BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SUSTAINABLE NEWTON, SARA and RANDALL VINSON, and THEODOSIA and WILLIAM WADE,	:	
	:	DOCKET NO.: 57243
Petitioners,	:	
v.	:	
VOLTAGRID, LLC,	:	
Respondent.	:	

BRIEF IN SUPPORT OF RESPONDENT, VOLTAGRID, LLC'S MOTION TO DISMISS

Comes now, VOLTAGRID, LLC ("Respondent" or "VoltaGrid"), Respondent in the above-styled docket and files this Brief in Support of its Motion to Dismiss ("Motion") Petitioners' "Petition for Expedited Declaratory Judgment and Enforcement Against VoltaGrid" (the "Petition"), showing the Commission as follows:

INTRODUCTION

SUSTAINABLE NEWTON ("Sustainable Newton"), SARA and RANDALL VINSON ("Vinsons"), and THEODOSIA and WILLIAM WADE ("Wades") (collectively, "Petitioners") are an advocacy group and four individuals who prefer greater deployment of renewable energy over natural gas generation. They seek "expedited declaratory judgment" from the Georgia Public Service Commission ("Commission") to declare that VoltaGrid's "planned retail sale of power from VoltaGrid to Serverfarm" is a violation of the Georgia Territorial Electric Service Act, O.C.G.A. § 46-3-1 *et seq.* ("Territorial Act"), and the Cogeneration and Distributed Generation

Act of 2001, O.C.G.A. § 46-3-50 *et seq.* ("Cogen Act"),[1] and to order VoltaGrid to "cease and desist any operations in violation of the Territorial Act or Cogeneration Act."[2]

The Petition fails on the merits and the Commission lacks jurisdiction to hear it. As to the merits, VoltaGrid is not an "electric supplier," as defined in O.C.G.A. § 46-3-3(3), and VoltaGrid is not (and will not be) engaged in the retail sale of electricity. VoltaGrid also does not "furnish service to the public" — a prerequisite to regulation under the Territorial Act — and thus is not subject to the Commission's jurisdiction. VoltaGrid's conversion assets in Covington, Georgia ("Conversion Assets"),[3] which will provide energy conversion services to a co-located data center owned and operated by Serverfarm, Inc. ("Serverfarm"), are still under construction. The Conversion Assets are not operational, have never produced electricity, and therefore, any Territorial Act challenge would also be premature.

Further, Petitioners lack standing. They do not meet the statutory and regulatory interest requirements to bring this action — which is packaged in the form of the Petition but is clearly a non-actionable grievance based upon Petitioners' environmental preference — under the Territorial Act. The right to provide exclusive electric service to Serverfarm's premises belongs to Georgia Power, not the Petitioners, and Petitioners have no interest in enforcing another person's right. Their stated interest is in "protecting and preserving the natural environment,"[4] and "preventing unnecessary or unlawful incremental air pollution that would exacerbate the harmful

[1] Petition For Expedited Declaratory Judgment and Enforcement Against VoltaGrid ("Petition"), at 1, *Sustainable Newton v. VoltaGrid, LLC*, Docket No. 57243 (Ga. Pub. Serv. Comm'n July 13, 2026).

[2] *Id.*, Prayer for Relief, at 12.

[3] The Conversion Assets consist of 33 Jenbacher J620 natural gas-fired reciprocating internal combustion engines.

[4] Petition, ¶¶ 4-6.

health and climate impacts from numerous pre-existing polluters."[5] The Territorial Act, however, is agnostic as to the means of electricity generation. The Territorial Act creates rights in exactly two groups: electric suppliers, and the consumers those suppliers serve. Electric suppliers are vested with the exclusive right to serve assigned territory.[6] Consumers are vested with the right to "adequate or dependable" service free from unreasonable discrimination.[7] No other party is given any right or interest under the Territorial Act.

Petitioners are neither electric suppliers, nor do they claim to be consumers whose service is not "adequate or dependable" or who are the victims of rate discrimination. This is fatal to their challenge: nowhere in the Territorial Act is a legal interest created as to the means of generation, as opposed to its adequacy and dependability. And because Petitioners complain of neither, their Petition is a collateral attack on VoltaGrid's pending application to the Georgia Environmental Protection Division for an air quality permit, disguised as a Territorial Act dispute, that the Commission lacks jurisdiction to hear.

STATEMENT OF FACTS

I. VOLTAGRID'S ARRANGEMENT WITH THE SERVERFARM DATA CENTER

In 2025, Serverfarm purchased property in Covington, Georgia for the purpose of constructing and operating a data center. The property lies within the assigned electric service

[5] Petition, ¶ 4.

