregoing is true and correct. Executed on _____, 2022.

_____

[2] For a subpoena issued in behalf of a party other than the Georgia Public Service Commission to be valid, service and mileage fees must be tendered to the witness upon service of the subpoena (O.C.G.A. Section 24-10-24).

EXHIBIT A TO GEORGIA POWER COMPANY SUBPOENA

Definitions and Instructions

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4. All documents concerning Your design plans for extending electric service to the Premises.
5. All documents concerning Your extension of electric service to the Premises.
6. All documents concerning invoices or bills sent by You to Electrify America related to the Premises or electric service rendered thereto.
7. All documents reflecting meter readings, metered demand, load data or usage data for electric service rendered to the Premises.

EXHIBIT 4

COMMISSIONERS:

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

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
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SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS

GEORGIA – FULTON COUNTY
DOCKET NO. 43899

SAWNEE ELECTRIC MEMBERSHIP CORPORATION V. GEORGIA POWER COMPANY

TO: ELECTRIFY AMERICA, LLC

GREETINGS:

You are requested to appear at the Hearing Room of the Georgia Public Service Commission, First Floor, 244 Washington Street S.W., Atlanta, Georgia 30334 on the 21st day of January, 2022, at 10:00 a.m., and continuing as necessary to testify at the hearing in the above entitled action pending before the Georgia Public Service Commission and to bring with you:

- See Exhibit "A" attached

As a corporate entity, you should designate one or more persons to testify regarding the authenticity of each document and the facts relevant to its creation.

Nancy Gibson

Nancy Gibson (Hearing Officer)
GEORGIA PUBLIC SERVICE COMMISSION

1/10/2022

Date

RETURN OF SERVICE

Received this subpoena at _____, 2022 and on _____, 2022, at _____ served it on the within named _____

by delivering a copy to him/her and tendering to him/her the fee for attendance and mileage as required by law[2]

_____ _____

By: Date:

Fees:

Service _____ $_____ Mileage_____ $_____

Total _____ $_____

I certify that the foregoing is true and correct. Executed on _____, 2022.

_____

[2] For a subpoena issued in behalf of a party other than the Georgia Public Service Commission to be valid, service and mileage fees must be tendered to the witness upon service of the subpoena (O.C.G.A. Section 24-10-24).

EXHIBIT A TO ELECTRIFY AMERICA, LLC SUBPOENA

Definitions and Instructions

The term "Electrify America" refers to Electrify America, LLC.

The term "Premises" refers to the electric vehicle charging facilities, including dispensers and power cabinets, installed at Johns Creek Town Center Shopping Mall, 3630 Peachtree Parkway, Suwanee, Georgia 30024.

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When a document is requested herein, the request includes any writings, emails, photographs, and any document maintained in a graphic, electronic, or other medium of any kind or nature.

Requests

1. All documents concerning alternating current (AC) meter readings, metered demand, usage data or load data at the Premises for the period March 1, 2021 through December 31, 2021.
2. All documents concerning direct current (DC) meter readings, metered demand, usage data or load data at the Premises for the period March 1, 2021 through December 31, 2021.
3. All documents that support Electrify America's testimony that "there are consumer vehicles already on the road that are capable of drawing 300 kW or more at peak charging power." (Pre-filed Rebuttal Testimony of Jigar J. Shah on behalf of Electrify America at 4:18-5:1.)
4. Documents reflecting the peak charging capacity of consumer vehicles on the road in the United States as of March 23, 2021, including but not limited to the make and model of such vehicles.
5. All documents concerning any limitation, restraint, or restriction on the maximum power or demand that can be used at the Premises at any given time, including but not limited to any documents regarding the Open Charge Point Protocol (OCCP) including OCPP setup, provisioning, configuration, and operational parameter changes related to the charging site; load-balancing settings; settings related to local and/or centralized charging control; and maximum power or current limitations (such as the

ChargePointMaxProfile) for the Premises.

6. With respect to the 250 kVA transformer installed at Electrify America's Cookeville, Tennessee charging station (referenced in Mr. Shah's Rebuttal Testimony), all documents concerning any analysis, assessment, evaluation, study, consideration, or decision regarding what size transformer should be installed at that location, including but not limited to all documents concerning communications with the utility serving the charging station regarding what size transformer should be installed.