STATE OF GEORGIA

BEFORE THE PUBLIC SERVICE COMMISSION

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

GEORGIA POWER COMPANY'S RESPONSE TO VOLTAGRID'S MOTION TO DISMISS

I. INTRODUCTION

COMES NOW Georgia Power Company ("Georgia Power" or the "Company"), Intervenor in the above-referenced matter, and files its response to Respondent, VoltaGrid, LLC's ("VoltaGrid") Motion to Dismiss (the "Motion"). Petitioners Sustainable Newton, Sara and Randall Vinson, and Theodosia and William Wade have filed the instant complaint (the "Petition") against VoltaGrid. In the Motion, VoltaGrid seeks dismissal of the Petition on two independent bases: (1) Petitioners are not "interested parties" as required by O.C.G.A. 46-3-8(c) and (2) the Commission lacks jurisdiction over VoltaGrid. Georgia Power's response is limited to the second contention, which provides no basis for dismissal. VoltaGrid's proposed rule—that serving a single customer places an electric provider beyond the Commission's jurisdiction—finds no support in the Georgia authority VoltaGrid cites, ignores the regulatory circumstances that courts examine in determining whether service is public, and would undermine the stated purposes of the Georgia Territorial Electric Service Act, O.C.G.A. § 46-3-1 *et seq.* (the "Territorial Act"), by

allowing unregulated providers to serve customers throughout Georgia on a one-at-a-time basis. The Motion should therefore be denied as to jurisdiction.

In its Brief in Support of VoltaGrid's Motion to Dismiss, VoltaGrid argues that the Petition fails on the merits and the Commission lacks jurisdiction to hear it for three main reasons. First, because VoltaGrid is not an electric supplier as defined in O.C.G.A. § 46-3-3(3); second, because VoltaGrid is not (and will not be) engaged in the retail sale of electricity; and third, because VoltaGrid does not furnish service to the public, a requirement that VoltaGrid argues is a prerequisite to regulation under the Territorial Act.[1] As discussed further in this Response, VoltaGrid's proposed view of "public service," if adopted, would upend the policy and practical purposes of the Territorial Act. This position ignores the factors that courts actually consider when determining whether service is "public," and VoltaGrid's proposed rule has no basis in the sources of Georgia law that it cites. Accordingly, the jurisdictional arguments of VoltaGrid's Motion should be denied.

II. DISCUSSION

VoltaGrid argues that the Commission's jurisdiction and the Territorial Act's reach are limited to electric companies that furnish service to the public. VoltaGrid also argues that it intends to serve only one specialized, on-site entity, and that Georgia law holds that service to a single customer cannot amount to "public service." VoltaGrid concludes that "[t]he Commission lacks jurisdiction over VoltaGrid because [VoltaGrid] does not furnish electric service to the public."[2] In short, VoltaGrid proposes a rule whereby service to a single entity under a contract can never amount to "public service" and that the Commission's authority cannot reach such service. This

[1] *See Brief in Support of Respondent, VoltaGrid, LLC's Motion to Dismiss*, Docket No. 57243 (Sep. 16, 2026) (hereinafter "VoltaGrid MTD Brief") at 2.
[2] VoltaGrid MTD Brief at 14.

rule finds no support in the Georgia authority VoltaGrid cites. As demonstrated in other jurisdictions, whether an entity is serving the public is instead determined by multiple factors, not purely by the number of customers served. A rule focused solely on the number of customers served would upend the Territorial Act and allow for unregulated entities to proliferate so long as they serve only one customer. For all of these reasons, VoltaGrid's proposed rule should be rejected.

A. VoltaGrid's proposed single-customer rule finds no support in the Georgia authority it cites.

VoltaGrid cites three sources of Georgia law for its conclusion that providing power to a single, on-site, specialized end user places it beyond the Commission's jurisdiction. First, it relies on *Atlanta Gas Light Co. v. Ga. Pub. Serv. Comm'n*, 228 Ga. 347 (1971), a decision issued two years before the Territorial Act was enacted that addressed a transaction vastly different from the one at issue here. Second, it relies on Attorney General opinions—themselves largely pre-Territorial Act—that purportedly conclude that service to one or a small number of customers is not public service. Finally, VoltaGrid cherry-picks language from a single Commission order in two consolidated dockets to claim that the Commission has adopted its proposed rule. None of these sources supports a conclusion that service to a single customer can never be service to the public.

a. *Atlanta Gas Light*, 228 Ga. 347 (1971), provides limited guidance on the meaning of "public service" under the current Territorial Act statutory scheme.

