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VIA ELECTRONIC DELIVERY

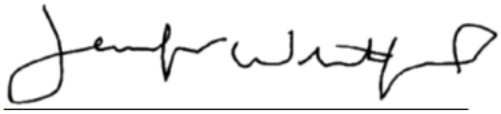
Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

Re: Petitioners' Response to VoltaGrid's Motion to Dismiss; Docket No. 57243

Dear Ms. Tanner:

Please find enclosed an electronic version of Petitioners' Response to VoltaGrid's Motion to Dismiss to be filed in Docket No. 57243.

Respectfully submitted,



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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

Sustainable Newton, Sara and Randall ("Randy") Vinson, and Theodosia and William ("Billy") Wade, Petitioners, v. VoltaGrid, LLC, Respondent.	Docket No. 57243

Petitioners' Response to VoltaGrid's Motion to Dismiss

Petitioners file this brief demonstrating why VoltaGrid's Motion to Dismiss must be denied.

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Background and Argument

1. Background

Respondent VoltaGrid is a relatively new and rapidly growing power company that provides temporary and long-term 24/7 electric power to end-users, like data centers. This year, VoltaGrid's CEO claimed VoltaGrid is "America's largest portable utility, power company."[1] VoltaGrid is poised to offer the same services available from Georgia's electric utilities—generation, 24/7 power, and the ability to transmit the power to customers.[2] However, VoltaGrid has not yet complied with any of the regulatory requirements in place for electric utilities in Georgia, and VoltaGrid is proposing to provide services that are prohibited by the Georgia Territorial Act and Georgia Cogeneration Act.

[1] Pet'r Ex. MC-12 (OILFIELD 360 PODCAST, *#83. Building a Billion-Dollar Energy Company: Nathan Ough's Story*, at 17:25 (YouTube, Jan. 20, 2026), https://www.youtube.com/watch?v=Q3jNRNEqBTU).

[2] Resp. of Georgia Power Company to Georgia Solar Utilities Addendum 1, *In Re: Georgia Power Company's Advanced Solar Initiative & Notice of Georgia Solar Utilities, Inc. Request to be Authorized as a Solar Utility*, Dkt. Nos. 36325 & 36286 (Nov. 9, 2012) at 1-2 (Georgia Power argues that a solar company petitioning to become a utility "does not have any of the services typically provided by a utility," which it supports by noting that the company "has no customers, no existing generation resources, no distribution lines nor the ability to transmit or distribute any generation to any customers, and no ability nor plan to offer safe, twenty-four hour, seven days a week (24/7) electric service to customers").

VoltaGrid's business model generates and sells electric power to third-party end users, like the data center, Serverfarm.[3] Serverfarm is VoltaGrid's first data center customer in Georgia, though it has explored serving other Georgia customers. In May of this year, VoltaGrid even planned that it may sell the power from its power plant built for Serverfarm (its "Covington facility") to other large load customers.[4]

VoltaGrid's Covington facility will be an approximately 90 MW power plant.[5] VoltaGrid will provide "[t]he design, delivery, installation, operation, and maintenance of a power generation microgrid and supply of power to [its] Customer. . . ."[6] The Covington power plant is a "baseload facility" that is "proposed to operate continuously for 8,760 hours per year."[7] Georgia Power learned of VoltaGrid's arrangement with Serverfarm, and it notified VoltaGrid that the arrangement appeared to be illegal.[8] Nonetheless, Georgia Power has failed to take enforcement action, and it has appeared in this action as an intervenor, noting merely that "[t]he outcome of these proceedings will . . . necessarily affect Georgia Power's service within its assigned territory."[9]

This brief responds to Respondent's motion to dismiss the Petition, which argues that Petitioners lack standing to bring this Petition as "interested parties," and that the Commission lacks jurisdiction over VoltaGrid. As described below, neither the law nor the facts are as simple

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[3] *See, e.g.*, VoltaGrid's May 20, 2026 Letter to EPD, VG001224-VG001231, VG001228 ("VoltaGrid is providing a contracted generation capacity service, Serverfarm pays a fixed capacity charge for a predetermined level of available electric capacity, regardless of the amount of power actually consumed at any given time.").
[4] VoltaGrid's May 20, 2026 Letter to EPD, VG001224-VG001231, VG001228 ("Before or after that transition [of Serverfarm to Georgia Power], the VoltaGrid ATL-1 facility may provide capacity for other similarly qualified large load facilities."); VoltaGrid Contract with Serverfarm, VG00141 (noting that if Serverfarm terminates the contract early, "VoltaGrid will use commercially reasonable efforts . . . to find a replacement customer (in any industry and any location) to utilize the same VoltaGrid Equipment following the termination. . . .").
[5] Petition For Expedited Declaratory Judgment and Enforcement Against VoltaGrid (July 13, 2026) ("Pet."), Ex. 2 at 1, 1.1 ("Project Overview").
[6] Schedule 1 Contract Summary, VG00121.
[7] Pet. Ex. 2 at 1, 1.1 ("Project Overview").
[8] Georgia Power Company's June 16, 2026 Letter to VoltaGrid, VG003301-VG003302.
[9] Georgia Power Company's Application for Leave to Intervene (Sept. 16, 2026) at 2.

as Respondent suggests. The Hearing Officer has significant discretion over the course of this proceeding.[10] However, the Territorial Act specifically provides for a hearing process to resolve these questions, which are—by their nature—deeply fact specific.[11] At the motion to dismiss stage, the contested facts must be resolved in Petitioners' favor.[12] To date, nearly all facts are contested, and the facts presented by Petitioners require Respondent's motion to dismiss to be denied.

2. Petitioners' Interests

Petitioners Sustainable Newton, Sara and Randall ("Randy") Vinson, and Theodosia and William ("Billy") Wade have filed this action, seeking enforcement.

Petitioner Sustainable Newton is a membership-based organization that focuses on environmental issues confronting Newton County.[13] VoltaGrid inflicts multiple harms on Sustainable Newton. First, VoltaGrid is planning to operate a significant power plant without any oversight from the Commission or the City of Covington, resulting in a lack of a public regulatory forum where Sustainable Newton can raise concerns.[14] Second, Sustainable Newton will be harmed by the around-the-clock operations that will result in noise, light, heat, and air pollution that will affect its community, which is already burdened by industrial pollution.[15] VoltaGrid's construction also locks the City of Covington into constructing and operating new

[10] *See, e.g.*, O.C.G.A. § 50-13-13 (6) (noting a hearing officer may "dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground").
[11] *See id.* § 46-3-13.
[12] *City of Norcross v. Johnson*, 363 Ga. App. 78, 78 (2022) ("[A] motion to dismiss should not be granted unless the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof. We construe the pleadings in the light most favorable to the plaintiff with any doubts resolved in the plaintiff's favor.") (internal citation omitted).
[13] Pet. ¶ 2; Direct Testimony of Maurice Carter, on behalf of Sustainable Newton (Oct. 9, 2026) at 1:21-2:15.
[14] Pet. ¶ 6; Direct Testimony of Maurice Carter at 5:5-9.
[15] Pet. ¶ 6; Direct Testimony of Maurice Carter at 7:4-8:19.

gas infrastructure, even if VoltaGrid only provides energy in the short-term.[16] Finally, Sustainable Newton is harmed by inconsistent application of Georgia's utility laws. The limitations imposed by these laws have prevented Sustainable Newton from advancing certain types of clean energy projects.[17] In the past, Sustainable Newton has been unable to bring forward solar projects that would provide power to individually metered apartments because of its interpretation of the Act.[18]

Petitioners Randall "Randy" Vinson and Sara Vinson ("the Vinsons") are residents of Newton County who are actively involved in both Sustainable Newton and other environmental organizations in their community.[19] The Vinsons have around 30-acres of property which includes their home, a small farm with animals and crops, forests and wildlife.[20] The Vinsons will be harmed by VoltaGrid's impact on the physical environment and other relevant health impacts – both on their property and in the surrounding community. For example, the Vinsons are concerned that "air pollution from VoltaGrid will add to other air pollution already in the area, and will affect [them] both."[21] Their "horses, . . . farm, and the wildlife on [their] property would suffer negative impacts from VoltaGrid's air and noise pollution."[22] The Vinsons also believe VoltaGrid should be held to the same Territorial Act requirements as other electric utilities and face harm by inconsistent application of the Act.[23] For example, they have installed rooftop solar and wanted to expand that solar system, yet they did not, because they understand Georgia's

[16] Pet. ¶ 6; Direct Testimony of Maurice Carter at 9:1-10.
[17] Pet. ¶¶ 3, 6; Direct Testimony of Maurice Carter at 5:11-13, 9:14-20.
[18] Pet. ¶ 3; Direct Testimony of Maurice Carter at 10:3-11:11.
[19] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson (Oct. 9, 2026) at 1-3. Sara Vinson's husband, Randall "Randy" Vinson "adopt[s] and attest[s] to the testimony of [his] wife, Sara Vinson to the extent that she describes [his] shared activities and interests." Direct Testimony of Randall Vinson (Oct. 9, 2026) at 1:17-20.
[20] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 1-2.
[21] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 5.
[22] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 9.
[23] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 8-9.

electric-service laws to prohibit them from sending excess solar-generated electricity to their neighbors.[24] VoltaGrid's circumvention of the Act has also deprived the Vinsons of an opportunity to raise their concerns with a utility regulator like the Commission.[25]

Petitioners William "Billy" Wade and Theodosia Wade ("the Wades") are residents of Newton County, where they have lived for 40 years and are actively involved in Sustainable Newton and other volunteer work.[26] The Wades' interests will be affected by VoltaGrid's impacts on the physical environment and health of their community. Specifically, VoltaGrid's private power plant "will pollute [their] air and cause noise and lights disturbances that could ruin the health and peace of [their] community."[27] As individuals who live near VoltaGrid and drive by the VoltaGrid parcel on a near-daily basis, they have an interest in preventing noise and light pollution that will affect how they enjoy their property.[28] The Wades will also be harmed by VoltaGrid's emissions of fine particulate matter, formaldehyde, nitrogen oxides, and other pollutants that will adversely affect their community.[29] While the Wades are not anti-power plant and "understand the need for electricity and power plants," they *are* against power plants, like VoltaGrid, that seek to operate and impact their community without proper regulation and public input at the Commission or the City of Covington.[30]

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[24] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 7.
[25] Pet ¶¶ 4, 6; Direct Testimony of Sara Vinson at 3-4.
[26] Pet ¶¶ 5, 6; Direct Testimony of Theodosia Wade (Oct. 9, 2026) at 1:2-4, 1:16-3:2. Theodosia Wade's husband, William "Billy" Wade "adopt[s] and attest[s] to the testimony of [his] wife, Theodosia Wade to the extent that she describes [his] shared activities and interests." Direct Testimony of William "Billy" Wade (Oct. 9, 2026) at 1:10-13.
[27] Pet ¶¶ 5, 6; Direct Testimony of Theodosia Wade at 4:21-23.
[28] Pet ¶¶ 5, 6; Direct Testimony of Theodosia Wade at 5:20-23.
[29] Pet ¶¶ 5, 6; Direct Testimony of Theodosia Wade at 4:21-5:11.
[30] Pet ¶¶ 5, 6; Direct Testimony of Theodosia Wade at 6:2-9.

