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VIA ELECTRONIC DELIVERY

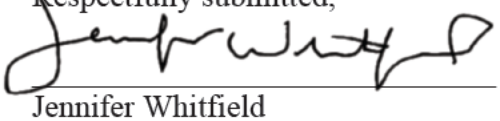
Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

Re: Petitioners' Response to VoltaGrid's Emergency Appeal and Motion to Stay; Docket No. 57243

Dear Ms. Tanner:

Please find enclosed an electronic version of the following Petitioners' Response to VoltaGrid's Emergency Appeal and Motion for Stay to be filed in Docket No. 57243.

Respectfully submitted,



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Counsel for Petitioners

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 Emergency Appeal and Motion for Stay

INTRODUCTION

By filing this "emergency" appeal, VoltaGrid takes a remarkable position about an unremarkable discovery dispute. VoltaGrid asks this Commission to reach down and micromanage its hearing officer's resolution of how the parties provide discovery to one another. This is not an "emergency." This is not a threatened taking of "property." Trade secret documents are routinely provided in discovery pursuant to a protective order that prevents the documents from becoming public or being used in any other setting (and thus, losing their value and causing harm).[1] The

[1] *See, e.g.*, GA. COMP. R. & REGS. 515-3-1-.11 (hereinafter "Trade Secret Rules"); O.C.G.A. § 10-1-765 (providing that "a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings); FED. R. CIV. P. 26(c) (providing for protective orders in discovery "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way"); *Atlanta Gas Light Co. v. Ga. Pub. Serv.* Comm'n, Civ. Action No. 2001CV42180 (Ga. Super. Ct. Aug. 29, 2001) (Goger, J.) (affirming an order to AGL to execute a protective agreement to allow for limited disclosure of trade secrets); *Bellsouth Telecommunications, Inc. v. GPSC*, No. Civ. Action E-07376, 1993 WL 596956 (Apr. 14, 1993) (ordering the Commission to establish a process for protective orders in response to a case whereby trade secret documents from an unregulated entity were necessary to provide to parties—including an intervenor-Competitor of that entity—protection from unauthorized disclosure of trade secrets to the public); *Hope For Fams. & Cmty. Serv., Inc. v. Warren*, No. 3:06-CV-1113-WKW, 2009 WL 1066524, at *4 (M.D. Ala. Apr. 21, 2009) (finding that a stay of a discovery order was not appropriate and holding that "In any event, the court has opined that application of the pertinent balancing test requires disclosure within the strict confines of the Consent Protective Order, even if the gross receipts and gross profits are found to be trade secrets."); *Festus & Helen Stacy Found., Inc. v. Merrill Lynch, Pierce Fenner, & Smith Inc.*, 432 F. Supp. 2d 1375, 1380 (N.D.

Commission should decline VoltaGrid's invitation to create the precedent that the Commission will intervene in routine matters that have been delegated to the Hearing Officer.

At issue is the Hearing Officer's November 4 order directing that VoltaGrid and Petitioners enter into a protective order to allow Petitioners access to 45 documents that VoltaGrid produced, without objection, in response to discovery requests in this docket. VoltaGrid had an opportunity to propose additional terms for that protective order that would protect its "property," and it declined.[2] VoltaGrid further had the burden at an evidentiary hearing to identify the economic harm that might befall it if its trade secrets were produced to Petitioners. Again, it declined.[3] VoltaGrid has waived the right to argue that the disclosure to Petitioners under Petitioners' proposed protective order will cause it economic harm: a trade secret property right is injured only when disclosure causes economic harm.

Here, the Hearing Officer did not order any documents or information to be disclosed to the public under Section (7) of the Commission's Trade Secret Rules. Such a ruling would justify an appeal to this Commission or otherwise, as the public disclosure of information valued for its privacy cannot be undone. And Section (7) provides for that appellate process. Here, however, there is no order for public disclosure.

Ga. 2006) ("After reviewing the provided motions and briefs, the court finds that the confidentiality concerns are not sufficiently compelling to excuse TH Lee and Click Tactics from providing the subpoenaed information, and the appropriate solution is rather to compel discovery of the documents subject to a protective order.").