VoltaGrid first relies on *Atlanta Gas Light*, a 1971 Supreme Court of Georgia decision. There, Atlanta Gas Light, the entity providing electric service, conceded that it was otherwise "a public utility company subject to regulation by the commission," but contended that under the

particular contract at issue, it was not holding itself out to the public to provide electric service.[3] VoltaGrid argues that *Atlanta Gas Light* established a "controlling standard" because that court reasoned that service to 16,000 customers reached a significant enough segment of the public to constitute "public service."[4] From this, VoltaGrid concludes that a provider must serve a "significant segment of the public" to be considered furnishing "service to the public," and that its own service to a single customer falls short of that threshold.[5]

As a preliminary matter, *Atlanta Gas Light* was decided on November 5, 1971, roughly two years before the General Assembly enacted the Territorial Act in 1973. The court thus construed an electric service regime that was about to be fundamentally overhauled, and its guidance on the meaning of "public service" under what would become the current statutory scheme is of limited value.

Moreover, *Atlanta Gas Light* announces no rule that service *must* reach a "significant segment of the public" to constitute public service. At most, the case establishes that 16,000 customers *can* be a significant segment of the public; it says nothing about what does *not* qualify. The court never identified a threshold between significant and insignificant—and therefore between public and non-public service. Nor does the decision state that service to a single customer can never be public service. This "controlling standard" is thus an inference the *Atlanta Gas Light* court never drew, yet VoltaGrid asks this Commission to apply it in this case.

Indeed, the *Atlanta Gas Light* court did not rest on customer count at all: in concluding that the contract at issue involved public service, it looked to the ***nature of the service*** and noted that

[3] 228 Ga. at 350.
[4] VoltaGrid MTD Brief at 19.
[5] *Id.*

Atlanta Gas Light furnished a regulated utility service.[6] *Atlanta Gas Light* therefore supplies no rule that service to a single customer must fall outside the Commission's jurisdiction. Moreover, VoltaGrid's appeal to *Atlanta Gas Light* as substantiating a reliance on customer count to define public service grossly ignores the circumstances at hand. Service to a single customer whose load can be in many instances larger than most cities in Georgia should be considered *de facto* a public service by scale, which undermines any reliance on customer count as the gateway to public service.

b. The Attorney General opinions relied on more than just customer count and suffer the same timing flaw as *Atlanta Gas Light.*

VoltaGrid next relies on three Attorney General opinions: 1969 Ga. Op. Att'y Gen. No. 69–27; 1972 Ga. Op. Att'y Gen. No. 72–84; and 1985 Ga. Op. Att'y Gen. No. 85-39. The 1969 and 1972 opinions suffer from the same fundamental flaw as *Atlanta Gas Light*—both predate the Territorial Act. Their persuasive force was thin even when issued: the 1969 opinion acknowledged that "[m]y research has not uncovered any Georgia authority on this problem,"[7] and the 1972 opinion relies in part on *Atlanta Gas Light*.[8] Whatever limited weight these opinions once carried has been further diminished by the Territorial Act's subsequent enactment and the realities of the facts before the Commission in this case.

Nor do the opinions announce the rule VoltaGrid needs. The 1972 opinion focused on a corporation whose charter expressly limited its corporate purposes to providing electricity to two designated businesses, which the Attorney General found showed "no evident intention of expanding its service to other customers."[9] The conclusion of the 1972 opinion rested on the intent

[6] 228 Ga. at 352 ("[Atlanta Gas Light] can not avoid regulation of its rates by converting its natural gas into a total energy service, **which includes electricity, a utility also subject to regulation.**" (emphasis supplied)).
[7] 1969 Ga. Op. Att'y Gen. No. 69-27 at *1.
[8] 1972 Ga. Op. Att'y Gen. No. 72-84 at *2–3.
[9] *Id.* at *3.

described in that charter limitation, not solely on the number of customers served.[10] VoltaGrid's business model appears to be starkly different, as it markets itself as "the future of data center power solutions," suggesting that its multitude of services is directed to more than just one customer.[11] The 1985 opinion—the only one issued after the Territorial Act—concerned a municipally owned natural gas distribution system—which is not governed by the Territorial Act—where a customer received gas from a utility at a single point and resold that same gas to its tenants.[12] It says nothing about an entity, like VoltaGrid, that generates electricity in the first instance with its own facilities and furnishes it to a customer.