[6] O.C.G.A. § 46-3-8(b) ("every electric supplier shall have the exclusive right to continue serving any premises lawfully served by it on March 29, 1973, or thereafter lawfully served by it pursuant to this part"); *id.* § 46-3-5 (secondary supplier has "the exclusive right to extend and continue furnishing service" to new premises within 300 feet of its lines, with residual service "the exclusive right of the primary supplier"); § 46-3-4 (same exclusive right within 500 feet outside municipal limits); *id.* § 46-3-7 (same, in annexed areas).

[7] O.C.G.A. § 46-3-8(c)(1).

territory of Georgia Power Company ("Georgia Power").[8] Serverfarm either has contracted or will contract with Georgia Power to provide electricity service to power Serverfarm's data center,[9] but Georgia Power must first install infrastructure to provide the power Serverfarm requires. Construction of this infrastructure is actively underway.

Prior to Georgia Power supplying Serverfarm with its power requirements for the data center, Serverfarm is procuring its power supply from multiple service providers. Serverfarm is negotiating a Natural Gas Sales Agreement ("NGSA") with the City of Covington ("City") to procure natural gas, which will be supplied by the City and delivered to a meter on Serverfarm's property via a line owned and operated by the City.[10] Serverfarm, in turn, also contracted with VoltaGrid to construct a tolling facility on its property "behind the meter," which will consist of a series of natural gas-fired combustion engines capable of converting the gas that Serverfarm procures from the City into electricity that Serverfarm — and Serverfarm alone — can use. Such tolling arrangements are common in energy and manufacturing industries, as they allow a company to convert its own energy input into its own energy output without investing capital in a processing facility.[11]

Under its contract with Serverfarm, VoltaGrid does not sell electricity and it is not compensated based on the power it produces. Rather, Serverfarm pays VoltaGrid for access to

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[8] Petition, ¶¶ 11, 25; *see also* Ga. Pub. Serv. Comm'n, Newton County Territorial Map, Exhibit "B" (Docket No. 2880-U, approved Nov. 18, 1975), https://psc.ga.gov/utilities/electric/.

[9] Petition, ¶¶ 11, 15.

[10] Petition, Exhibit 4, Natural Gas Sales Agreement, is a draft contract between Serverfarm and the City. The Agreement as attached to the Petition was not executed.

[11] The classic example of a tolling agreement is a wheat farmer contracting a mill to grind the wheat into flour. The farmer retains full ownership of the raw materials and final output, and the mill is paid a "toll" for access to its specialized facilities and labor. For an overview and history of tolling agreements, see Cory Pomeroy, Arranger Liability under Tolling Agreements, 36 ST. B. TEX. ENVTL. L.J. 223, 226–27 (2006).

service from its Conversion Assets, with payments determined based on the Conversion Assets' capacity rather than on the quantity of energy VoltaGrid delivers. VoltaGrid neither purchases nor controls the natural gas inputs, which Serverfarm is required to provide. And VoltaGrid is not required to provide any particular amount of energy to Serverfarm's data center, beyond providing certain minimum capacity requirements ensuring its Conversion Assets are available to convert Serverfarm's gas if and when Serverfarm chooses to do so.

Serverfarm is the only business served by VoltaGrid's Conversion Assets, which are co-located on Serverfarm's property for its exclusive use.[12] There is no other potential customer that VoltaGrid could serve on Serverfarm's property other than Serverfarm itself.[13] And VoltaGrid does not provide services in Georgia to any other entity besides Serverfarm.

II. PETITIONERS AND THEIR CHALLENGE UNDER THE TERRITORIAL ACT

Sustainable Newton is a "grassroots, community-based 501(c)(3) nonprofit organization" that "partners with residents, businesses, and government officials to implement local climate solutions"[14] in Newton County. Sustainable Newton is described in the Petition as a "champion" of clean energy alternatives to fossil fuels.[15] Though it seeks to find an interest to enforce the Territorial Act here, Sustainable Newton also blames the broad interpretation of the Territorial and Cogen Acts for hampering efforts to promote clean energy.[16]

[12] Affidavit of Chris Atchley, ¶ 11 (Sept. 16, 2026), "Attachment 1."

[13] Atchley Affidavit ¶¶ 11–13.

[14] Petition, ¶ 2.

[15] *Id.*

[16] Petition, ¶ 3.

The Vinsons and Wades each reside in Newton County, Georgia, approximately two and five miles, respectively, from the Conversion Assets.[17] The Vinsons claim "a strong interest in protecting and preserving the natural environment and preventing unnecessary or unlawful incremental air pollution that would exacerbate the harmful health and climate impacts from numerous pre-existing polluters in their neighboring communities,"[18] and allege that the operation of the Conversion Assets is "incompatible" because they regularly drive past them.[19] The Wades' stated interests are virtually identical.[20]

Collectively, Petitioners allege an interest in preventing VoltaGrid from emitting fossil-fueled pollution in Newton County and in minimizing the disruption to the natural environment of Newton County allegedly caused by "short-term powerplants."[21] On that basis alone, they claim to be "interested parties" in the fair enforcement of the Territorial Act.[22]

PROCEDURAL HISTORY

Petitioners filed their Petition on July 13, 2026. VoltaGrid answered the Petition on August 12, 2026.[23] The Commission assigned the case to Hearing Officer Chris Collado on August 24, 2026.[24] Shortly thereafter, the Hearing Officer issued a Procedural and Scheduling Order ("PSO") providing for an expedited schedule that requires identification of witnesses and proposed

[17] Petition, ¶¶ 4–5.