3. Petitioners have sufficiently alleged that they are interested parties.

Petitioners have sufficiently alleged that they are "interested parties." "The cardinal rule of statutory construction is first, to ascertain the legislative intent and purpose in enacting the law and then to give it that construction which will effectuate the legislative intent and purpose."[31] The legislative purpose of the Territorial Act is to ensure that the regulated utility system benefits the pubic, and the legislature has identified a very broad class of persons—"other interested persons"—who can seek enforcement of those rights and benefits. Petitioners neighbor the facility, they use impacted utilities, and they are directly impacted by the encroachment of the facility's operation and the failure of that facility to be regulated by the Public Service Commission. Petitioners meet the standard of "interested parties."

A. The Territorial Act is designed to benefit the public.

The Georgia legislature passed the Territorial Act ("Act") "to foster the extension and location of electric supplier lines in the manner most compatible with the preservation and enhancements of the state's physical environment," among other objectives.[32] And although the Act may restrain competition, "the restraint is for the benefit of the public in [the] minimization of duplication of facilities and prevention of other adverse economic and environmental effects," not just for the benefit of electric suppliers.[33]

Respondent argues that exclusive supply rights vest "*solely* in the assigned electric supplier."[34] While it is true that the Territorial Act grants certain suppliers with the right to supply certain customers, the argument misses the mark, because the question here is which parties did

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[31] *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 296 Ga. App. 556, 559 (2009), aff'd sub nom. *Sumter Elec. Membership Corp. v. Georgia Power Co.*, 286 Ga. 605, 690 (2010).
[32] O.C.G.A. § 46-3-2.
[33] *City of Calhoun v. N. Georgia Elec. Membership Corp.*, 233 Ga. 759, 768 (1975).
[34] Brief in Support of Respondent, VoltaGrid, LLC's Motion to Dismiss ("VoltaGrid's Brief ISO MTD") at 9.

the legislature intend to benefit from this monopolistic structure being created and enforced? The beneficiaries of the Territorial Act's monopolistic structure are—and must be[35]—broader than any particular supplier, but instead include the public. Petitioners do not bring this action to compete with VoltaGrid or to vindicate Georgia Power's interests, but instead, Petitioners bring this action to protect the core purpose for which the Territorial Act exists: to "benefit [] the public in [the] minimization of duplication of facilities and prevention of other adverse economic and environmental effects."[36]

The Territorial Act provides that upon the complaint of "*any other interested party*, the commission shall have the authority and jurisdiction, after notice to all affected electric suppliers and other interested parties, and after a hearing, to enforce the provisions of this part by appropriate orders."[37] Petitioners are part of the public the Territorial Act is designed to benefit, and they are interested parties.

B. "Interested party" is a broad term.

Under O.C.G.A. § 46-3-13 ("§ 13"), "interested party" is not defined – as Respondent correctly points out – but the plain meaning of "interested" is broad, and it encompasses Petitioners' interests. First, the structure of the Territorial Act underscores the breadth of the term "interested party." Second, Respondent's attempt to narrow the "interests" implicated by the Territorial Act wrongly focuses on the use of interested party in O.C.G.A. § 46-3-8 ("§ 8") instead of § 13 that Petitioners rely on. Third, similar language has been used to interpret intervention at the Commission broadly to ensure private participation in public matters. Fourth, Petitioners' interest in not being subjected to the harms of an unlawfully operating and

[35] *City of Calhoun*, 233 Ga. at 767-68.
[36] *Id.* at 768.
[37] VoltaGrid's Brief ISO MTD at 9; O.C.G.A. § 46-3-13 (emphasis added).

unregulated power plant implicates the core purpose of the Territorial Act. And fifth, Respondent's suggestion that Georgia Power is the only party who can Petition the Commission for redress contravenes the plain language of the Territorial Act and its constitutional underpinnings.

First, "interested parties" is a much broader phrase than used elsewhere in the Act. In § 8, the legislature uses four distinct terms when assigning Territorial Act rights: "any other electric supplier," "any other interested party," "affected electric supplier," and "affected persons." When interpreting statutory language, a term's meanings can be formed by the broader context of related terms in the same statute.[38] The legislature could have chosen to restrict Petitioning rights to "affected persons" when writing § 13, which would suggest a requirement for a more direct nexus between the challenged behavior and the harm, but instead the legislature chose to include the broadest class—"other interested parties"—to whom it confers Petitioning rights. This choice is consistent with the broad statutory purpose, which is to benefit the public at large.[39]

Second, Respondent claims that because the Territorial Act identifies interests over which the Commission has jurisdiction in § 8, Petitioners "raise no issue relevant to the interests identified in the Territorial Act."[40] However, Petitioners do not raise a claim under § 8, which identifies a specific process for seeking specific remedies, like transferring service from one provider to another. Petitioners do not challenge the adequacy of VoltaGrid's service, and Petitioners do not seek the relief offered under § 8. Instead, Petitioners cite and rely upon the Commission's enforcement powers of other provisions of the Territorial Act under § 13.

[38] *See Kinslow v. State*, 311 Ga. 768, 771 (2021) ("In construing language in any one part of a statute, a court should consider the statute as a whole.").
[39] *City of Calhoun*, 233 Ga. at 768.
[40] VoltaGrid's Brief ISO MTD at 10-11.

Third, "other interested persons" is not unique to the Territorial Act, but its breadth is mirrored in the Commission's practice concerning intervention, which conveys "party" status to intervenors with an "interest" (who also meet other criteria).[41] The Commission permits intervention by "[a] person who demonstrates a legal, property, **or other interest** in the proceeding."[42] The Public Service Commission's work regulating utilities impacts the public as a whole, and the Commission has recognized that "its liberal intervention practices," which permit intervention by those with any "other interest," "promote the public interest by allowing a diversity of interest and viewpoints to be presented."[43]

Fourth, Respondent argues that "interested parties" cannot include Petitioners' interest in not being harmed by an unregulated retail power plant in its neighborhood, because Georgia Power could lawfully install the exact same engines on the same site.[44] Respondent's baffling argument ignores the fundamental regulatory regime that Petitioners seek to enforce: utilities in Georgia are regulated and accountable to either the Commission or to the public through elections or ownership structures.[45] VoltaGrid seeks to build power plants for customers while answering to no one. If Georgia Power proposed an unnecessary and duplicative power plant in Petitioners' backyard, Petitioners would have been able to come to the Commission and raise their concerns, and Georgia Power could not proceed unless it could demonstrate that the power plant was necessary and in the public interest.[46] However, with VoltaGrid, there is no pathway for

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[41] O.C.G.A. § 46-2-59(e)(3)
[42] *Id.* § 46-2-59(e)(2) (emphasis added).
[43] Chairman Shaw, Administrative Session of the Georgia Public Service Commission (Feb. 18, 2026) at 5:16-19, https://www.selc.org/wp-content/uploads/2026/08/2026.02.18-56298-56310-Final-Vote-Transcript.pdf.
[44] VoltaGrid's Brief ISO MTD at 11.
[45] *See, e.g.*, Staff Report on Electric Industry Restructuring, *In Re Elec. Indus. Restructuring*, No. 7313-U, 1998 WL 334887, at § 4.C. (Jan. 23, 1998); O.C.G.A. § 46-3-2.
[46] O.C.G.A. § 46-3A-3.

members of the affected community to bring the interests protected by the Territorial Act forward, aside from filing this petition.

Fifth, Respondent incorrectly suggests that the only party who can enforce VoltaGrid's unlawful behavior is Georgia Power.[47] This narrow interpretation of "interested parties" results in an outcome in which only Georgia Power – aside from the Commission – could bring a Territorial Act challenge, and only *if* it chooses to.[48] If Respondent's interpretation is accepted, regulated monopolies, like Georgia Power, would get to wield the Territorial Act as a weapon for private gain, picking and choosing their competitors, which is in opposition to the Constitution's limitations on monopolistic behavior.[49] In fact, in this very case, Georgia Power determined that VoltaGrid's arrangement appeared "to violate[] the Territorial Act," but it privately committed not to take enforcement action so long as VoltaGrid met certain conditions not to interfere with Georgia Power's future service.[50] Would Georgia Power look the other way if a similar arrangement were attempted by one of its primary competitors—an EMC or municipality—to win a customer choice contract? Would Georgia Power look the other way if it did not stand to profit from capturing a large customer? While these hypotheticals need not be answered in this matter, they reveal the importance of the legislature's conveyance of broad standing rights to raise a Territorial Act case. Regulated monopolies are not designed "to guarantee the security of investment in public service corporations."[51] "The primary purpose is to serve the interests of the

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[47] *See, e.g.*, VoltaGrid's Brief ISO MTD at 8 ("Because the only rights as stake under the Territorial Act belong to Georgia Power Company, Petitioners can assert no interest the Territorial Act was enacted to protect. . . .").
[48] *See id.* at 8, 13-14. In addition to the constitutional implications, this construction is inconsistent with the plain language of the legislature who empowered both "electric suppliers" **and** "interested parties" to Petition the Commission.
[49] GA. CONST. art. III, § 6, ¶ V ("The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of or which is intended to have the effect of defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void.").
[50] Georgia Power Company's June 16, 2026 Letter to VoltaGrid, VG003301-VG003302.
[51] *City of Calhoun*, 233 Ga. at 768 (citing 73 C.J.S. Public Utilities s 12, p. 1006).

public."[52] To that end, the legislature was clear: Petitioning rights belong not just to the "electric supplier," but also "interested parties."[53]

C. Petitioners are interested parties.

Petitioners are interested parties because their interests are among those protected by the Act. As stated before, all electric suppliers are subject to the Act "to foster the extension and location of electric supplier lines *in the manner most compatible with the preservation and enhancements of the state's physical environment*" as required by public interest.[54] And in accordance with *City of Calhoun*, "the restraint [on competition] is for the benefit of the public in [the] *minimization of duplication of facilities and prevention of other adverse economic and environmental effects*."[55] Each Petitioner aims to prevent adverse environmental effects from an unregulated, short-term power plant.[56] As described above in Section 2, all Petitioners are interested parties because of the harm to them from VoltaGrid's pollution, noise, and other intrusions on the physical environment in which they live and work, without any oversight as to whether this powerplant is necessary or merely duplicative. Petitioners further seek to ensure that Georgia's energy laws are applied fairly, and that they are not subjected to the harm from a power plant operating under a different set of rules than those that have been applied to them.[57]

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[52] *Id.*
[53] If the only person who can bring this action is Georgia Power, then the clear legislative intent of the Petition process to allow other interested persons to Petition the PSC is frustrated. *See Sawnee Elec. Membership Corp. v. Georgia Pub. Serv. Comm'n*, 273 Ga. 702, 705 (2001) ("[T]he use of plain and unequivocal language in a legislative enactment obviates any necessity for judicial construction, and indeed forbids an interpretation of the meaning of the words employed by the General Assembly.").
[54] O.C.G.A. § 46-3-2 (emphasis added).
[55] *City of Calhoun*, 233 Ga. at 768 (emphasis added).
[56] Pet. ¶¶ 3-6; Direct Testimony of Theodosia Wade at 4-6; Direct Testimony of Sara Vinson at 5, 7-10; Direct Testimony of Maurice Carter at 5-11; Direct Testimony of Randy Vinson at 1-2; Direct Testimony of Billy Wade at 1.
[57] *See, e.g.*, Pet. at ¶¶ 3-6; Direct Testimony of Theodosia Wade at 4-6; Direct Testimony of Sara Vinson at 3, 7-10; Direct Testimony of Maurice Carter at 5-11; Direct Testimony of Randy Vinson at 1-2; Direct Testimony of Billy Wade at 1.