None of the three Attorney General opinions purports to establish a categorical rule; each confines its conclusion to the particular arrangement before it.[13] They cannot support the broad rule VoltaGrid asks the Commission to adopt.

c. VoltaGrid's proposed rule is unsupported by the Commission precedent it cites.

Finally, VoltaGrid points to this Commission's Docket Nos. 11276-U and 11463-U as confirming both its other cited authority and its proposed rule. But these consolidated dockets, in which the parties sought similar declaratory relief regarding jurisdiction over military installations, produced a single Commission order. One order regarding a military installation—which

[10] As discussed further below, even if VoltaGrid were to create an entity with a limited charter to provide service, that would still fail to substantiate a motion to dismiss on that basis. The facts of this case do not support the creation of a wholesale exemption of jurisdiction for VoltaGrid, and reliance on a limited charter is fraught with peril and subject to abuse.

[11] *See* VoltaGrid, *VoltaGrid – Data Centers* , https://voltagrid.com/data-centers ("Welcome to the future of data center power solutions. At the intersection of reliability, efficiency, and sustainability, our natural-gas powered microgrids provide an unparalleled energy source for your data center.") (last accessed Oct. 15, 2026).

[12] 1985 Ga. Op. Att'y Gen. No. 85-39 at *5-7.

[13] 1969 Ga. Op. Att'y Gen. No. 69-27 at *1–2 ("Generally, whether a business operation renders such 'service to the public' as to become a public utility is controlled by the facts of each particular case . . . ."); 1972 Ga. Op. Att'y Gen. No. 72-84 at *1–2 ("As noted in a previous opinion, there exists no Georgia authority for a precise application of 'service to the public' as contemplated by [Georgia law]; consequently, it is necessary to examine the facts of each individual case." (Citing to 1969 Ga. Op. Att'y Gen. No. 69-27)); 1985 Ga. Op. Att'y Gen. No. 85-39 at *6 ("Whether [a] business operation is furnishing service to the public is a question of fact which must be determined on a case by case basis.").

ServerFarm is not—hardly constitutes a settled line of Commission precedent supporting VoltaGrid's proposed rule.

Moreover, the language VoltaGrid selectively quotes does not support its position. VoltaGrid argues that the Commission held that

> to the extent that utility service is being provided solely and exclusively to the federal government for distribution on a military base to locations behind the meter by an entity that cannot otherwise be found to be conducting itself as a public utility, the Commission may presume that the entity would not be deemed to be furnishing service to the public in a manner that would invoke agency jurisdiction.[14]

Read in context, the order holds only that service to a unique customer—the United States government, receiving electric service to and on a military base—does not amount to public utility service. It does not hold that service to *any* single customer falls outside Commission jurisdiction. The order's reasoning is tied to the federal government's distinct status, and VoltaGrid serves Serverfarm, a private entity, not a federal agency on a military installation. Nor did the Commission treat the number of customers as dispositive; it declined to make a jurisdictional determination as to whether the United States military truly was the exclusive customer on the military installations at issue.[15] The very precedent VoltaGrid invokes thus confirms that Georgia has no rule placing single-customer service beyond the Commission's jurisdiction.

B. VoltaGrid's proposed rule only considers the number of customers served and ignores the factors actually applied by courts.

In addition to finding no support in VoltaGrid's cited Georgia authorities, it is also informative that neighboring jurisdictions have addressed this precise question and similarly declined to adopt the positions of parties that suggested what VoltaGrid proposes here. For example, courts in North Carolina have squarely addressed the question of when an electric service

[14] VoltaGrid MTD Brief at 20-21 (citing *Order Issuing Declaratory Rulings*, Docket No. 11276-U and 11463-U (Apr. 18, 2000)).
[15] *See Order Issuing Declaratory Rulings* at *14 (citing the 1969 and 1972 opinions).

provider furnishes "public service" and determined that the nature of the service and the regulatory scheme controls, not the number of customers. Applying that analysis, courts have held that service to a single customer can be public service.