[18] Petition, ¶ 4.

[19] *Id.*

[20] Petition, ¶ 5.

[21] Petition, ¶ 6.

[22] *Id.*

[23] Answer of Respondent, VoltaGrid, LLC, *Sustainable Newton v. VoltaGrid, LLC*, Docket No. 57243 (Ga. Pub. Serv. Comm'n Aug. 12, 2026).

[24] PSO ¶ 4.

stipulations by October 1, 2026, direct testimony by October 9, rebuttal testimony by October 30, and hearing on December 9, 2026.[25] No separate time is allotted for briefing or determination of jurisdictional issues. VoltaGrid notified the Hearing Officer of its intent to file a dispositive motion to dismiss the Petition, such motion to be considered separately from the schedule set in the PSO. The docket is presently before the Hearing Officer on VoltaGrid's Motion to Dismiss.

ARGUMENT AND CITATION TO AUTHORITY

VoltaGrid's Motion to Dismiss should be granted and the Petition should be dismissed. O.C.G.A. § 50-13-13(a)(6) authorizes the Hearing Officer to "dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground." Even taking every allegation of the Petition as true[26]:

a. Petitioners are not "interested parties" as that term is used in O.C.G.A. §§ 46-3-8(c) and 46-3-13, and Petitioners fail to identify any right of theirs that is "uncertain or insecure" as Commission Rule 515-2-1-.12 requires. Petitioners therefore lack standing to bring this Petition.

b. This Commission lacks jurisdiction over VoltaGrid, which is not a public utility and does not "furnish service to the public" within the meaning of O.C.G.A. § 46-2-21(b)(5). The Commission therefore has no authority to consider the Petition or issue orders directed at VoltaGrid.

For each of these reasons, the Petition must be dismissed.

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[25] PSO ¶ 5.

[26] For purposes of this motion, the allegations of the Petition are presumed to be true. VoltaGrid will challenge the truth and accuracy of Petitioners' allegations in the event an evidentiary hearing is required.

I. PETITIONERS ARE NOT "INTERESTED PARTIES" UNDER THE TERRITORIAL ACT AND FAIL TO SATISFY RULES REQUIRING THEIR OWN RIGHTS BE THREATENED

The Territorial Act creates two groups of legal interests: the assigned supplier's exclusive right to serve the premises in its territory, and the customer's right to adequate, dependable, and nondiscriminatory service from that supplier. Neither of these rights belongs to the Petitioners. They are an advocacy organization and four residents who live miles from the Serverfarm property, take no service from VoltaGrid, and claim no dispute with their own electric supplier. Petitioners' objection is to the burning of natural gas, which the Territorial Act neither regulates nor protects against. Because the only rights at stake under the Territorial Act belong to Georgia Power as the assigned electric supplier, Petitioners can assert no interest the Territorial Act was enacted to protect and they are not "interested parties" under O.C.G.A. § 46-3-13. For the same reason, the Petition fails to identify any right *of the Petitioners* that is "uncertain or insecure," as Commission Rule 515-2-1-.12 requires, and no amendment could supply one.

A. The Territorial Act vests exclusive supply rights *in the electric supplier*

The Territorial Act was enacted to give the Commission authority to assign a monopoly service area to each electric supplier, whether Georgia Power, electric membership corporation or municipal systems.[27] It declares the policy of this State that "every geographic area within the state shall be either assigned to an electric supplier or declared unassigned as to any electric supplier."[28] Within its assigned area, "the electric supplier shall have the exclusive right to extend and continue

[27] The customer's right to select its electric supplier is allowed as an exception to the Territorial Act, provided the customer meets the criteria in O.C.G.A. § 46-3-8(a).

[28] O.C.G.A. § 46-3-2.

furnishing service to new premises,"[29] and "the exclusive right to continue serving any premises lawfully served by it."[30]

But the exclusive right created by the Territorial Act is vested *solely* in the assigned electric supplier. To the extent there is any violation of the Territorial Act here, the right being threatened belongs to Georgia Power, not Petitioners. Petitioners have no legal interest in enforcing rights vested in another party.[31] As to Petitioners, the Territorial Act confers no interest and no rights: Petitioners are neither the assigned supplier nor the customer, they hold no right to exclusively serve Serverfarm's premises, no right to be served there, and no right that turns on who serves the premises.