Ultimately, Petitioners seek enforcement of the Act to ensure that VoltaGrid is not permitted to operate until it has complied with all required regulations.[58]

4. Petitioners have satisfied Commission rules for seeking a declaratory judgment.

Petitioners have satisfied the requirements for seeking a declaratory judgment.[59] First, as described above, Petitioners have sufficiently set forth their interests in the matter and how they are uncertain and insecure with respect to their rights secured by the Territorial Act.[60] For example, here, VoltaGrid's attempt to operate in circumvention of the Territorial Act amounts to an inefficient and disorderly rendering of electric service that will impose adverse environmental impacts on Petitioners and deprive them of a body to whom they can address their grievances.[61] This cuts squarely against the purpose of the Act and the benefits to the public, including Petitioners.

Respondents warn of a slippery slope, imagining that if Petitioners are indeed "interested parties," then the Commission will become a forum for every grievance with any electric facility.[62] Respondents conflate the principles of Petitioners' cause of action (VoltaGrid is acting illegally and the Commission is empowered to intervene) with Petitioners' standing (that illegal activity causes Petitioners real harm).[63] The Commission will face only as many petitions as electricity power companies seek to act illegally and escape accountability.

Next, though each Petitioner has asserted violations of their own rights, VoltaGrid is incorrect as a matter of law that Petitioners "must assert the violation of his own rights and

[58] Pet. ¶ 6, and at 12.
[59] *See* Ga. Comp. R. & Regs. 515-2-1-.12.
[60] O.C.G.A. § 46-3-2; *City of Calhoun*, 233 Ga. at 768 (1975).
[61] *See id*.
[62] VoltaGrid's Brief ISO MTD at 9-10, 13.
[63] *Id.* at 13.

cannot merely vindicate the rights of another."[64] Respondent appears to rely on *Eternal Vigilance* and its recent companion cases, in which the Georgia Supreme Court narrowed the concept of standing in Georgia's judicial courts.[65] However, these decisions limit standing in Georgia's judicial branch courts under the authority of the Georgia Constitution's judicial power paragraph from which the Public Service Commission is expressly exempt.[66] Thus, those standing concepts in Georgia's judicial courts are not applicable here. Instead, the statutory requirement that an "interested party" bring a claim before the Public Service Commission is quite applicable and, in this case, has been sufficiently met.

Finally, the facts in the Petition are all either supported by its accompanying exhibits of public record, or by public documents and Petitioners' personal knowledge, which Petitioners have verified.[67]

5. The Commission plainly has jurisdiction to investigate violations of the Territorial Act.

The Georgia Constitution creates the Commission "for the regulation of utilities," and expressly states that the commission's "jurisdiction, powers, and duties" shall vest "as provided by law."[68]

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[64] *See, e.g.*, Br. in Supp. Mot. to Dismiss at 9, fn. 31 citing *Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775, 917 S.E.2d 125, 139 (2025).
[65] *See Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775, 917 S.E.2d 125, 139 (2025); *Wasserman v. Franklin County*, 320 Ga. 624, 640, 911 S.E.2d 583 (2025); *Sons of Confederate Veterans v. Henry County Bd. of Commrs.*, 315 Ga. 39, 50, 880 S.E.2d 168 (2022).
[66] The judicial power paragraph explicitly states that "administrative agencies shall not be subject to the provisions of this article." GA. CONST. art. VI, § 1, ¶ I. That paragraph also provides the Georgia General Assembly with the authority to give agencies, like the Public Service Commission, quasi-judicial powers by statute. Here, the General Assembly, through the Territorial Act, has given the Public Service Commission "authority and jurisdiction" over complaints filed by "any other interested party" concerning application of the Territorial Act. O.C.G.A. § 46-3-13.
[67] Pet. ¶¶ 2-3 verified by Direct Testimony of Maurice Carter at 1:18-5:2; Pet. ¶ 4 verified by Direct Testimony of Sara Vinson at 1-11, Direct Testimony of Randy Vinson at 1-3; Pet. ¶ 5 verified by Direct Testimony of Theodosia Wade at 1-7, Direct Testimony of Billy Wade at 1-2; Pet. ¶ 6 verified by Direct Testimony of Maurice Carter at 5:3-12:2, Direct Testimony of Sara Vinson at 1-11, and Direct Testimony of Theodosia Wade at 1-7; Pet. ¶ 7 from public documents verified by Direct Testimony of Maurice Carter at 12:14-13:7; Pet. ¶ 8 (supported by Pet. Ex. 1); Pet. ¶ 11 from public documents verified by Direct Testimony of Maurice Carter at 13:20-14:9.
[68] GA. CONST. art. IV, § 1(a), (b).

The Territorial Act's plain language expressly does two things: 1) It vests electric suppliers (who are either regulated or otherwise publicly accountable) with a) the rights to provide retail electric service as defined in the Act, and b) the obligations not to encroach on the retail electric service rights of other electric suppliers and to provide just and reasonable service; *and* 2) It vests jurisdiction in the Commission both to investigate alleged violations of those rights and obligations and, when violations arise, to enforce them.[69]

> At any time, upon its own complaint or the complaint of any other electric supplier or any other interested party, the commission **shall have the authority and jurisdiction**, after notice to all affected electric suppliers and other interested parties, **and after a hearing, to enforce the provisions of this part by appropriate orders.**[70]

The Commission is properly exercising its jurisdiction to hold a hearing "upon its complaint or the complaint of . . . any other interested party."[71] And, following a hearing, if the Commission determines that a violation of the Territorial Act has occurred, the Commission has explicit jurisdiction "to enforce the provisions of" the Territorial Act "by appropriate orders."[72]

Because the Territorial Act explicitly vests investigatory and enforcement jurisdiction in the Commission, there is no need to pull from more general sources of Commission jurisdiction. The ultimate questions, like whether VoltaGrid is subject to the regulation of the Commission and is thus an "electric supplier," are ones of statutory interpretation and reach the merits of this case. These questions cannot be answered without factual development. The lengthy history lesson offered by VoltaGrid focuses on § 46-2-21, and that statute is discussed below, in the context of the merits of the Territorial Act claim and in the context of jurisdiction under the Cogeneration Act. However, the scope of jurisdiction under §§ 46-2-20 and 21 is not

[69] O.C.G.A. §§ 46-3-8, 46-3-13.
[70] *Id.* at § 46-3-13 (emphasis added).
[71] *Id.*
[72] *Id.*

determinative of the Commission's jurisdiction under the Territorial Act, which the legislature explicitly provides within the Act.

6. Following a hearing, the Commission will find facts sufficient to enforce the Territorial Act against VoltaGrid.

The Territorial Act has been interpreted two ways. At a hearing, the facts will demonstrate that VoltaGrid's proposed service to Serverfarm violates the Territorial Act under either legal interpretation.

First, the plain language of the Territorial Act *only* regulates the activities of entities who qualify as "electric suppliers." For VoltaGrid to be an electric supplier, it must both be an electric power company and it must be "subject to regulation" by the Public Service Commission. Under this plain language interpretation, VoltaGrid is in violation of the Territorial Act if a hearing demonstrates that VoltaGrid is an electric power company properly "subject to regulation" by the Public Service Commission. VoltaGrid neither has a right to compete to serve Serverfarm, nor has VoltaGrid complied with the Commission's regulations on electric suppliers. Thus, VoltaGrid's proposed electric service violates the Territorial Act.

Second, some limited authority supports the view that the Territorial Act establishes a protected monopoly only for "electric suppliers." In that view, the Commission's vested powers, duties, and jurisdiction under the Territorial Act include protecting that monopoly against all potential competitors who provide electric retail services, regardless of whether the competitor is subject to Commission regulation. Under this interpretation, VoltaGrid is in violation of the Territorial Act simply by furnishing retail electric service to Serverfarm without being either assigned or "chosen," regardless of whether VoltaGrid qualifies as an electric supplier.

Finally, the Cogeneration Act carves out an exception to the Commission's exercise of jurisdiction over certain electric company activities under either legal interpretation, but VoltaGrid's services do not fit within that exception.

Petitioners submit that a hearing will demonstrate that VoltaGrid is planning to furnish retail electric service to Serverfarm, and that it is a company holding itself out as a rapidly growing electric utility provider. VoltaGrid's electric services clearly affect the public's interests protected by Georgia's utility laws and are squarely in the regulatory purview of the Public Service Commission. In addition, VoltaGrid's proposed Covington facility does not fall within the Cogeneration Act's exception to Territorial Act jurisdiction. To date, VoltaGrid is contesting nearly all of the facts Petitioners rely upon, and thus proceeding to a hearing is necessary to determine the Commission's enforcement authority over VoltaGrid.

A. VoltaGrid's proposed electric service violates the Territorial Act because VoltaGrid is an "electric supplier" without a right to furnish retail electric services. (Plain Language Interpretation**)**

The Territorial Act's plain language only regulates the behavior of "electric suppliers" (as opposed to all who may compete with them).[73] The Territorial Act provides that each geographic area in Georgia "shall be assigned to only one electric supplier,"[74] and gives that electric supplier the "exclusive" right to serve,[75] prohibiting other "electric suppliers" from competing for smaller customers within that territory. For larger customers, the Territorial Act allows the customer to

[73] *See, e.g.*, *Dobbins* Order Issuing Declaratory Rulings, Dkt. Nos. 11276-U & 11463-U (Apr. 18, 2000), at 9-10 (emphasizing that the Territorial Act applies to the assignment of territory "**to electric suppliers**" to conclude that the Commission is not authorized to choose providers for a military's on-base electrical system); O.C.G.A. § 46-3-3 (defining "electric suppliers" as "any electric light and power company subject to regulation by the commission."); *id.* § 46-3-2 ("all electric suppliers within the state shall be subject to this part"); *id.* § 46-3-4 (authorizing the commission "to assign to electric suppliers or to declare as unassigned . . . all geographic areas in this state . . . ."); *id.* § 46-3-8 (providing customer choice for large customers among "electric suppliers").
[74] O.C.G.A. § 46-3-4(2).
[75] O.C.G.A. §§ 46-3-3(1).

choose to obtain retail electric service from among certain "electric suppliers."[76] Under this plain language interpretation, the Territorial Act regulates the behavior of and competition *among* electric suppliers. It does not protect electric suppliers from competition by non-electric suppliers, i.e., electric power companies who are not "subject to regulation" by the Commission. Thus, under this interpretation, the key question for the Commission is whether VoltaGrid is an "electric supplier," which requires it to be "subject to the regulation" of the Commission. Who is "subject to the regulation" of the Commission is a mixed question of law and fact.

