NGEMC (PETITIONER) V. CALHOUN (RESPONDENT) – DOCKET NO. 55200

The bargained-for exchange between NGEMC and Calhoun (and non-intervenor Georgia Power) under their 1975 Territorial Agreement – an agreement unlike any other territorial agreement in Georgia – is summarized in the chart below. The Commission has interpreted the Agreement four times consistently with this chart (starting in 2003) and in a way that gives meaning to all provisions of the Agreement. Because the annexation language of the Agreement is unique, enforcement consistent with prior interpretations will not affect any other territorial agreement.

Calhoun made significant sacrifices under the Agreement. Calhoun may not serve NGEMC's existing customers or any customers outside the Box (although the Box expands by annexation[1]), and Calhoun gave up exclusivity outside City limits. In exchange, Calhoun bargained for exclusivity within City limits, the ability to pursue customer choice loads inside the Box, and the right to expand the Box via annexation. The Commission should uphold its prior interpretations of the Agreement and reject NGEMC's contention that the Commission's interpretation constitutes an improper delegation of Commission authority – a result that could threaten every territorial agreement in Georgia.

SUMMARY OF TERRITORIAL AGREEMENT BARGAINED-FOR EXCHANGE		
City of Calhoun	**Received**	**Gave Up**
	• Expansion of the Box by City annexation[2] • Corridor rights within City limits, as expanded through annexation[3] • Pursuit of customer choice loads inside the Box[4]	• Pursuit of customer choice loads outside the Box, subject to expansion of the Box[5] • NGEMC's existing customers at the time of annexation[6] • Exclusivity as to customer choice loads inside the Box (outside City limits)[7]
NGEMC	**Received**	**Gave Up**
	• Continued corridor rights outside City limits, subject to expansion by annexation[8] • Ability to add new customers outside the City limits until annexation and retain those customers after annexation[9] • Calhoun will not compete outside the Box, subject to expansion by annexation[10] • Pursuit of customer choice loads inside the Box but outside City limits[11]	• A static Box; instead, the Box expands through City annexation[12] • Corridor rights within City limits, as expanded through annexation[13] • Exclusivity as to customer choice loads inside the Box (outside City limits)[14]

[1] Annexation and the provision of municipal services, including the construction of sanitary sewers.
[2] *See* Territorial Agreement ("TA") pp. 2–3; Kerry Foods ("KF") Initial Decision pp. 6–7 ¶ 5, pp. 13–14 ¶ 25, and pp. 20–21 ¶ 13; KF Final Order p. 6; 2022 Ruling pp. 7–8; 2024 Initial Decision pp. 7 ¶ 20.
[3] TA pp. 1–3; KF Initial Decision p. 7 ¶ 6, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, and pp. 20–21 ¶ 13; KF Final Order p. 6.
[4] TA pp. 2–3; KF Initial Decision pp. 12–13 ¶ 22, 13–14 ¶ 25 and pp. 20–21 ¶ 13; KF Final Order p. 6.
[5] TA pp. 1–3; KF Initial Decision pp. 6–7 ¶ 5, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, and pp. 20–21 ¶ 13; KF Final Order p. 6; 2022 Ruling pp. 7–8.
[6] TA pp. 2–3.
[7] TA pp. 2–3; KF Initial Decision pp. 12–13 ¶ 22, 13–14 ¶ 25 and pp. 20–21 ¶ 13; KF Final Order p. 6.
[8] TA pp. 2–3; KF Initial Decision pp. 6–7 ¶ 5, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, and pp. 20–21 ¶ 13; KF Final Order p. 6.
[9] TA pp. 2–3.
[10] TA pp. 1–3; KF Initial Decision pp. 6–7 ¶ 5, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, pp. 20–21 ¶ 13; KF Final Order p. 6; 2022 Ruling pp. 7–8.
[11] TA pp. 2–3; KF Initial Decision pp. 12–13 ¶ 22, 13–14 ¶ 25 and pp. 20–21 ¶ 13; KF Final Order p. 6.
[12] TA pp. 2–3; KF Initial Decision pp. 6–7 ¶ 5, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, and pp. 20–21 ¶ 13; KF Final Order p. 6; 2022 Ruling pp. 7–8; 2024 Initial Decision pp. 7 ¶ 20.
[13] TA pp. 1–3; KF Initial Decision p. 7 ¶ 6, pp. 13–14 ¶ 25, pp. 16–17 ¶ 6, and pp. 20–21 ¶ 13; KF Final Order p. 6.
[14] TA pp. 2–3; KF Initial Decision pp. 12–13 ¶ 22, 13–14 ¶ 25 and pp. 20–21 ¶ 13; KF Final Order p. 6.