[2] Respondent, VoltaGrid, LLC's Resp. and Obj. to First Am. to Notice of Hr'g and Sched. Order at 6-7 (Oct. 27, 2026) ("Scheduling Order Response") ("VoltaGrid declines to provide any proposed 'agreement' to make its trade secrets available to Petitioners, unless and until Petitioners' standing is established, the Commission's jurisdiction is confirmed, and it is afforded the process and protections to which it is entitled under the Commission's Trade Secret Rules, including the automatic stay and opportunity for judicial review.").

[3] *See, e.g.*, GA. PUB. SERV. COMM'N, *Hearing on Petitioners Challenge of Trade Secret Info. Request for Access to Trade Secret Info*, at 00:31:50 (YouTube, Oct. 29, 2026), https://www.youtube.com/watch?v=P0-vs8vEK8s (VoltaGrid's witness, Mr. Ro-Trock, refused to "speculate" on the harm to VoltaGrid of disclosing to Petitioners certain information withheld as a "trade secret") (hereinafter "H'rg on Trade Secret Motion"); *see also* discussion below at 6-7.

The only issue is whether the Hearing Officer properly weighed the interests of the parties before requiring disclosure to Petitioners pursuant to a protective order, as set out in Section (3). The Hearing Officer followed this procedure, and if VoltaGrid has an argument that the Hearing Officer's process has been flawed, it can raise that issue at the appropriate time—when the Hearing Officer's recommendations are presented to the Commission, as laid out in this matter's scheduling order. In the meantime, there remains no evidence on the record that VoltaGrid will suffer economic harm in any measure from this limited disclosure, no less a "taking" of any property rights.

VoltaGrid has demonstrated no basis for a stay of the Hearing Officer's order or for Commission reconsideration of the Hearing Officer's opinion in the middle of the course of litigation. VoltaGrid's emergency petition is little more than a litigation tactic, in which it takes great pains to avoid accountability to regulation and to avoid the process of developing the facts in the record. VoltaGrid seeks to prevent Petitioners from accessing records which it relies upon in its motion to dismiss. All while plowing forward with the construction and operation of an illegal power plant. This Commission should not entertain VoltaGrid's bid for it to even consider—much less reverse—its Hearing Officer's discovery determination, which would stall Petitioners' access to information while VoltaGrid's unlawful operations are allowed to advance. The Commission should deny VoltaGrid's "emergency" appeal, and if appropriate, reconsider VoltaGrid's complaints about the Hearing Officer's compliance with process at the appropriate time.

BACKGROUND

VoltaGrid's CEO boasts that it is "America's largest portable utility, power company," with a major business sector devoted to providing 24/7 baseload power to large end-use customers, like

data centers.[4] VoltaGrid is now building a 90-megawatt power plant in Covington, Georgia, to serve its first Georgia data center customer.[5] Through VoltaGrid's air permitting process, it became clear that VoltaGrid's data center customer, Serverfarm, would not own and operate its backyard power plant, but that instead, VoltaGrid was establishing a foothold in Georgia for operating its 24/7 baseload power plant to supply electricity to large load customers.[6] On July 13, Petitioners filed an Emergency Petition with this Commission challenging the lawfulness of this arrangement and highlighting the imminence of VoltaGrid's planned operations.[7] On August 18, the Commission unanimously voted to assign the Petition to a hearing officer and to investigate the jurisdiction of the Commission to regulate VoltaGrid and issue enforcement orders. This assignment "set[s] the matter down for hearing on the issues," establishes the matter as a "contested case," and expressly authorizes discovery. On August 24, after soliciting feedback from the parties, the Hearing Officer issued its first scheduling order, creating an accelerated schedule towards the statutorily required hearing. On October 2, Petitioners filed a motion with the Hearing Officer, after VoltaGrid explained that it refused to provide roughly 1,000 pages of documents that it claimed are trade secret. On October 19, the Hearing Officer held a procedural conference to ask the parties if they had any objection to setting the trade secret motion for a hearing. Neither party objected. The Hearing Officer asked the parties if they wished to maintain the December 9 trial date, in light of new litigation pressures. Neither party sought to extend the date for trial.