B. The Territorial Act permits "interested parties" to seek enforcement, but Petitioners identify no interest the Act protects

The Territorial Act gives the Commission the authority to enforce its provisions "upon its own complaint or the complaint of any other electric supplier or any other interested party."[32] While the Territorial Act does not define "interested party," the Act clearly identifies the interests over which the Commission has jurisdiction. Specifically, the Territorial Act gives the Commission authority to determine:

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[29] O.C.G.A. § 46-3-3(1); *see also* O.C.G.A. §§ 46-3-4, 46-3-5, 46-3-7; *City of LaGrange v. Ga. Pub. Serv. Comm'n*, 296 Ga. App. 615, 616, 675 S.E.2d 525 (2009) ("Once a service territory is assigned, an electric supplier shall have the exclusive right to extend and continue furnishing service to any new premises within that area.").

[30] O.C.G.A. § 46-3-8(b).

[31] *Cf. Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775(2), 917 S.E.2d 125 (2025) ("A plaintiff must assert the violation of his own rights and cannot merely vindicate the rights of another.").

[32] O.C.G.A. § 46-3-13.

a. whether the customer's premises meet the required criteria for the exercise of customer choice;[33]

b. whether the service of an electric supplier is not adequate or dependable, whether there is unreasonable discrimination in favor of or against the consumer, or whether an electric supplier is in violation of subsection (b) of Code Section 46-3-11;[34]

c. whether the public convenience requires a transfer of service to another electric supplier;[35]

d. whether an electric supplier has breached the tenets of public convenience and necessity, and all or any portion of the territory should be reassigned to another electric supplier;[36]

e. whether the public convenience and necessity so require assignment of a previously unassigned area to an electric supplier;[37] and

f. whether the electric supplier has constructed its lines to serve new premises in accordance with sound electric utility standards.[38]

Every item concerns the relationship between an electric supplier and the premises it serves. Here, on the other hand, Petitioners' complaints seek to prevent a method of generation and the use of fossil fuels, with which they disagree. Their allegations raise no issue relevant to

[33] O.C.G.A. § 46-3-8(a).

[34] O.C.G.A. § 46-3-8(c)(1).

[35] O.C.G.A. § 46-3-8(c)(2).

[36] O.C.G.A. § 46-3-8(d)(1).

[37] O.C.G.A. § 46-3-8(d)(2).

[38] O.C.G.A. § 46-3-8(e)(4).

the interests identified in the Territorial Act that the Commission is empowered to regulate and protect.

That Petitioners' interests do not fall within the scope of the Territorial Act is illustrated by the fact that nothing in the Act would prevent Georgia Power, as the assigned supplier, from installing the exact same reciprocating engines on the exact same site, burning the same natural gas from the same pipeline, to serve the same data center. The emissions, the noise, and the view from Hazelbrand Road would be identical. Yet, Petitioners would have no claim under the Territorial Act because the Act's assignment provisions would be satisfied. Petitioners do not have any protected interest in ensuring that Georgia Power causes the emissions from which they claim harm rather than VoltaGrid. An interest the Act leaves wholly unprotected when Georgia Power generates the power does not become a protected interest because VoltaGrid does.

Petitioners' objection is to combustion, not to territory. The forum for that objection is the Environmental Protection Division. The Petition alleges no interest arising under the Territorial Act.

C. The Petition is defective under Commission Rule 515-2-1-.12 because Petitioners fail to identify any of their rights that are uncertain or insecure

The Petition does not comply with the requirements of Commission Rule 515-2-1-.12, which sets forth the content requirements for seeking a declaratory judgment before the Commission. Subsection (1)(e) specifically requires that a petition for declaratory judgment "shall" include "[a] statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain or insecure with respect to his rights."

Compliance with the requirements of Commission Rule 515-2-1-.12 is mandatory. But the Petition identifies no right *of any Petitioner* under the Territorial Act that is uncertain or insecure. As discussed above, the right to exclusive service belongs solely to the respective electric supplier,

not Petitioners. And Petitioners can claim no right under the Act to limit air emissions, to prevent "light, noise, air, and visual pollution," or to decide whether power in Newton County comes from "small and medium sized power plants" or "utility-scale plants,"[39] because the Act protects none of those things — Georgia Power could, without offending a single provision of the Territorial Act, install the same engines on the same site.

The only rights the Territorial Act creates with respect to the property are Georgia Power's right to serve it and Serverfarm's right to be served. Neither of those rights belongs to Petitioners. Having failed to identify how any Petitioner is "uncertain or insecure with respect to *his* rights," Petitioners cannot proceed under the Rule, and the Petition should be dismissed on that ground alone.

D. Petitioners cannot meet the Rule's requirements

The failure to satisfy the rule cannot be cured. In compliance with Commission Rule 515-2-1-.12, Petitioners are required to show that VoltaGrid's alleged violation of the Territorial Act threatens Petitioners' rights created by the Territorial Act. They cannot do so, regardless of how they plead.

