STATE OF GEORGIA

BEFORE THE PUBLIC SERVICE COMMISSION

CITY OF CARTERSVILLE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 55973
	)	
GEORGIA POWER COMPANY,	)	
	)	
Respondent.	)	

GEORGIA POWER COMPANY'S OBJECTIONS TO CERTAIN PORTIONS OF THE PRE-FILED TESTIMONY OF CITY OF CARTERSVILLE

COMES NOW Georgia Power Company ("Georgia Power" or the "Company"), Respondent in the above-referenced matter, and files its objections to certain pre-filed testimony of Petitioner, City of Cartersville ("Cartersville"). Georgia Power moves to strike portions of the Pre-Filed Rebuttal Testimony of Robert Benjamin ("Ben") Boucher (the "Boucher Rebuttal Testimony") for offering improper legal conclusions. The portions of the Cartersville testimony to which Georgia Power objects address what satisfies the "single-metered service under the Territorial Act" and what the connected load is "at initial full operation." The portions of the Boucher rebuttal testimony objected to herein offer improper legal conclusions and, therefore, should be excluded.

I. BACKGROUND

Cartersville filed the present action on October 11, 2024, under the Georgia Territorial Electric Service Act (the "Territorial Act") alleging a right to serve the premises located at 1181 Cassville White Road, Cartersville, Georgia 30184 (the "Premises"). On May 23, 2025, Georgia Power submitted pre-filed direct testimony by Glenn W. Dyke and Mark W. Lees regarding the

Premises' ineligibility for customer choice, including a description of the equipment used to serve the Premises and a discussion of the Premises' peak electric usage. On June 20, 2025, Cartersville submitted the Boucher Rebuttal Testimony regarding "single-metered service" to the Premises and "initial full operation" pursuant to the Territorial Act.

The Georgia Public Service Commission (the "Commission") should exclude any fact witness testimony containing legal conclusions, specifically, whether the Premises satisfies the legal requirement of "single-metered service under the Territorial Act" or the connected load "at the time of initial full operation of the premises." Witness Boucher is not a lawyer and has not been qualified as an expert witness to offer these opinions. Specifically, the Company moves to strike the following from the Boucher Rebuttal Testimony:

- "But so long as those meters are serving the same premises and are billed to the same customer, that would still be considered "single-metered service" under the Territorial Act." (pg. 3, ln. 19-21.)
- "Q. And based on your review of these documents and the other documents you mentioned earlier, what is your testimony as to the connected load at the Atkore facility at the time of initial full operation of the premises? A: That it easily exceeded 900 kilowatts." (pg. 5, ln. 16 – pg. 6, ln. 1.)

II. ARGUMENT AND CITATION OF AUTHORITY

Under Georgia law, "[i]f the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness;

(2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and

(3) Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702."

O.C.G.A. § 24-7-701(a).[1] Cartersville attempts to introduce inadmissible legal conclusions and unqualified expert opinions through the testimony of Benjamin Boucher. That testimony should not be permitted as it attempts to circumvent the ultimate legal conclusion reserved for the Hearing Officer.

As noted in the Notice of Hearing and Scheduling Order, the sole matter at issue is "[w]hether the City of Cartersville has the right, under O.C.G.A. § 46-3-8(a), to serve the Premises located in 1181 Cassville White Road, Cartersville, Georgia." *City of Cartersville v. Georgia Power Co.*, Docket No. 55973, at 5 (February 10, 2025). Under Georgia law, any electric supplier may serve one or more new premises, if the premises (i) is utilized by one consumer; (ii) has single-metered connected service; (iii) has a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater; and (iv) is located outside the limits of a municipality. O.C.G.A. § 46-3-8(a) (1973). Cartersville attempts to provide testimony containing inadmissible legal conclusions regarding whether the legal requirements for "single-metered service" and "initial full operation" are met as required by the Territorial Act to establish eligibility for the large load exception.

1. **Cartersville Witness Boucher should be precluded from offering a legal conclusion regarding whether the connected load of the Premises at "initial full operation" exceeded 900 kilowatts.**

Cartersville intends to introduce inadmissible testimony through Witness Boucher regarding the connected load of the Premises "at initial full operation." Commission precedent

[1] *See also Fireman's Fund Ins. Co. v. Holder Constr. Group*, 362 Ga. App. 367, 374 (affirming the trial court's exclusion of an impermissible legal conclusion from an expert's testimony).

considers "initial full operation" as a term of art, finding that the issue of "initial full operation" is a legal conclusion left to the sound discretion of the Commission and specifically noting that "reliance on expert opinion to determine the existence or date of 'initial full operation' would constitute an abdication by the Commission of its duties as trier of fact."[2] Witness Boucher is not an attorney and has not been qualified as an expert to undertake load counts. His legal conclusion regarding when initial full operation occurred and whether the connected load satisfies the 900 kW threshold within the Territorial Act falls squarely within the type of testimony previously rejected by the Commission. Therefore, testimony from Witness Boucher that the Premises exceeded 900 kilowatts ("kW") at "initial full operation" is a legal conclusion going to the ultimate question to be decided and should be excluded.

2. Cartersville Witness Boucher should be precluded from offering a legal conclusion regarding satisfaction of "single-metered service" under the Territorial Act.

Similarly, Cartersville intends to introduce improper testimony through Witness Boucher that the Premises would be considered as receiving "single-metered service" under the Territorial Act. Specifically, he offers a legal conclusion regarding the satisfaction of the "single-metered service" requirement of the Territorial Act's large load exception. His testimony that service to the Premises and billed to one customer satisfies the legal requirement for "single-metered service," offers a legal interpretation of the facts designed to address this criterion for the large load exception. In doing so, Witness Boucher again usurps the Commission's decision-making role. Therefore, testimony from Witness Boucher that the Premises receives "single-metered service" under the Territorial Act is a legal conclusion and should be excluded.

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[2] *Georgia Power Company v. Carroll Electric Membership Corp.*, Docket No. 10517, at 3 (Initial Decision, Oct. 5, 2000). *See also Georgia Power Company v. Habersham Electric Membership Corp.*, Docket No. 23781, at 7 (Initial Decision. Mar. 26, 2007).

III. CONCLUSION

Courts routinely exclude improper expert testimony, whether given by qualified experts or unqualified lay witnesses. The Hearing Officer appointed by the Commission may do so as well. *See Ga. Power Co. v. Ga. Pub. Service Comm'n*, 122 P.U.R. 4th 214 (July 21, 1988). ("Determining the competency and relevancy of evidence is within the express parameters of the Commission's authority and cannot be disturbed on review [ ] unless that authority has been manifestly abused.") The testimony of Witness Boucher related to what qualifies as "single-metered service" and connected load at "initial full operation" under the Territorial Act constitutes a legal conclusion and an unqualified expert opinion. Accordingly, the Commission should grant Georgia Power's Objections to Certain Portions of the Pre-filed Testimony of City of Cartersville Witness Boucher.

Respectfully submitted, this 11th day of July, 2025.

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