As a matter of law, the Commission is established for the regulation of utilities,[77] so historically, the Commission's regulation of electric power companies has been limited to those companies furnishing service to the public or affected with a public interest.[78] VoltaGrid argues that the scope of companies that fall under the Commission's regulation is governed by legal authority that predates the spate of modern regulatory laws passed to govern electric retail service. This argument ignores that in recent decades, legislation has expanded the Commission's regulatory powers, such as in the Territorial Act, and it has also expressly exempted certain classes of electric power providers from the Commission's jurisdiction or regulation.[79]

Pursuant to its Constitutional mandate "for the regulation of utilities," the legislature vested the Commission with broad jurisdiction—"general supervision"—over "electric light and

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[76] O.C.G.A. §§ 46-3-8(a); 46-3-3(7), (8).
[77] GA. CONST. art. IV, § 1(a), (b).
[78] *See, e.g.*, *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n,* 228 Ga. 347, 353 (1971) (holding that "[s]ince we have determine that the present and proposed undertaking of Atlanta Gas to supply electrical energy in a total energy service is a manner affected with a public interest," the constitutional challenges to the Commission's regulation of Atlanta Gas' electrical services "are without merit"); Ga. Op. Att'y Gen. 72-84 (1972). ("It has been generally recognized that . . . the jurisdiction of the Public Service Commission is restricted to those electric and gas companies which serve the public.").
[79] O.C.G.A. § 46-3-53 (exempting certain cogeneration facilities from the jurisdiction or regulation of the commission); *id.* § 46-3-65(a) (exempting solar energy procurement agreements from being considered retail electric service under the Territorial Act).

power companies."[80] Historically, the Commission's "powers and duties" to regulate those companies were limited to those "conferred by law prior to August 23, 1907,"[81] such as rate supervision. But the powers and duties vested in the Commission in a series of modern laws reflect the evolving nature of the electric system and the evolving nature of the Commission's jurisdiction and "powers[] and duties as provided by law."[82] The law has changed. The Commission's jurisdiction has evolved, too.

Furthermore, to the extent that the Public Service Commission's view of the scope of its regulatory authority over 100 years ago is relevant here, VoltaGrid presents a misleading record of this history by inserting ellipses into its three-paragraph block quotation, omitting eight key words, which fundamentally changes the nature of the passages quoted. VoltaGrid represents to the Commission that there is a report that says in 1909 the Commission had determined that a power company was exempt from its jurisdiction because it did not "furnish power or service directly to the public, but [instead] sells all its power to another party or company. . . ."[83] VoltaGrid omits the key facts that the company at issue was not selling to a retail customer, but the company was a wholesale utility supplier, supplying power to a company who resold that power 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 **which latter furnishes the same to the public.**[84]

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[80] *Id.* § 46-2-20.
[81] *Id.* § 46-2-21.
[82] GA. CONST. art. IV, § 1(a). *See, e.g.*, O.C.G.A. § 46-3-53; *id.* § 46-3-65(a).
[83] VoltaGrid's Brief ISO MTD at 15, 16.
[84] 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") (emphasis added), *available at* https://bit.ly/1909-Report.

The Territorial Act only applies to retail sales—not wholesalers. So while this passage offers support for the Commission's view in 1909 that a wholesaler is not furnishing service to the public, when VoltaGrid's ellipses are replaced with the text from the actual source, this passage offers no support for VoltaGrid's argument that electric power companies get a regulatory pass on their first customer—even in 1909.

As to the facts, a hearing—or a set of agreed-upon facts—is required for the Hearing Officer to conduct the fact-finding necessary to determine whether VoltaGrid is properly subject to the Commission's regulation. There is not a single test for which companies are "affected with a public interest" or "furnishing service to the public." However, in 1969, the Attorney General offered the following factors as relevant to whether a company is subject to Commission regulation:

> "[W]hether a business operation renders 'service to the public' as to become a public utility is controlled by the **facts of each particular case** and the question depends on such factors as the **extent of the service**, whether the operation **holds itself out as ready to serve the public generally**—and whether, perhaps, in other ways **it has conducted itself as a public utility**."[85]

In 1971, the Georgia Supreme Court concluded that a gas company's contract to furnish a service, which included electricity, was properly subject to Commission regulation, considering factors including the impact of the deal on the public, whether the company owned the buildings receiving electricity service, and the fact that the gas company had looked for other business opportunities within Georgia to sell similar "total energy systems" including electricity.[86] And in *Dobbins*, the Commission opined that if a utility was "found to be conducting itself as a public

[85] Op. Att'y Gen. 69-27 (1969) (citing *Clark v. Olson*, 177 Wash. 237 (1934), and 35A Words and Phrases, Public Utility, pp. 86-89, 91-99 (1963)) (emphasis added), *available at https://dlg.galileo.usg.edu/data/dlg/ggpd/pdfs/dlg_ggpd_y-ga-bl310-b-ps1-bo6-b1969.pdf*.
[86] *Atlanta Gas Light*, 228 Ga. at 351-52.

utility," it could result in the Commission's proper regulation of the entity even if it was "solely and exclusively" serving a single customer.[87]

Facts at a hearing will demonstrate that under the plain language of the Territorial Act, VoltaGrid is an electric power company that is subject to regulation by the Commission, and VoltaGrid has not been assigned any territory to serve retail customers in Georgia, nor has it been chosen by Serverfarm under customer choice.[88] Yet, VoltaGrid is providing retail electric service to Serverfarm, which is prohibited under the Territorial Act.[89]

i. A hearing will demonstrate that VoltaGrid is an electric power company subject to regulation by the Commission.

VoltaGrid is an electric power company subject to the Commission's regulation because it is acting as a utility, it is furnishing service to the public, and because its electric service is affected with the public interest.

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[87] Order Issuing Declaratory Rulings, Dkt. Nos. 11276-U & 11463-U (Apr. 18, 2000) ("*Dobbins*") at 28. Cases from other states cited by Respondent on page 21 of its brief agree. *See Humbird Lumber Co. v. Pub. Utilities Comm'n of State of Idaho*, 39 Idaho 505, 228 P. 271, 273 (1924) ("The test for determining whether the lumber company is a public utility would seem to depend upon whether it has held itself out as ready, able, and willing to serve the public generally, or some portion thereof."); *Bethlehem Steel Corp. v. Pennsylvania Pub. Util. Comm'n*, 552 Pa. 134, 143 (1998) (holding that a determination there is currently only a single user "does not definitively answer whether Bessie 8 was a public utility").

Other cases cited by respondents to suggest "single-user sales" are exempted from regulation are inapposite. *Holder* held a gas pipeline with one utility customer was not a public utility under Mississippi's definition, but Mississippi's definition now explicitly says that furnishing electricity to "an individual person or entity" makes one a public utility. *Holder v. Miss. Fuel Co.* 317 So. 2d 891, 892 (Miss. 1975); Miss. Code § 77-3-3(d). *Arkansas-Louisiana Electric Cooperative* involved a cooperative formed in Louisiana operating across statelines under a certificate of convenience and necessity issued during World War II power shortages and who had taken steps to become a regulated cooperative in Arkansas. *Ark-La Elec. Coop., Inc. v. Ark. Pub. Serv. Comm'n***,** 210 Ark. 84, 86-89 (1946). Petitioners also note that the cases collected in *Ark-La* include a case relating to a wholesaler (*State ex rel. Buchanan Cnty. Power Transmission Co. v. Baker*, 320 Mo. 1146, 1148–49 (1928)), a case that had to explicitly distinguish between electricity for light and electricity for "purposes other than light" (*Sunset Shingle Co. v. Nw. Elec. & Water Works*, 118 Wash. 416, 428 (1922)), and a case involving a wholesaler who had contracts that predated the creation of the Public Utilities Commission (*Colorado Power Co. v. Halderman*, 295 F. 178, 192-194 (D. Colo. 1924)).

[88] Pet'r Proposed Stips. and Witness List (Oct. 1, 2026) at #17 ("Georgia Power is the designated primary electricity supplier . . . ."); Georgia Power Company Resp. to PIA-44-2(a), Dkt. No. 44280 ("Georgia Power has a signed Contract for Electric Service with Serverfarm to deliver service to the premises").

[89] O.C.G.A. § 46-3-11(b).

Here, facts developed at a hearing will demonstrate that the Commission's regulatory authority extends to this Texas-based utility whose business model is to build power plants to serve end-use (retail) data center customers and who is exploring the expansion of its service territory to Georgia. VoltaGrid's CEO has described VoltaGrid as "America's largest portable utility, power company," which has grown from a new start up to a projected 2,000 employees by the end of 2026.[90] Today, VoltaGrid advertises its services, promising "reliable power for communities and project sites, assuring firm energy resources for our customers."[91] VoltaGrid advertises its "Remote Operations Center," which allows "customers to adjust power supply based on demand without delay."[92] VoltaGrid boasts, "[W]e're not just providing power, we're powering the future reliably, safely, and sustainably."[93] In Georgia, Serverfarm is VoltaGrid's first customer, and VoltaGrid has taken concrete steps to expand in Georgia.[94]

- In September 2025, VoltaGrid's Director of Sales "had an initial discussion with Vantage Data Centers . . . pertinent to a development proposed in Coweta County."[95]

- In February 2026, VoltaGrid's Director of Sales had a conversation with Southern Company Services and shared information about "Voltagrid's solution" for bridge generation.[96] Southern Company Services' representative followed up asking if VoltaGrid "would still be interested in meeting with" Georgia Power's resiliency team "to discuss opportunities to work with your customers" about Georgia Power's tariffs.[97]

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[90] Pet'r Ex. MC-12 (OILFIELD 360 PODCAST, *#83. Building a Billion-Dollar Energy Company: Nathan Ough's Story*, at 17:25 (YouTube, Jan. 20, 2026), https://www.youtube.com/watch?v=Q3jNRNEqBTU).
[91] Pet'r Ex. MC-10 (Tr. of VoltaGrid, *Remote Operations Center*) at 2:7-9.
[92] *Id.* at 3:13-14.
[93] *Id.* 3:15-17.
[94] The Atchley affidavit submitted by VoltaGrid with its Motion to Dismiss alleges that VoltaGrid is not currently engaged in negotiations with other customers to provide power services in Georgia, and VoltaGrid is not currently soliciting, marketing to, or otherwise pursuing any additional customers in Georgia. However, a pause or cessation in customer marketing in response to litigation is immaterial to the nature of VoltaGrid's business, which is revealed from numerous public records detailed here, and it does not justify a regulatory free pass for the power plant it is or is about to begin operating.
[95] VoltaGrid Resp. to PIA-1-19(c).
[96] E-mail from Sam Johnson to Elisabeth Hankins Hall (Feb. 20, 2026 at 8:39 PM), VG002918.
[97] *Id.*

- In May 2026, VoltaGrid wrote EPD a letter in which it asserted that VoltaGrid's Covington facility "may provide capacity for other similarly qualified large load facilities" either before or after "Georgia Power is able to provide permanent electric service to the [Serverfarm] data center (anticipated in mid-2028)."[98]

- The contract between Serverfarm and VoltaGrid contemplates that if Serverfarm terminates the contract early, VoltaGrid will try to find a "replacement customer (in any industry and any location) to utilize the same VoltaGrid Equipment."[99]

VoltaGrid's single powerplant also requires a substantial investment of electric power infrastructure, and it is designed to provide power that could fuel over 40,000 *households*.[100] In *Atlanta Gas Light*, the "total energy service" that the Commission could regulate was sold to a landlord, whose three buildings "would be occupied by more than 16,000 *people* as tenants, residents, and employees. . . ."[101] The Supreme Court held that this "would be a significant segment of the public."[102] Here, there is only a single customer to-date, but VoltaGrid does not get a regulatory free pass simply because it has not *yet* expanded to more customers, when its business model demonstrates that it will expand in Georgia, if it can expand in Georgia.[103] To

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[98] VoltaGrid's May 20, 2026 Letter to EPD, VG001228.