Sustainable Newton is an advocacy organization. It describes its interest as "implementing local climate solutions" and identifies itself as "a champion of solar as a clean energy alternative to fossil fuels and a way to address energy burden."[40] It does not allege that it is a customer of any electric supplier, much less that its electric service has been affected in any way by VoltaGrid's Conversion Assets. Whatever its interest in air quality and solar power, Sustainable Newton has no right under the Territorial Act, and so no right that is uncertain or insecure.

[39] Petition, ¶¶ 4–6.

[40] Petition, ¶¶ 2–3.

The Vinsons live approximately two miles from the Conversion Assets. They allege "a strong interest in protecting and preserving the natural environment and preventing unnecessary or unlawful incremental air pollution," and that being forced to drive past Serverfarm's data center, and VoltaGrid's Conversion Assets, "threatens light, noise, air, and visual pollution that is incompatible with their personal interests."[41] Presumably, the Vinsons receive electric service at their residence from an electric supplier. But they do not identify that supplier, they do not allege that their service will be affected in any way by the completion of VoltaGrid's Conversion Assets, and they do not assert that any dispute exists between electric suppliers in Newton County as to which is obligated to serve them.

The Wades, who live approximately five miles from the Conversion Assets, allege the same interests in nearly the same words.[42] Like the Vinsons, they presumably have an electric supplier, but they do not identify it or state how their service will be affected by the Conversion Assets, and they identify no dispute over which supplier is obligated to serve them.

Commission Rule 515-2-1-.12 and the "interested party" requirement created by the General Assembly both serve an important gatekeeping function similar to that standing serves in the courts. A party may invoke the Commission's authority only to vindicate its own rights and interests created by a law the Commission administers. Read any other way, the Commission would become a forum for every grievance that can be aimed at an electric facility, whether about emissions, noise, aesthetics, land use, or the wisdom of gas-fired generation. The Commission's

[41] Petition, ¶ 4.

[42] Petition, ¶ 5.

rule forecloses that result by requiring a petitioner to identify, in detail, its *own* interest and a right *of its own* that is uncertain or insecure.[43] None of the Petitioners can unlock that gate.

Ultimately, the exclusive service right Petitioners invoke is not theirs. It belongs to the electric supplier assigned to serve the premises. Petitioners ask the Commission to enforce a right that is not theirs, in service of interests the Territorial Act was not enacted to protect. The Petition should be dismissed.

II. THE COMMISSION LACKS JURISDICTION OVER VOLTAGRID BECAUSE IT DOES NOT FURNISH ELECTRIC SERVICE TO THE PUBLIC

Petitioners' lack of statutory interest and failure to comply with the Commission's rules alone warrant dismissal of their entire Petition. To the extent Petitioners have standing to pursue any of their claims, however, the Commission lacks jurisdiction over VoltaGrid as a matter of law and the action cannot proceed. The jurisdiction of the *Public Service* Commission is limited, by statute, to companies "furnishing *service to the public*."[44] This jurisdictional limitation has been enforced consistently for over a century to recognize that entities that service a single bespoke customer, or even a small number of customers, under a privately negotiated contract are not "furnishing service to the public" and thus not subject to the jurisdiction or regulation of the Commission.

A. The Commission's jurisdiction and the Territorial Act's prohibitions are limited to electric companies that "furnish service to the public"

The Commission's jurisdiction is defined by its enabling legislation. In 1907, the Georgia legislature conferred upon the Commission authority and control over:

> Gas and electric light and power companies, [corporations,] or persons owning, leasing, or operating *public* gas plants or electric light and power

[43] Ga. Comp. R. & Regs. 515-2-1-.12(1)(e).

[44] O.C.G.A. § 46-2-21(b)(5) (emphasis added).

> plants *furnishing service to the public*.[45] O.C.G.A. § 46-2-21(b)(5) (emphasis added).

This pertinent language has not changed since its enactment. Shortly thereafter, the Commission, through an opinion issued by the "Office of Special Attorney to Commission,"[46] affirmed "it was the intention of the Legislature to confer jurisdiction only over such companies as deal with the public."[47] The requirement that an electric company serve the public, and not just a single private customer, has consistently been the threshold to fall under the Commission's jurisdiction. The 1909 Report makes clear that an entity that "sells all its power to another party or company" does not qualify as furnishing service to the public and "is exempted from jurisdiction of the Commission."[48]

[45] As enacted by the General Assembly, the statute extended the Commission's jurisdiction to "gas and electric light and power companies, corporations, or persons owning, leasing or operating public gas plants or electric light and power plants furnishing service to the public." Ga. Civ. Code § 2662 (1910) (codifying Ga. L. 1907, at 74–75, § 5). In 1981, "corporations" was omitted from the text when O.C.G.A. was adopted. Where the language compiled in the O.C.G.A. substantively differs from that enacted by the legislature previously, it is the "the substantive law in effect" prior to the O.C.G.A. that controls. *Sheriff v. State*, 277 Ga. 182, 183–84(1), 587 S.E.2d 27 (2003); O.C.G.A. § 1-1-2.