In *State ex rel. Utilities Commission v. Simpson*, 295 N.C. 519 (1978) ("*Simpson*"), the Supreme Court of North Carolina held that a physician's two-way radio service, offered only to members of his county medical society and used by just ten subscribers, was offered to the public and subject to regulation.[16] The court rejected the argument that a service must be offered to "an indefinite class or the community at large."[17] Instead, it explained that "whether any given enterprise is a public utility within the meaning of a regulatory scheme does not depend on some abstract, formulistic definition of 'public' to be thereafter universally applied. What is the 'public' in any given case depends rather on the regulatory circumstances of that case."[18]

The *Simpson* court identified four regulatory circumstances that determine whether a service is "public":

(1) The nature of the industry sought to be regulated;

(2) The type of market served by the industry;

(3) The kind of competition that naturally inheres in that market; and

(4) The effect of non-regulation or exemption from regulation of one or more persons engaged in the industry.[19]

Customer count is not among these factors.

The North Carolina Court of Appeals later applied these *Simpson* factors to an electric service arrangement with a single customer. In *State ex rel. Utilities Commission v. N.C. Waste*

[16] *State ex rel. Utils. Comm'n v. Simpson*, 295 N.C. 519 (1978).
[17] *Id.* at 522.
[18] *Id.* at 524.
[19] *Id* at 524.

Awareness and Reduction Network, 255 N.C. App. 613 (2017) ("*NC WARN*"), NC WARN installed and maintained solar panels on a single church's property, and the church paid NC WARN based on the electricity the system produced.[20] Although NC WARN served only one customer, the court did not end its inquiry there; it applied all four *Simpson* factors to determine whether NC WARN was operating as a public utility.[21]

Each factor applies here as it did in *NC WARN*. On the first two factors—the nature of the industry and the type of market served—the court found that the territory at issue had been "assigned exclusively to Duke Energy, just as other regions of the state are exclusively assigned to other electricity suppliers."[22] Georgia's Territorial Act does the same. And like the Territorial Act, North Carolina law bars retail electric competition and creates regional monopolies in large part because that arrangement helps ensure that service is provided to all customers at a reasonable price.[23] On the third factor—the kind of competition that naturally inheres in the market—the court explained that the legislature had elected to prohibit *any* competition that might otherwise exist and to limit electric service to specific providers in each region.[24] The Territorial Act likewise displaces natural competition by assigning territories[25] and permitting competition only under limited exceptions.[26] The court found the fourth factor—the effect of non-regulation—most important.[27] NC WARN, like VoltaGrid, argued that "it only intend[ed] to provide its services 'to self-selected non-profit organizations' and ha[d] no desire to offer its services to all of Duke

[20] 255 N.C. App. at 615.
[21] *Id.* at 616–19.
[22] *Id.* at 617.
[23] *See id.* at 617–18 ("Monopolies exist in North Carolina so that it makes financial sense for utilities to serve all North Carolinians and so that service can be provided at a reasonable price.").
[24] *Id.* at 618.
[25] *See* O.C.G.A. §§ 46-3-4 through 46-3-7 (providing for areas to be assigned or unassigned).
[26] *See, e.g.,* O.C.G.A. § 46-3-8(a)(3) and (5) (authorizing any electric supplier to serve certain large load customers in certain circumstances).
[27] 255 N.C. App. at 618.

Energy's customers."[28] But the court rejected that argument, reasoning that allowing NC WARN to "serve customers of its own choosing within Duke Energy's territory at whatever rates and service requirements it sets for itself without oversight" would open the door for others to offer similar arrangements and would jeopardize regulation of the industry as a whole.[29] As discussed below, the same risk exists here: if serving one customer allows an entity to avoid regulation, VoltaGrid and others could serve single customers across Georgia free from Commission oversight. There is no doubt that unrestricted access to the customers that VoltaGrid openly desires to serve would have significant impacts on the public, the ability of electric service providers to efficiently provide service in their assigned territories, and the Commission's jurisdiction over how that service is provided across the industry.