[99] VoltaGrid's Agreement for Power Generation, VG000141, ¶ 9.4(b). The Atchley affidavit also alleges that Serverfarm's data center is the "only potential retail customer that VoltaGrid can serve from the Conversion Assets [gas-powered combustion engines] on the Subject Property." This statement seems to mean nothing more than there are no potential customers "on the Subject Property" other than Serverfarm, because as demonstrated here, VoltaGrid has represented that it *can* use the Covington facility for other customers to a separate regulator in Georgia and VoltaGrid has promised to Serverfarm that it would exercise good faith efforts to redeploy the equipment at the Covington facility for replacement customers if certain circumstances arise.

[100] Calculated using Georgia Power's measure of approximately 454 households served per megawatt of power, meaning 90 megawatts of power could serve 40,909 households. *See, e.g.*, Georgia Power, *Vogtle Unit 4 Enters Commercial Operation* (Apr. 29, 2024), https://www.georgiapower.com/news-hub/press-releases/vogtle-unit-4-enters-commercial-operation.html (estimating power from nuclear units that would deliver 1,100 megawatts of power).

[101] *Atlanta Gas Light*, 228 Ga. at 351 (emphasis added).

[102] *Id.*

[103] *See, e.g.*, *Atlanta Gas Light*, 228 Ga. at 352 (finding activities to be regulatable by noting, in part, that Atlanta Gas was considering the feasibility of expanding to two other customers); Ga. Op. Att'y Gen. 72-50 (1972) (finding that supplying three general manufacturing corporations was not serving the public because the corporation's charter limits the business' expansion beyond two designated businesses); *Dobbins* at 27-28 (suggesting that if an entity was "found to be conducting itself as a public utility," it could result in the Commission's proper regulation of the entity even if it was "solely and exclusively" serving a single customer).

achieve this scale, VoltaGrid's first Georgia power plant has relied on significant infrastructure investment. By at least June 2025, VoltaGrid was working with the City of Covington to secure over a million dollars of new gas infrastructure on behalf of its "customer," Serverfarm.[104] And VoltaGrid's construction is energized by Georgia Power: In June 2026, VoltaGrid asked Georgia Power to open an account in VoltaGrid's name to provide "backup power if [VoltaGrid's] generators are off."[105]

Surely, VoltaGrid could seek to comply with utility regulations and provide retail electric service, as permissible under the Territorial Act.[106] The regulatory hurdles are steep to protect the public, but VoltaGrid's disinterest in compliance does not mean that VoltaGrid is not subject to regulation as an electric power company.[107]

ii. A hearing will demonstrate that VoltaGrid is planning to furnish "retail electric service" to Serverfarm, despite VoltaGrid not being assigned Serverfarm's territory or chosen by Serverfarm as its electric supplier under the Territorial Act.

VoltaGrid is planning to furnish retail electric service in Georgia, which is prohibited by the Territorial Act.[108] VoltaGrid suggests in a conclusory way that it is not offering retail electric

[104] *See* E-mail from Scott Tolleson (Gas Authority) (Jun. 10, 2025 at 09:41 AM) (offering options for "system improvements" for gas flow, including one to construct over 4,800 linear feet of gas main and other projects for an estimated cost of $1.1MM) & E-mail from Brandon Seale (VoltaGrid) (Jun. 18, 2025 at 03:51 PM) ("The customer needs an in-service date for the $1.1 MM before the end of the year. Can we work toward that . . . ."), attached as Exhibit 1.

[105] Georgia Power Confirmation – VoltaGrid's Connect New Service Request, VG002916; VoltaGrid Resp. to PIA-1-22.

[106] *See, e.g.*, Resp. of Georgia Power Company to Georgia Solar Utilities Addendum 1, *In Re: Georgia Power Company's Advanced Solar Initiative* & *Notice of Georgia Solar Utilities, Inc. Request to be Authorized as a Solar Utility*, Dkt. Nos. 36325 & 36286 (Nov. 9, 2012) at 3 ("[t]hese requirements include such things as filing an Integrated Resource Plan ("IRP") (*see* O.C.G.A. § 46-3A-2; Ga. Comp. R. & Regs. 515-3-4-.03, .05), filing for a certificate of public convenience and necessity for new generation (*see* O.C.G.A. § 46-3A-4), and filing a cost of service rate case (*see id.* § 46-2-23, 25, 26.1).").

[107] *See id.*

[108] O.C.G.A. § 46-3-11(b) ("[E]very electric supplier is prohibited from, directly or indirectly, by ordinance, law, policy, contract, rate, regulation, or otherwise . . . furnishing retail electric service to any premises which such electric supplier is not entitled to serve under this part.").

service, but it offers no argument or citation to support this conclusion, and the facts demonstrate otherwise.[109]

"Retail electric service" is not defined in the Territorial Act, but the Court of Appeals has used the Webster definition for "retail," which means, "to sell directly to the ultimate customer."[110] Thus, the term "retail" distinguishes electric service to the customer end-user from electric service to a wholesaler, another utility, or other entity for resale. This interpretation is bolstered by the Territorial Act's definition of "service," which "means retail electric service and includes temporary or construction service as well as permanent service, but excludes wholesale service and sales for resale."[111]

It is indisputable that VoltaGrid is furnishing electric power to Serverfarm, who is the "ultimate customer."[112] VoltaGrid's Covington facility "is proposed to provide prime power to itself and to a nearby facility owned and operated by an external third party (Serverfarm facility)."[113] Serverfarm is not a Georgia utility; Serverfarm is a data center.[114] "Serverfarm plans to "purchase electricity for the facility from VoltaGrid until it is able to obtain sufficient electricity from the grid."[115]

It is equally plain that VoltaGrid is not authorized to provide this retail service under the Territorial Act. Georgia Power is the designated primary electricity supplier for Serverfarm,

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[109] VoltaGrid's Brief ISO MTD at 2 ("VoltaGrid is not (and will not be) engaged in the retail sale of electricity").
[110] "Although the term 'retail service' is not defined in the Territorial Act, 'retail' is defined in Webster's Third New International Dictionary (Unabridged 1961) as 'to sell directly to the ultimate consumer.'" *N. Georgia Elec. Membership Corp. v. City of Calhoun*, 195 Ga. App. 382, 383 (1990) (a city providing electricity service to its own city facility is not "retail service").
[111] O.C.G.A. § 46-3-3(9).
[112] *See, e.g.*, Pet. Ex. 2 at 1, 1.2 ("Source Segregation"); VoltaGrid's Resp. to PIA-1-18 ("VoltaGrid . . . produces electricity on behalf of its customer, in quantities determined by the customer, to be dispatched as needed by the customer."); *N. Georgia Elec. Membership Corp. v. City of Calhoun*, 195 Ga. App. at 383.
[113] Pet. Ex. 2 at 1, 1.2 ("Source Segregation").
[114] Pet. Ex. 3 at Att. 1, ¶15.
[115] *Id.*

under the Georgia Territorial Act.[116] It further appears that Serverfarm has affirmatively chosen to contract with Georgia Power as its electricity supplier under the Territorial Act.[117]

B. Even if VoltaGrid is not determined to be an "electric supplier," VoltaGrid's proposed retail electric services violate the Territorial Act if the Commission interprets the Territorial Act as protecting "electric suppliers" from all competition. (Protected Monopoly Interpretation)

Utilities in Georgia have interpreted the Territorial Act's grant of "exclusive" service rights as preventing competition from any and all electric power companies who may offer retail service, unless those providers are expressly exempted from the Commission's jurisdiction, like through the Cogeneration Act safe harbor.[118]

There is limited textual justification for this interpretation. First, the Territorial Act grants specified electric suppliers "the exclusive right" to serve retail customers in their "assigned area."[119] However, it has not been squarely determined whether the electric suppliers' exclusivity is against all potential market entrants (which would be a tremendous expansion of Commission

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[116] Pet'r Proposed Stips. and Witness List (Oct. 1, 2026) at #17.

[117] Georgia Power Company's Resp. to PIA-44-2(a), Dkt. No. 44280 ("Georgia Power has a signed Contract for Electric Service with Serverfarm to deliver service to the premises"); Georgia Power Company's Resp. to PIA-44-1(1) (Georgia Power asserts it is "the exclusive electric supplier to the premises" and "[t]his site is captive to Georgia Power. . . .").

[118] *See, e.g.*, Direct Testimony of Maurice Carter, on behalf of Sustainable Newton at 9:11-11:11; Margaret Newkirk, *Solar Industry Challenges Georgia Power*, ATLANTA J. CONST. (Oct. 11, 2010), https://www.ajc.com/business/solar-industry-challenges-georgia-power/vVGBAu27dI8cp4zK8aj2hL/ (describing a "cease and desist letter from Georgia Power" to a nonprofit school for buying power from a third-party solar provider for purportedly violating the Territorial Act), attached as Exhibit 2; Resp. of Georgia Power Company to Georgia Solar Utilities Addendum 1, *In Re: Georgia Power Company's Advanced Solar Initiative & Notice of Georgia Solar Utilities, Inc. Request to be Authorized as a Solar Utility*, Dkt. Nos. 36325 & 36286 (Nov. 9, 2012); Georgia Power's Resp. to PIA-6-6, Dkt. No. 44280, attached as Exhibit 3 (justifying its Rules and Regulations prohibiting electric service supplied "in competition with the Company's own service" that "electric service in competition with the Company's own service' would "include service in contravention of the Company's service rights pursuant to the Territorial Act"). *But see City of Calhoun*, 233 Ga. at 767 (1975) ("The long history of regulated monopoly in this state shows that the General Assembly is free to restrict competition *among public utilities* where, in the judgment of the legislature or its duly authorized delegate, such competition may be injurious to existing public service") (emphasis added); *Dobbins* (concluding that there were insufficient facts to determine whether a competing power service would violate the Territorial Act, rather than concluding that a competing retail service resulted in a per se violation of the Territorial Act).

[119] O.C.G.A. § 46-3-3(1) ("Assigned area" is defined as "an enclosed geographic area assigned to only one electric supplier by the commission or by this part, and inside which the assignee electric supplier shall have the exclusive right to extend and continue furnishing service to new premises, except as otherwise provided in this part.").

jurisdiction over the electric marketplace) or against other electric suppliers who are definitionally subject to the Commission's jurisdiction (which would incorporate historic principles of the Commission's jurisdictional scope into its duties under the Territorial Act).[120] Second, the structure of the customer choice provisions of the Territorial Act only expressly permits the customer to choose an "electric supplier." But again, this reading assumes that the Territorial Act is intended to regulate the marketplace, writ large, rather than merely the conduct of electric suppliers.

Nonetheless, if the Commission adopts the position that the Territorial Act's assignments and rights expands the Commission's jurisdiction to insulate regulated electric suppliers from all competition from the marketplace of providers offering electric services to retail customers, then VoltaGrid's proposed services plainly violate the Territorial Act and need little further investigation.

If the Territorial Act expands the Commission's jurisdiction to insulate electric suppliers against all potential market-entrants, regardless of whether their service is affected with a public interest, then all Petitioners need to demonstrate is that VoltaGrid is providing "retail electric services" and that the Territorial Act has not affirmatively entitled them to provide that service.[121] As described in Section 6.A(ii) above, this standard is readily met.

C. VoltaGrid's Covington facility does not fall within the Cogeneration Act's safe harbor from the Commission's jurisdiction under the Territorial Act.