[46] The Special Attorney at the time was James Hines, who later became a Georgia Supreme Court justice. His opinions issued on behalf of the Commission and concerning its jurisdiction were held in extremely high regard by the Court. *See Ga. Pub. Serv. Comm'n v. City of Albany*, 180 Ga. 355, 365, 179 S.E. 369 (1935) (adopting a Hines Special Attorney opinion on the Commission's jurisdiction in full, crediting "the unchallenged sanction of a mind of such judicial acumen and infallible clarity as that which distinguished Judge Hines.").

[47] Thirty-Seventh Annual Report of the Railroad Commission of Georgia, "Jurisdiction of Commission over Power Companies not Furnishing Service to the Public," at 93 (1909) ("1909 Report"), *available at* https://bit.ly/1909-Report.

[48] 1909 Report at 9.

The Commission recognized this gap in its authority and requested a legislative amendment to extend its jurisdiction to all plants "whether their power or product be furnished to one or many persons or parties."[49] The 1909 Report explains:

> The [Candler-Overstreet] Act of 1907 enlarges and extends "The Powers and Duties" previously conferred by law on the Railroad Commission, so as to include street railways and other public service companies therein severally mentioned and enumerated, as set out in Section 5 of that Act, concluding with the words, 'Electric Light and Power Plants FURNISHING SERVICE TO THE PUBLIC.'
>
> It has been found that under the wording of said section at least one such power plant is exempted from jurisdiction of the Commission by reason of the fact that it does not furnish power or service directly to the public, but sells all its power to another party or company.… [I]t would seem that as long as the language or wording of the statute remains as above quoted it is possible for every power plant to escape supervision in the same way.…
>
> We recommend that the law be so amended as that all electric light and power plants having the power of eminent domain, whether owned or operated by an individual, company or corporation … and whether their power or product be furnished to one or many persons or parties, be under the jurisdiction, authority and control of the Commission.…[50]

This recommendation was presented to the legislature, but the General Assembly declined to change the Act's jurisdictional reach to expand the Commission's authority. To the contrary, the General Assembly re-enacted the exact same text one year later,[51] legislatively ratifying the interpretation that Commission jurisdiction does not extend to a company that services a single private customer and does not furnish service to the public.

The Territorial Act does not enlarge the Commission's jurisdiction. The Territorial Act provides that "every electric supplier is prohibited from … [f]urnishing retail electric service to

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[49] *Id.*

[50] *Id.*

[51] Ga. Civ. Code § 2662 (1910).

any premises which such electric supplier is not entitled to serve under this part."[52] In turn, it defines "electric supplier" as "any electric light and power company *subject to regulation by the [Public Service] Commission*…."[53] Thus, in any Territorial Act case, the Commission must first determine whether the party is "subject to regulation by the Commission," which turns on whether it furnishes service to the public.[54] Because VoltaGrid does not furnish service to the public, the Commission has no jurisdiction over it, and it is not an "electric supplier" for purposes of the Territorial Act.

Petitioners wholly fail to address this jurisdictional requirement. The Petition never cites O.C.G.A. § 46-2-21(b)(5). It instead relies on Section 46-2-20(a), the "general supervision" provision, presumably because that provision does not recite the "furnishing service to the public" limitation. But the Supreme Court of Georgia long ago settled that this provision does not "introduce any new class of business over which the [Commission's] jurisdiction should extend, but it is a summary of the business to which the jurisdiction attached under [Section 46-2-21(b)(5)]."[55] That is, O.C.G.A. § 46-2-21(b) establishes the *personal jurisdiction* of the Commission, defining which parties are subject to Commission jurisdiction and regulation (electric light and power companies operating public plants that furnish service to the public); and Section 46-2-20(a) establishes the Commission's *subject matter jurisdiction*, defining its authority ("general supervision") with respect to those companies otherwise under its jurisdiction.

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[52] O.C.G.A. § 46-3-11(b)(4).

[53] O.C.G.A. § 46-3-3(3).

[54] O.C.G.A. § 46-2-21(b)(5).

[55] *Estes v. Perry*, 167 Ga. 902, 904–06, 147 S.E. 370 (1929). Special Attorney Hines previously reached the same conclusion in 1909. 1909 Report at 93 (analyzing both sections to conclude the Commission "has no jurisdiction over an electric light and power company which does not furnish power or light to the public.").

Petitioners cannot read the jurisdictional limitation "furnishing service to the public" out of the law by citing the wrong statute. Whether VoltaGrid is a party "subject to regulation by the commission," O.C.G.A. § 46-3-3(3), turns on whether it operates a "public" plant "furnishing service to the public." O.C.G.A. § 46-2-21(b)(5). It does not.