The court in *NC WARN* also emphasized that the analysis is flexible and must adapt to technological change, but that the controlling question is whether a given meaning of "public" will "accomplish the legislature's purpose and comports with its public policy."[30] North Carolina's statutory scheme, like Georgia's Territorial Act, "establishe[d] regional monopolies on the sale of electricity based on the premise that the provision of electricity to the public is imperative and that competition within the marketplace results in duplication of investment, economic waste, inefficient service, and high rates."[31] Deferring to that legislative policy, the court held that NC WARN was a public utility subject to the North Carolina Utilities Commission's jurisdiction—despite serving only one customer.[32]

[28] *Id.*
[29] *Id.* at 618–19.
[30] *Id.* at 617 (punctuation omitted) (quoting *State ex rel. Utils. Comm'n v. Simpson*, 295 N.C. 519, 524 (1978)).
[31] 255 N.C. App at 617.
[32] *Id.* at 620.

VoltaGrid's single-customer rule ignores every one of these considerations. The Commission should reject it and hold that service to a single customer can be public service when the regulatory circumstances warrant. That result preserves regulation of Georgia's electric industry and serves the purposes of the Territorial Act.

C. VoltaGrid's proposed jurisdictional rule would throw the Territorial Act into a tailspin.

The Territorial Act divides the state of Georgia into assigned and unassigned territories, providing electric suppliers with specific monopolies over their assigned territory.[33] The provision of these territories helps accomplish the Territorial Act's policy goals of, among other things, assuring "efficient, economical, and orderly rendering of retail electric service"; inhibiting the duplication of electric supplier lines; and protecting and conserving lawfully constructed lines.[34]

Under VoltaGrid's proposed rule, however, this orderly service would be threatened. Any entity, whether the recipient of an assigned territory under the Territorial Act or not, could "pop up" in Georgia, render any amount of service, and avoid Commission jurisdiction so long as they serve only one customer in the state. Taken to its logical conclusion, an electric service provider could establish a corporate entity to serve a single customer in Cobb County, a different corporate entity to serve a single customer in Gwinnett County, and other separate corporate entities serving single customers in the remaining Georgia counties—all unregulated yet serving single customers across Georgia's 159 counties. Nothing in VoltaGrid's rule would require the provider to stop at county lines: it could just as easily form a separate entity at the city, neighborhood, or even city block level, multiplying the number of customers these pop-up entities could serve without limit. These single customers may not even be small ones: VoltaGrid's rule would allow these pop-up

[33] *See, e.g.,* O.C.G.A. § 46-3-4 (authorizing Commission to assign electric suppliers to geographic areas outside the corporate limits of any municipality).
[34] O.C.G.A. § 46-3-2.

providers to serve a customer with hundreds or even thousands of megawatts of load, leading to potentially gigawatts of energy being served in Georgia without any Commission oversight.

Not only does this usurp the purpose of the Territorial Act, it renders each of these pop-up corporate entities, all functioning under a single parent company, completely unregulated. Rates, service, load forecasting, and every other facet of electric service regulation would be unfettered, and the industry would risk becoming entirely unregulated. At best, if those entities adopted the same level of regulation that VoltaGrid accepts today, the only state agency exercising regulation would be Georgia's Environmental Protection Division.[35] The General Assembly could not have intended a jurisdictional line that is so easily evaded when it enacted the Territorial Act, and the Commission should not adopt one under VoltaGrid's single-customer rule. The Commission should accordingly reject VoltaGrid's jurisdictional arguments in its Motion to Dismiss.

III. CONCLUSION

VoltaGrid's service of electricity to Serverfarm is a public service that should be regulated by the Commission. Failure to do so could lead to deregulation of the electric industry in Georgia as "pop-up" generation facilities serving single customers could proliferate across the state. Without regulation of these proposed single-customer entities, the purpose of the Territorial Act as well as Commission authority would be rendered meaningless. The Commission should accordingly reject VoltaGrid's proposed view of "public service" and deny VoltaGrid's motion on jurisdictional grounds.

[35] *See Answer of Respondent VoltaGrid, LLC*¸ Docket No. 57243 (Aug. 12, 2026), ¶¶ 9 and 11 (admitting applications tendered to the Environmental Protection Division); *see also Petition for Expedited Declaratory Judgment and Enforcement Against VoltaGrid*, Docket No 57243 (Jul 13, 2026), Exhibits 1, 2, and 5.

Respectfully submitted, this 16th day of October, 2026.



Brandon F. Marzo
Steven J. Hewitson
Michael G. Foo

Attorneys for Georgia Power Company

TROUTMAN PEPPER LOCKE LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 3600
Atlanta, Georgia 30308-2216
(404) 885-3000