VoltaGrid does not meet the safe harbor elements set out in O.C.G.A. § 46-3-53 of the Cogeneration Act. If it did fall within the safe harbor, then this case would need to be dismissed, as the safe harbor provision clarifies that the Commission does not have jurisdiction when its

[120] *But see Dobbins*.
[121] *See* O.C.G.A. § 46-3-11(b).

terms are met. Though VoltaGrid does meet the definition of a "cogeneration facility," it does not fulfill the elements for which "a person may operate a cogeneration facility without being subject to the jurisdiction or regulation of the commission."[122]

VoltaGrid is a cogeneration facility, as broadly defined in the Cogeneration Act. The Cogeneration Act defines a "cogeneration facility" as a facility which 1) "produces electric energy, steam, or other forms of useful energy (such as heat) which are used for industrial commercial, heating, or cooling purposes," and 2) is not a "distributed generation facility." Though the term "cogenerator" is often referred to in the industry to mean a facility generating useful energy from steam or heat "as a by-product of an industrial process," the language of the Cogeneration Act expressly omits this limiting language and provides a definition of Cogeneration facilities that captures a broader group.[123] VoltaGrid admits that the Covington facility "produces electric energy, steam, or other forms of useful energy which are used for industrial, commercial, heating, or cooling purposes,"[124] and VoltaGrid is not a distribution facility.[125] Thus, VoltaGrid is a "cogeneration facility" under the Cogeneration Act.

VoltaGrid does not meet the required elements of the Cogeneration Act to be exempt from the Commission's "jurisdiction or regulation." The cogeneration safe harbor applies to a company[126] if all of the following elements are met: 1) that company operates the cogeneration facility; 2) that operating company uses all of the electric energy, steam, or other useful energy produced at the facility; and 3) the energy is not sold to any other third party, unless that third

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[122] *Id.* § 46-3-53(a).
[123] Ga. Op. Att'y Gen. 89-1 (1988) ("cogeneration is not limited solely to use facilities").
[124] VoltaGrid's Resp. to PIA-1-20.
[125] VoltaGrid does not meet the size or fuel-type requirements (solar, fuel cells, or wind") of a distribution facility. Pet. Ex. 2 at 1, 1.1 ("Project Overview").
[126] Replacing "person" with "company," per the definition of "person" under O.C.G.A. § 46-3-52(10). "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity. *Id.*

party is an "electric supplier." Here, VoltaGrid does not meet the required elements, because it is selling the energy to a third party, Serverfarm.

VoltaGrid will operate the Covington facility, because it will run and maintain the facility.[127] However, VoltaGrid is not using all of the electric energy it produces, but rather it is selling its power to Serverfarm.[128] VoltaGrid now claims it does not "sell electricity," but it is indisputable that VoltaGrid is generating and dispatching electric energy to Serverfarm, in exchange for payment.[129] VoltaGrid's contract with Serverfarm reflects that it is charging monthly fees for the generation and "supply of power to [its] Customer. . . ."[130] And while VoltaGrid has shielded many of its contractual terms from review as a "trade secret," it is clear from what is public that VoltaGrid is obligated to generate and "provide prime power" on a set schedule, which corresponds with monthly fees.[131]

Serverfarm is a separate legal entity from VoltaGrid.[132] Because VoltaGrid is selling power to a third-party from a cogeneration facility that it operates, VoltaGrid does not meet the Cogeneration Act's safe harbor from Commission jurisdiction and regulation.

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[127] 1988 Ga. Op. Atty. Gen. 89, Opinion No. 88-1, 1 (1988) ("[T]he term 'operate' . . . means to run and to maintain a cogeneration facility."); *see* VG000117-000211, VG000121 (VoltaGrid will "operate" the power facility); VG000133 (VoltaGrid is obligated to comply with the facility's "operating parameters" and "air permitting parameters"); VG000174-000175 ("VoltaGrid shall be responsible for. . . Operation and maintenance of VoltaGrid Equipment"). *See also, e.g.*, Pet. ¶¶ 7-10, 14-15, 18, 20-22.

[128] *See* VG000117-000211, VG000121, VG000122 (VoltaGrid will maintain the "supply of power to Customer"); VG000124 & VG000126 (VoltaGrid "shall provide to Customer. . . the Power Delivery," which is defined as the "power generation obligation of VoltaGrid provided in a Statement of Work"); VG000134 (in turn, Serverfarm is responsible for "Monthly Fees"); VoltaGrid's Resp. to PIA-1-18 ("VoltaGrid . . . produces electricity on behalf of its customer, in quantities determined by the customer, to be dispatched as needed by the customer."); *See also, e.g.*, Pet. ¶¶ 7-10, 14-15, 18, 20-22.

[129] *See* Pet. Ex. 3 at Att. 1 ¶ 15 ("Serverfarm will purchase electricity for the facility from VoltaGrid until it is able to obtain sufficient electricity from the grid."); *Atlanta Gas Light*, 228 Ga. at 352 ("It can not avoid regulation . . . by converting its natural gas into a total energy service, which includes electricity, a utility . . . subject to regulation.").

[130] Schedule 1 Contract Summary, VG000121.

[131] Phase Start Dates and Descriptions, VG000182.

[132] Pet'r Proposed Stips. and Witness List (Oct. 1, 2026) at #10-11.

7. <u>The Commission has jurisdiction over VoltaGrid under the Cogeneration Act, and it may enforce violations of the Cogeneration Act against VoltaGrid.</u>

The Cogeneration Act's safe harbor section includes the following requirement: "The electric energy [produced at a cogeneration facility] shall not be sold to any other person," unless that other person is an "electric supplier."[133] VoltaGrid's Covington facility is a "cogeneration facility."[134] VoltaGrid's contractual agreements reflect that it is selling the electric energy it is generating to Serverfarm.[135] Serverfarm is not an "electric supplier," but it is instead a data center.[136] Thus, VoltaGrid is violating this Cogeneration Act language prohibiting the sale of electric energy to any other person.

If the Commission interprets the third-party sale prohibition language as an independent constraint on electric power providers in Georgia,[137] then VoltaGrid's proposed operations squarely violate this prohibition. In 1985, the Attorney General held that "it is my official opinion that under current Georgia laws, cogenerators may not make retail sales of electricity in Georgia except to electric suppliers."[138]

Unlike the Territorial Act, the Cogeneration Act does not expressly vest the Commission with jurisdiction over its enforcement. But the Commission may enforce this violation, generally, if it deems that its jurisdiction to generally supervise electric power companies confers to it power to enforce compliance with statutes proscribing the behavior of electric power companies,

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[133] O.C.G.A. § 46-3-53(a), (b).
[134] *Id.* § 46-3-52.
[135] *See, e.g.*, discussion in Section 6C, above.
[136] VoltaGrid's Brief ISO MTD at 2 (VoltaGrid's conversion assets "will provide energy conversion services to a co-located data center owned and operated by Serverfarm.")
[137] The Commission could fairly interpret the prohibition on selling energy to third parties solely as an element of the jurisdiction safe harbor, rather than an independent prohibition applicable to all who meet the broad definition of a "cogenerator." *See also* Tr. of Georgia Power Company's 2022 Rate Case, Dkt. No. 44280 (Sept. 27, 2022) at 145:12-15, attached as Exhibit 4 (Commissioner McDonald: concerning a company who wanted a hundred percent renewable energy, "If they are not connected to Georgia Power, they can use whatever energy resources they want to have. The only thing they can't do is sell it to their neighbor.").
[138] Ga. Op. Att'y Gen. 85-42 (1985).

like the Cogeneration Act.[139] "Except as otherwise provided by law, the commission shall have the general supervision of . . . electric light and power companies. . . ."[140] Pursuant to that general supervision, the Commission may "hear complaints" and "perform the duties imposed upon it of its own initiative."[141] If the Commission finds that the Cogeneration Act provides affirmative obligations on cogeneration operators (not to sell electric energy to third-parties), then the Commission has the power to enforce that obligation on the electric providers by necessary implication.[142]

The Commission may enforce this violation against VoltaGrid, specifically, if the Commission also has general jurisdiction over VoltaGrid. As discussed Section 6A above, the Commission's Constitutional power to regulate extends to utilities, and so the legislature's vestiture of general supervision in the Commission is generally limited to companies furnishing service to the public or affected with a public interest. As also discussed Section 6A(i) above, facts developed at a hearing will demonstrate that VoltaGrid meets this test.

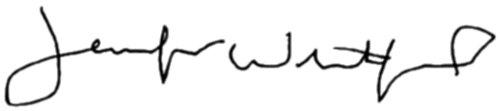
In sum, if the Commission deems that the Cogeneration Act's safe harbor provision affirmatively prohibits cogenerators from selling power to a third-party (separate and apart from the jurisdictional safe harbor), then VoltaGrid's planned sale of power to Serverfarm squarely violates that prohibition and the Commission make take action to enforce the Act. The Commission's general supervision over electric companies empowers the Commission to enforce a legislative restraint on the electric market, and enforce its terms on electric power companies under its jurisdiction, like VoltaGrid.

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[139] *Higdon v. City of Senoia,* 273 Ga. 83, 86(3) (2000) ("All statutes are presumed to be enacted with full knowledge of existing law and their meaning and effect is to be determined with reference to the constitution as well as other statutes and decisions of the courts") (citation omitted).
[140] O.C.G.A. § 46-2-20(a).
[141] *Id.* § 46-2-20(b).
[142] *C.f.*, *Bentley v. State Bd. of Med. Examiners of Ga.*, 152 Ga. 836, 836 (1922) ("This Board is an administrative body, and has only such powers as the Legislature has expressly or by necessary implication conferred upon it.").

Conclusion

For the foregoing reasons, the Hearing Officer should deny VoltaGrid's motion to dismiss, because VoltaGrid relies upon a misconstruction of the applicable legal standards and because the factual findings necessary to resolve the ultimate questions raised by VoltaGrid's motion are disputed by the parties.



Jennifer Whitfield
Georgia Bar No. 984465
Bob Sherrier
Georgia Bar No. 979890
Southern Environmental Law Center
10 10th Street, Suite 1050
Atlanta, Georgia 30309
404-521-9900
jwhitfield@selc.org
bsherrier@selc.org

Counsel for Petitioners

EXHIBIT
1

From:	Rusty Hough
To:	Brandon Seale; Scott Tolleson; Jason Volk
Cc:	Mike Jewell; David Bell; Chris Coan; Rodney Dill; Will Whittington; greg.f@sfrdc.com; Rob Leigh; Rai Trippe; Samantha McDaniel; Justin Hipps
Subject:	RE: Serverfarm - City of Covington gas
Date:	Thursday, June 26, 2025 11:59:13 AM
Attachments:	image001.png Covington NATURAL GAS FACILITES AGREEMENT V.2.docx ServeFarms Gas Authority MGC Draft Transaction Confirmation.doc

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Brandon,

Attached is a draft facilities agreement and NAESB for your review. For the draft facilities agreement, I know that the city will need to vet this through their team and get their city attorney's review and opinion. As Scott mentioned, we have some time on this, but we would handle the gas supply in a separate agreement.

After your review, let us know if you have any questions or would like to discuss.

Regards,

Rusty

From: Brandon Seale <Brandon.Seale@voltagrid.com>
Sent: Wednesday, June 25, 2025 9:48 AM
To: Scott Tolleson <sstolleson@gasauthority.com>; Jason Volk <jason.v@sfrdc.com>; Rusty Hough <rhough@gasauthority.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>; Will Whittington <william.w@sfrdc.com>; greg.f@sfrdc.com; Rob Leigh <RLeigh@cityofcovington.org>; Rai Trippe <rtrippe@gasauthority.com>; Samantha McDaniel <smcdaniel@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

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Hey Scott, good morning. Checking on the document set to see when we could expect to see some of those. Some of the docs like NAESB and reimbursement agreement I think we could start reviewing even while we are still filling out some of the blanks.