B. Serving one specialized, on-site entity under a private contract is not "furnishing service to the public"

VoltaGrid's provision of power services to a single, on-site, specialized end user does not render it subject to the Commission's jurisdiction as a "public" power plant "furnishing service to the public." This precedent has been applied consistently by the Georgia Supreme Court, the Attorney General, and this Commission.

i. The Georgia Supreme Court required service to the public, not just one customer

The Georgia Supreme Court issued the controlling standard in *Atlanta Gas Light Co. v. Georgia Public Service Commission*, 228 Ga. 347 (1971). There, Atlanta Gas Light Company ("AGLC") admitted it was a "public utility company" subject to the Commission's jurisdiction, but it argued that the specific transaction at issue was "a private, non-utility contract" not subject to Commission oversight because it involved provision of electricity to only a single customer — a landlord in Peachtree Center. The Court reasoned that though the landlord was a single customer, the electricity would serve over 16,000 people in the buildings, a "significant segment of the public."[56] Further, the Court recognized that AGLC was providing the same "total energy" package

[56] *Id.* at 351.

to multiple facilities in the state and was negotiating similar supply services to other customers.[57] On this basis, the Court concluded the transaction involved servicing the public.[58]

The controlling standard set forth by the Georgia Supreme Court for when electricity service constitutes "service to the public" is, therefore, whether the power ultimately reaches a "significant segment of the public." As described below, the Attorney General applied exactly that standard a year later to hold that a generator servicing only three industrial customers was not furnishing "service to the public" and thus not subject to Commission regulation. Here, VoltaGrid has a service contract with one entity, Serverfarm, which does not in turn provide electricity to any other party, much less a "significant segment" of the public. Under the standard set forth by the Georgia Supreme Court, VoltaGrid does not furnish service to the public and is not subject to Commission jurisdiction.

ii. Opinions of the Attorney General are consistent with this authority

Attorney General opinions have consistently reaffirmed that the Commission lacks jurisdiction over companies that furnish electricity to a single customer (or even a small number of customers). For example, the Attorney General has concluded there was no jurisdiction over resale of electricity by a trailer-park owner to his tenants because such resale is not "service to the public."[59] Likewise, the Attorney General applied the standard in *Atlanta Gas Light* to find there was no jurisdiction over a corporation generating and furnishing electricity to three industrial customers because "the power supplied does not serve a substantial segment of the public."[60] And more recently, the Attorney General has opined that the Commission lacked jurisdiction over

[57] *Id.* at 351–52.

[58] *Id.* at 352.

[59] 1969 Op. Att'y Gen. No. 69-27, 1969 Ga. AG LEXIS 441 (Jan. 21, 1969).

[60] 1972 Op. Att'y Gen. No. 72-84, 1972 Ga. AG LEXIS 76 (June 27, 1972).

master-metered customers, "so long as the activities of said customers do not constitute furnishing service to the public."[61]

In each Opinion, the Attorney General concluded that service to a small number of on-site or adjacent customers under private contracts did not constitute furnishing service to the public and thus did not invoke Commission jurisdiction.

iii. The Commission's decisions acknowledge this precedent.

Finally, the Commission confirmed this precedent in *In re U.S. Air Force Seeking Declaratory Relief*, Docket No. 11276-U (Ga. Pub. Serv. Comm'n 2000) and *In re: Petition for Declaratory Ruling of Enron Federal Solutions, Inc.*, Docket No. 11463-U (Ga. Pub. Serv. Comm'n 2000). There, the Commission dealt with the application of the Territorial Act and the Natural Gas Competition and Deregulation Act, O.C.G.A. § 46-4-150 *et seq.*, to electric and natural gas service provided to the Warner Robins Air Force Base and other military installations as the federal government attempted to privatize utility services on military bases. In both dockets, the federal government and Enron argued that the Commission did not have jurisdiction over internal electric and natural gas systems serving the military base because "neither the facilities nor the operator thereof constitute a 'public utility.'"[62] They asserted that "the operation and maintenance of the facilities are not 'furnishing service to the public' as required by O.C.G.A. § 46-2-21(b)(5)."[63] The Commission held that "to the extent that utility service is being provided *solely* and *exclusively* to the federal government for distribution on a military base to locations behind the meter by an entity that cannot otherwise be found to be conducting itself as a public

[61] 1985 Op. Att'y Gen. No. 85-39, 1985 Ga. AG LEXIS 42 (July 23, 1985).

[62] "Order Issuing Declaratory Rulings," *In re U.S. Air Force Seeking Declaratory Relief*, Issue 7, at 25–28, Docket No. 11276-U (Ga. Pub. Serv. Comm'n Apr. 18, 2000).