From: Scott Tolleson <sstolleson@gasauthority.com>

Sent: Thursday, June 19, 2025 2:01 PM
To: Jason Volk <jason.v@sfrdc.com>; Brandon Seale <Brandon.Seale@voltagrid.com>; Rusty Hough <rhough@gasauthority.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>; Will Whittington <william.w@sfrdc.com>; greg.f@sfrdc.com; Rob Leigh <RLeigh@cityofcovington.org>; Rai Trippe <rtrippe@gasauthority.com>; Samantha McDaniel <smcdaniel@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

This is very good news but believe the timeline may be aggressive in #1 given the Covington City Council will ultimately approve any documents. Mike or Rob can confirm but the earliest the Council could hear this is July 21st.

The construction critical path for #2 and #3 are achievable and will be driven by how quickly a reimbursement agreement can be completed. We will get a draft moving internally and get something back to you as soon as possible.
On #4 – we have some time but there are two scenarios – 1) You deliver your own gas supply to the Citygate and Covington re-delivers to the facility (Transportation service) or 2) You purchase a bundled delivered supply from Covington. We would prefer scenario 2 and will provide a quote to get the supply coupled with a delivery service to the city gate for comparison. This would be documented by a NAESB and related confirms.
If a third party delivers to the Covington Citygate (scenario 1), different agreements will be required to document imbalance cures, scheduling coordination, penalty remediation, etc.

We look forward to getting this project up and running.

Scott

From: Jason Volk <jason.v@sfrdc.com>
Sent: Wednesday, June 18, 2025 7:22 PM
To: Brandon Seale <Brandon.Seale@voltagrid.com>; Rusty Hough <rhough@gasauthority.com>; Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>; Will Whittington <william.w@sfrdc.com>; Greg Ford <greg.f@sfrdc.com>; Rob Leigh <RLeigh@cityofcovington.org>
Subject: Re: Serverfarm - City of Covington gas

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Mike Jewell, Director of Gas Utilities - City of Covington, is out-of-office/unavailable.

I've included Rob Leigh who is covering for Mike until he returns in late July.

Rob, see below. Thanks in advance for your help.

Jason Volk

serverfarm

VP - Acquisitions & Asset Mgmt.
+1 (213) 737-1903
jason.v@sfrdc.com
www.serverfarmllc.com

From: Jason Volk <jason.v@sfrdc.com>
Sent: Wednesday, June 18, 2025 4:08 PM
To: Brandon Seale <Brandon.Seale@voltagrid.com>; Rusty Hough <rhough@gasauthority.com>; Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>; Will Whittington <william.w@sfrdc.com>; Greg Ford <greg.f@sfrdc.com>
Subject: Re: Serverfarm - City of Covington gas

Thanks Brandon, I'm adding a few more Serverfarm folks to this email chain.

Covington Team,

We are looking forward to your response at your earliest convenience. Thank you!

Jason Volk

serverfarm

VP - Acquisitions & Asset Mgmt.
+1 (213) 737-1903
jason.v@sfrdc.com
www.serverfarmllc.com

From: Brandon Seale <Brandon.Seale@voltagrid.com>

Sent: Wednesday, June 18, 2025 3:51 PM
To: Rusty Hough <rhough@gasauthority.com>; Scott Tolleson <sstolleson@gasauthority.com>; Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

Covington Team,

After discussing with the customer, we'd like to move forward. Some thoughts:

1. We'd like to target the execution of definitive agreements in the next 2-4 weeks – sometime between July 1 and July 15.
2. The customer needs an in-service date for the $1.1 MM before the end of this year. Can we work toward that on these timelines?
3. We'd propose to work the $1.1 and $11.0 MM scopes under separate document sets, particularly so as to not slow down the $1.1 MM scope.
4. With respect to a final delivered cost, can we present you a proposal for what we feel like an all-in delivered rate should be?

Do you have draft reimbursement agreements and gas purchase contracts (or NAESB's and confirms?) that we could start reviewing as soon as possible. Please call if easier.

Best,

Brandon Seale
VoltaGrid LLC
(210) 313-3441

From: Rusty Hough <rhough@gasauthority.com>
Sent: Monday, June 16, 2025 3:40 PM
To: Brandon Seale <Brandon.Seale@voltagrid.com>; Scott Tolleson <sstolleson@gasauthority.com>; Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

Here are best guesses for each scenario once agreements are completed and approved.

1,300 mcf/hour – 6 – 8 months.

1,600 mcf/hour – 16 – 24 months. (wild card here is the interstate pipeline's timeline for the new take point meter)

From: Brandon Seale <Brandon.Seale@voltagrid.com>
Sent: Monday, June 16, 2025 11:42 AM
To: Scott Tolleson <sstolleson@gasauthority.com>; Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Rusty Hough <rhough@gasauthority.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

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Scott and folks, would you estimate in-service timelines for the 1,300 and 1,600 mcf/hr upgrade scenarios?

From: Scott Tolleson <sstolleson@gasauthority.com>
Sent: Tuesday, June 10, 2025 9:41 AM
To: Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>; Brandon Seale <Brandon.Seale@voltagrid.com>; Rusty Hough <rhough@gasauthority.com>; Chris Coan <ccoan@gasauthority.com>; Rodney Dill <rdill@gasauthority.com>
Subject: RE: Serverfarm - City of Covington gas

Here are the results of the preliminary engineering study.

The following Gas Loads and pressure requirement for the proposed customer at 10835 Hazelbrand Road were provided:

- Total load 9.6 MMCF/day (400 MCF/Hr.)
- Peak hourly load 692 MCF/Hr.
- Required Delivery Pressure > 200 PSIG*

*Brandon Seale informed me that they could probably operate with a delivery pressure of 150 PSIG.

I looked at the system improvements required to handle the following customer demands:

- Customer demand of 1,300 MCF/Hour (900 MCF/hour plus 400 MCF/hour)
- Customer demand of 1,600 MCF/Hour (900 MCF/hour plus 700 MCF/hour)
- Customer demand of 1,900 MCF/Hour (900 MCF/hour plus 1,000 MCF/hour)

System Improvements needed for 1,300 MCF/Hour (Existing 900 MCF/hour plus 400 MCF/hour)

The system can handle this flow with the following system Improvements **(Estimated Cost $1.1MM)**:

- Construct 6-inch diameter crossover gas mains to connect the existing 8-inch Tap-line to the existing 6-inch Tap-line at three locations on Hwy 81. $150K
- Construct 1,200 linear feet of 6-inch diameter gas main from the 6-inch gas main on E. Bonnell St. to the traffic circle at Bob Williams Pkwy & Keegan Ct. $200K
- Construct 3,600 linear feet of 6-inch gas main on Hazelbrand Rd, from Hwy. 142 to the customer's meter station. $450K
- Construct an industrial Pressure Regulating and Metering Station at the Hazelbrand Rd project site. $300K

System Improvements needed for 1,600 MCF/Hour (Existing 900 MCF/hour plus 700 MCF/hour)

The system can handle this flow with the improvements listed above plus the following system Improvements **(Estimated Cost $11MM)**:

- Improvements to Transco's existing Delivery Point Station located off Hwy 81 in Walnut Grove. $2.8MM
- Construct 25,000 linear feet of 12-inch diameter gas main from Transco's Delivery Point to the intersection of Hwy 81 and Hwy 142. $7MM
- Connect the new 12" gas main to the 6-inch diameter crossover gas mains along Hwy 81 so that all the tap-lines operate at the same pressure. $100K

System Improvements needed for 1,900 MCF/Hour (Existing 900 MCF/hour plus 1000 MCF/hour)

The system can handle this flow with the improvements listed above plus the following system Improvements **(Estimated Cost $16MM)**: :

- Construct 43,000 linear feet of 12-inch diameter gas main from Transco's Delivery Point to the intersection of Hwy 142 and Alcovy Rd. $12MM
- Connect the new 12" gas main to the 6-inch diameter crossover gas mains along Hwy 81 so that all the tap-lines operate at the same pressure.
- Connect the new 12" gas main to the 8-inch diameter gas mains at Alcovy Rd.

From: Jason Volk <jason.v@sfrdc.com>
Sent: Wednesday, June 4, 2025 4:33 PM
To: Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>
Subject: Re: Serverfarm - City of Covington gas

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Monday is better for the VoltaGrid team. I sent an invite for 11 ET on Monday.

Thanks.

Jason Volk

serverfarm

VP - Acquisitions & Asset Mgmt.
+1 (213) 737-1903
jason.v@sfrdc.com
www.serverfarmllc.com

From: Jason Volk <jason.v@sfrdc.com>
Sent: Wednesday, June 4, 2025 1:11 PM
To: Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>
Subject: Re: Serverfarm - City of Covington gas

David, Mike,

See below from Scott.

Please let us know your preference for a call Friday and Monday based off Scott's availability.

Thanks

Jason Volk

Serverfarm

213-737-1903

From: Scott Tolleson <sstolleson@gasauthority.com>
Sent: Wednesday, June 4, 2025 1:04 PM
To: Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>
Subject: RE: Serverfarm - City of Covington gas

I could do 3 or later on Friday or 11 on Monday.

Scott

From: Jason Volk <jason.v@sfrdc.com>
Sent: Tuesday, June 3, 2025 2:52 PM
To: Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org; David Bell <david.bell@voltagrid.com>
Subject: Re: Serverfarm - City of Covington gas

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No problem. Do you have time on Friday?

Jason Volk



VP - Acquisitions & Asset Mgmt.
+1 (213) 737-1903
jason.v@sfrdc.com
www.serverfarmllc.com

From: Scott Tolleson <sstolleson@gasauthority.com>
Sent: Tuesday, June 3, 2025 11:40 AM
To: Jason Volk <jason.v@sfrdc.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>
Subject: Re: Serverfarm - City of Covington gas

Hello Jason
Sorry for the delay. I have been in meetings the last couple of days and will be not have availability until Thursday between 12 and 3 eastern.
Thanks
Scott

Sent from my Verizon, Samsung Galaxy smartphone
Get Outlook for Android

From: Jason Volk <jason.v@sfrdc.com>
Sent: Monday, June 2, 2025 4:41:59 PM
To: Scott Tolleson <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>; David Bell <david.bell@voltagrid.com>
Subject: Re: Serverfarm - City of Covington gas

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Adding David Bell with VoltaGrid.

Scott, please let us know if you have time tomorrow for a call.

Thanks.

Jason Volk

serverfarm

VP - Acquisitions & Asset Mgmt.
+1 (213) 737-1903
jason.v@sfrdc.com
www.serverfarmllc.com

From: Jason Volk <jason.v@sfrdc.com>
Sent: Monday, June 2, 2025 12:28 PM
To: sstolleson@gasauthority.com <sstolleson@gasauthority.com>
Cc: mjewell@cityofcovington.org <mjewell@cityofcovington.org>
Subject: Re: Serverfarm - City of Covington gas

Scott,

I left you a VM on your mobile phone. I called to talk about 10835 Hazelbrand Rd, Covington

I just spoke with Mike Jewell, cc'd. He suggested I contact you and offered to join the conversation.

I'd like to discuss the results of the engineering analysis commissioned by our partner VoltaGrid. I'd also like to understand the rate structure for the volumes we are going to be buying. I understand the rate structure could be different than the Large Interruptible

Customer pricing on City of Covington's website. Covington, Georgia | Official Website

Do you have some time to talk tomorrow?