[63] *Id.*

utility, the Commission may presume that the entity would not be deemed to be furnishing service to the public in a manner that would invoke agency jurisdiction…."[64]

iv. Other states agree that single-user sales do not constitute "providing service to the public"

The majority view of other jurisdictions holds that absent special circumstances, "the furnishing of electric power to one customer under a private contract does not constitute the furnishing agency a public utility." *Ark-La Elec. Coop., Inc. v. Ark. Pub. Serv. Comm'n***,** 210 Ark. 84, 94, 194 S.W.2d 673 (1946) (collecting cases); *see also Humbird Lumber Co. v. Pub. Util. Comm'n,* 39 Idaho 505, 511, 228 P. 271 (1924) ("The furnishing of [service] to one person or corporation, under a contract, does not constitute a delivery of [service] to the public or some portion thereof."); *Bethlehem Steel Corp. v. Pa. Pub. Util. Comm'n*, 552 Pa. 134, 142 n.8, 713 A.2d 1110 (1998); *Holder v. Miss. Fuel Co.*, 317 So. 2d 891, 892 (Miss. 1975) ("It is apparent that appellee is not a public utility because its transmission of gas through the proposed pipeline in question was not 'to the public' but to only one customer, Mississippi Power Company.").

Public service commissions were created for a specific purpose and were never intended to apply to on-site, single end-customer arrangements like VoltaGrid. Commission regulation has been recognized as a *quid pro quo*:[65] public utilities receive privileges from the state, including condemnation power, that allow them to obtain near monopolies; and to ensure these "quasi-

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[64] *Id.* at 27–28.

[65] This quid pro quo is described in Ga. H.R. Jour., Reg. Sess., at 206a-207a (1911) ("Public service companies are, to a large extent, essentially monopolies. They exercise privileges under charters and special grants from the State....[S]upervision by commissions similar to that which we have created in Georgia is the only known means of compelling these companies to recognize the rights of the public.... By placing them under the supervision of the [] Commission the public can be guarded against the arbitrary conduct of these quasi public corporations."), *available at* https://bit.ly/1911-House-Journal.

public"[66] companies provide reasonable rates and adequate service to the public, they are subject to regulation and supervision by the Commission. That balance does not apply in any sense to VoltaGrid, which has no special privileges, no condemnation power, is the antithesis of a monopoly, and is negotiating bespoke rates with a sophisticated counterparty.[67]

Based on the language of Georgia law, the purpose of the Commission, the standard set forth by the Georgia Supreme Court, and the precedent of the Attorney General and the Commission itself, VoltaGrid is not a public utility subject to regulation because it will only serve one highly specialized and on-site entity, Serverfarm, and will not furnish service to the public. Accordingly, the Commission lacks jurisdiction over VoltaGrid, and has no authority over any contract services that it provides to Serverfarm. Lacking jurisdiction over VoltaGrid, the Commission must dismiss the Petition.

C. The Commission lacks authority over the Cogen Act

Even if it had personal jurisdiction over VoltaGrid, the Commission separately lacks authority to enforce the Cogen Act. The Petition seeks an order requiring compliance with the Cogen Act. However, O.C.G.A. § 46-3-13, which is the basis for authority here, allows the Commission "to enforce the provisions of *this part* by appropriate orders." The phrase "this part" refers to Part 1 of Article 1 of Chapter 3 — O.C.G.A. §§ 46-3-1 through 46-3-15 — which is the Territorial Act. The Cogen Act is a different act, contained in a different part, and there are no provisions in Georgia law allowing the Commission to issue orders to enforce the Cogen Act,

[66] *Id.* at 207a.

[67] *See Minn. Microwave, Inc. v. Pub. Serv. Comm'n*, 291 Minn. 241, 249–50 (1971) ("Rather than dealing with the public generally, appellant's closed-circuit system is such that it is suitable only for large subscribers who presumably are in a good position to bargain. The 'usual monopolistic evils' seemingly are not threatened.") (cleaned up).

much less to entertain a petition filed by a third party. Purported violations of the Cogen Act are outside the authority of the Commission.

CONCLUSION

Petitioners lack standing to bring their Petition in this docket, having failed to allege a legal, property, or other direct territorial interest at stake to warrant their enforcement of the Territorial Act. Even if Petitioners were to establish standing (and taking the allegations in the Petition as being true), VoltaGrid is not a public utility subject to the jurisdiction of the Commission because it will only serve one entity, Serverfarm, and will not furnish service to the public. As a result, Petitioners' Petition for Expedited Declaratory Judgment and Enforcement Against VoltaGrid must be dismissed.

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Respectfully submitted this 16th day of September, 2026.

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

SUSTAINABLE NEWTON, SARA and RANDALL VINSON, and THEODOSIA and WILLIAM WADE,	:	
Petitioners	:	DOCKET NO.: 57243
v.	:	
VOLTAGRID, LLC,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing VOLTAGRID'S MOTION TO DISMISS PETITIONER'S PETITION FOR EXPEDITED DECLARATORY JUDGMENT AND ENFORCEMENT AGAINST VOLTAGRID upon the following persons by causing electronic copies of the same to be transmitted to each interested party that has supplied a valid email address, and all other parties to be served via e-mail or first class mail with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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