Jason Volk

serverfarm

VP - Acquisitions & Asset Mgmt.

+1 (213) 737-1903
jason.v@sfrdc.com

www.serverfarmllc.com

EXHIBIT
2

The Atlanta Journal-Constitution

Solar industry challenges Georgia Power

BUSINESS

By Margaret Newkirk

Oct 11, 2010

Advertisement

Three years ago, when Congress tried to set national standards for the power industry's use of things like solar energy, Atlanta-based Southern Co. fought back with singular ferocity.

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The costs would be "exorbitant," a Southern Co. spokesman said at the time.

"Renewable energy sources like wind and solar are not really an option for us in the Southeast," the spokesman said.

This spring, the state's small but growing solar industry offered up a full-throated rebuttal to the Southern Co.'s longtime mantra, blasting it and its Georgia Power utility for misleading Georgia and national policymakers about the feasibility of solar energy in the Southeast.

"We directly challenge for the first time the accuracy of the company's information about the viability of solar power as a renewable energy source in Georgia," James Marlow and Lee Peterson said on behalf of the Georgia Solar Energy Association in first-time testimony at the state Public Service Commission.

Marlow, a solar businessman, and Peterson, an attorney, said Georgia Power and Southern Co. have downplayed evidence -- including U.S. Department of Energy data -- that shows the Southeast, Georgia and especially South Georgia are second only to the desert Southwest in solar potential.

They also said the utilities had exaggerated solar energy's admittedly higher price by comparing it with the kinds of 24-7 power generators solar energy will never replace.

Advertisement

Georgia Power is aware of the potential for solar power here, they said. The issue, they said, is whether solar “deployment will be controlled and developed solely by the company.”

Georgia Power denies misrepresenting solar prospects. “The company is supportive of the development of solar [photovoltaic] and has gone to great lengths to promote and disseminate accurate information regarding solar PV,” company resource director Jeff Burleson said in testimony.

The solar association's push may be the start of a showdown between an upstart industry and a utility giant that could be either its biggest customer or biggest competitor: Georgia Power and Southern Co. are both beginning to invest in solar energy on their own.

The solar industry was testifying to regulators about a Georgia Power plan that seems to contradict the utility's past claims about solar energy.

After years of calling the Southeast too cloudy for viable solar energy, Georgia Power wants to build 2.5 megawatts of solar facilities in the state. The amount is tiny overall. Georgia Power has 16,000 megawatts of generation in the state. But 2.5 megawatts is as much solar capacity as the utility buys now from the private solar market.

The company also wants to fund its solar projects by rolling the cost of their power -- roughly 17 cents per kilowatt hour -- into the regular rates paid by its customers.

That's another about-face.

For years, Georgia Power and the PSC have held that rank-and-file ratepayers shouldn’t pay for boutique energy products like solar power unless they agree to do so. They said the price was too high.

Because of that, the utility buys only as much solar power as it has customers willing to pay $5 extra a month to get it. The company only pays vendors the 17 cents per kilowatt price for the

first 100 kilowatt hours. The limits keep the utility's solar buying small.

The solar industry isn't opposing Georgia Power's plan. "We're happy for them to go out and build 2.5 megawatts of solar," GSEA president Walter Brown said. "We can even provide them with cost data."

But the industry wants the same financial treatment Georgia Power is proposing for itself. It wants the PSC to make Georgia Power buy a matching 2.5 megawatts of solar energy from the private market and pay for it through ordinary electric rates.

Given the size of Georgia Power's customer base, the cost of putting 5 megawatts of solar into electric rates would hike the average residential customer's bill 3 cents per month, according to both John Gornall, an attorney working with the solar association, and Georgia Power, when asked to sign off on his figure.

Georgia Power opposes the solar proposal.

In testimony Thursday, the company's Burleson called it "nothing more than an attempt by GSEA to increase the level of solar procured by the company, increasing the cost to customers without providing additional benefits."

The utility said its current solar purchase program ensures that it buys only as much as customers want.

"Unlike Georgia Power's proposal, customers will not benefit from private developers installing additional solar projects in Georgia in the same way they will benefit by Georgia Power gaining experience with this technology," Burleson said.

For at least the past several years, Southern Co. and Georgia Power have listed the growth of solar power among business risks disclosed to shareholders in filings with the Securities and Exchange Commission. The potential for more decentralized power generation conflicts with the company's business model and could shrink market share, the filings say.

The utilities began their own solar investment early this year, when Southern Co. announced a partnership with Ted Turner in a new utility-scale solar farm out west.

Georgia Power's proposed projects are pilots: Burleson said the company wants to get a feel for the technology's economics.

“The reality is that solar is not cost effective during most hours of the year,” he said. “It’s just hard to make the economics work.”

Solar entrepreneurs, meanwhile, have been multiplying in Georgia, drawn by rising demand, dipping prices for solar panels and government incentives to help customers buy solar products.

Interest is so high that one $4.5 million, stimulus-funded matching grant program was tapped out 10 months after the Georgia Environmental Facilities Authority began taking applications last year.

“Never in my wildest dreams did I think my timing would be this good,” said Peter Marte, who got into the business three years ago and is now CEO of Atlanta-based Hannah Solar. “Because of the incentive dollars, it’s just gone from a crawl to a sprint, and now it’s going into a full-on run.”

But state policies, limits and laws are standing in the market's way, he said, in part because of the discouraging stance of Georgia Power.

Developers like Marte market solar installations to businesses as a kind of long-term hedge against rising electric bills. They make their money selling and installing solar equipment.

They can’t sell power. That point was driven home earlier this year, when a North Georgia private school contracted with a vendor for solar panels on the school's roof.

Unable to use tax credits, the nonprofit Rabun Gap Nacoochee School agreed to pay for the system over time by paying the vendor for its electric output.

The result was a cease and desist letter from Georgia Power, which said the deal violated monopoly rights set up in the state’s 1973 territorial act.

Georgia Power says it was protecting a law that protects consumers by ensuring that monopoly utilities are regulated.

“Commission regulation ensures that rates are fair and just, that suppliers have adequate plans to meet customers’ needs both near and long term, and that service is reliable and safe,” company spokeswoman Christy Ihrig said.

Private solar advocates say they don't believe the territorial act applies to small and self-contained projects like the Rabun Gap one and that they intend to get that clarified by the Legislature.

"The territorial act is preventing the classic business model where the solar owners sell the power on the rooftop to the building owner," the GSEA's Brown said. "We understand the rationale for the act, but we don't think it was intended for this."

While private solar vendors can't sell power to customers, customers can sell it to utilities. Georgia Power pays 17 cents per kilowatt hour up to 100 kwh.

Because the company buys only enough solar energy as its premium-paying customers demand, its purchases are limited. At the solar association's urging, the PSC has raised Georgia Power's total solar purchase caps from 500 kilowatts last year to 1.5 megawatts and then to 2.5 megawatts: Each time, the new cap was filled immediately.

Georgia solar entrepreneurs say the caps and other state limits on solar power are sending them out of state for business, particularly to states that require utilities to buy more nontraditional power than Georgia does.

"Georgia is really an aberration," Marte said, adding that Hartsfield-Jackson International Airport helps the solar industry as much as Georgia Power does.

"We've got airplanes," he said. "We can go to New Jersey or Massachusetts or Ohio."

About the Author

Margaret Newkirk

Editors' Picks

EXHIBIT
3

GEORGIA POWER COMPANY
Docket No. 44280
Georgia Power Company's 2022 Rate Case
Staff Data Request No. STF-PIA-6

STF-PIA-6-6

Question:

Please define "Electric service" as used in A.6.

a. Does "Electric service" include the sale of Alternating Current (AC) electricity? Please explain the conditions under which the sale of AC electricity is or is not "Electric service in competition with the Company's own service."
b. Does "Electric service" include the sale of Direct Current (DC) electricity? Please explain the conditions under which the sale of DC electricity is or is not "Electric service in competition with the Company's own service."

Response:

"Electric service" refers to retail electric service consistent with the provisions of the Georgia Territorial Electric Service Act, O.C.G.A. Title 46, Chapter 3 (the "Territorial Act"). The Company's provision of retail electric service is a service for end-user consumers and not a sale of electric energy for resale.

a. Yes, the Company provides retail electric service to customers through the provision of AC electric energy. With respect to retail electric service, "electric service in competition with the Company's own service" would include service in contravention of the Company's service rights pursuant to the Territorial Act.

b. The Company provides retail electric service through the provision of AC electric energy and does not currently offer DC current under any of its rate schedules. With respect to retail electric service, "electric service in competition with the Company's own service" would include any retail electric service in contravention of the Company's service rights pursuant to the Territorial Act.

EXHIBIT
4

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

STATE OF GEORGIA

In Re:)
)
Georgia Power Company's 2022)
Rate Case) Docket No. 44280
_____)

Hearing Room 110

Georgia Public Service Commission

244 Washington Street
Atlanta, Georgia

Tuesday, September 27, 2022

The above-entitled matter came on for hearing

Pursuant to Notice at 9:30 a.m.

PRESENT WERE:

TRICIA PRIDEMORE, Madam Chair
TIM ECHOLS, Vice-Chairman
FITZ JOHSON, Commissioner
LAUREN "BUBBA" MCDONALD, Commissioner
JASON SHAW, Commissioner

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June of 2022. Does that not shift the conversation towards no fuel cost resources, like solar, given that natural gas futures and, of course, coal remain high in cost?

A We've always been a big supporter of all of the above. All the resources that -- generation resources that are available. And, yeah, I mean, it speaks to that kind of strategy that we'll continue to support and embrace.

Q In your statement you talked about how Georgia Power Company is a big supporter of businesses and Georgia is a wonderful state to do business. I believe you even mentioned the first.

Has Georgia Power supported the -- any businesses coming to the state who want 100 percent renewable energy?

A We do have companies that are interested in this state that look for renewable resources on a 24-by-7 basis.

Q Have any of those companies chosen Georgia Power as their supplier under the Territorial Act?

A Restate your question.

Q Have any of those companies that are interested in 24-hour-a-day renewable energy selected Georgia Power as their supplier under the Territorial Act?

A And, subject to check, we are working with a number of companies that have that renewable profile that they are seeking.

COMMISSONER MCDONALD: Is it not true that if a company wanted a hundred percent renewable energy, they could do it themselves without Georgia Power?

MR. WOMACK: They could.

BY MS. BROWN:

Q Are there not limits on the amount of renewable energy that you can interconnect to Georgia Power's grid without their approval?

COMMISSONER MCDONALD: If they are not connected to Georgia Power, they can use whatever energy resource they want to have. The only thing they can't do is sell it to their neighbor.

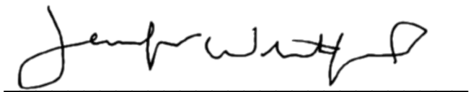
MS. BROWN: Understood.

COMMISSONER MCDONALD: They have to use it themselves.

And one of the other things that we need to keep in mind as we move forward, as Georgia has done in its renewable energy program, with no upward pressure on our ratepayers and no state subsidies, but the fact is that we can't -- we can't overproduce in renewable, unless we address the grid situation.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Petitioners' Response to VoltaGrid's Motion to Dismiss** was cause to be filed with the Public Service Commission in Docket No. 57243 by electronic delivery on the 16th of October, 2026. An electronic copy of same was served upon all parties listed below by electronic mail as follows:



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