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[4] Pet'rs' Ex. MC-12 (OILFIELD 360 PODCAST, *#83. Building a Billion-Dollar Energy Company: Nathan Ough's Story*, at 17:29 (YouTube, Jan. 20, 2026),https://www.youtube.com/watch?v=Q3jNRNEqBTU .

[5] Petition For Expedited Declaratory Judgment and Enforcement Against VoltaGrid (July 13, 2026) ("Pet."), Ex. 2 at 1, 1.1 ("Project Overview").

[6] *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.").

[7] This filing and other filings referenced in this docket are available on the public docket and incorporated herein by reference.

On October 29, the Hearing Officer held an evidentiary hearing on Petitioners' request to access the purportedly trade secret material, which consists of 45 documents, all of which were produced to staff in response to Document Requests.

At the trade secret hearing, with respect to the question of whether Petitioners should be able to access the documents at the Commission that VoltaGrid claims to be trade secret, VoltaGrid bore the burden of demonstrating that any economic harm to VoltaGrid would outweigh the benefit of providing Petitioners access to these documents.[8] VoltaGrid presented a single witness. VoltaGrid was asked why it refused to sign a protective order—its reasoning had nothing to do with the potential for economic harm to VoltaGrid, but instead reflects VoltaGrid's litigation strategy that it should not be subjected to discovery at all.[9] Staff counsel asked "how is the potential for economic harm of disclosing these documents under an NDA or protective order, how does that outweigh the public benefit of allowing the petitioners in this case to have access to that information for the purposes of these proceedings." VoltaGrid's single witness, Mr. Ro-Trock, replies, "it's a valid question. Um, and my response to that is they don't have standing to be there."[10] When asked to describe the harm to VoltaGrid if specific information was disclosed to Petitioners pursuant to a protective order, VoltaGrid's witness deflected, saying, for example, "it's hard for me to speculate on that front," or declining to answer, stating he was unfamiliar with the document in question.[11]

[8] GA. COMP. R. & REGS. 515-3-1-.11(3).
[9] H'rg on Trade Secret Motion at 00:17:50 (explaining that VoltaGrid refused to sign a protective order "because the petitioners do not have standing to bring this claim" and "because this is not an investigation that's been initiated by the commission.").
[10] *Id.* at 1:28:36.
[11] *Id.* at 00:30:00 – 03:38:43; 01:20:10 ("I would need to refer specifically to my previous statements, but . . . I feel that it's a little bit incomplete and in that I do not know what the first redacted page says. Not at this time.").

Though Mr. Ro-Trock gives broad generalizations about the potential for harm from public disclosure to competitors, VoltaGrid provided no evidence of why or how providing Petitioners access pursuant to a protective order would cause any economic harm.[12]

On November 4, the Hearing Officer ruled that "counsel for Petitioners are granted access to materials marked trade secret subject to a protective agreement" and that "counsel for Petitioners and VoltaGrid shall execute a protective agreement that reasonably protects and ensures the confidentiality of the protected information" by November 12. The Hearing Officer arrives at this conclusion by applying the balancing test of whether "the potential for economic harm to [VoltaGrid] outweighs the public benefit derived from allowing the party or intervenor access to such information."[13] The Hearing Officer found that "any potential for economic harm to VoltaGrid can be adequately minimized to a reasonable level through the use of protective agreement."

ARGUMENT

I. A stay is neither justified nor required.

This matter is a run-of-the-mill discovery dispute in which VoltaGrid seeks Commission interference because it is frustrated with the Hearing Officer's unwillingness to capitulate to VoltaGrid's demands that issues are determined in the order VoltaGrid would prefer—as opposed to the order that the Hearing Officer has determined yields the most efficient resolution of the issues.[14] Discovery and a hearing on the merits are critical to developing the facts relevant to this

[12] *See, e.g.*, *id.* at 00:15:05 (Mr. Ro-Trock gave broad generalities about the potential for harm from competitors, saying that third parties could "use that [information] to their advantage" and explaining that third-parties could use the information to compete with VoltaGrid by avoiding making investments to developing business models and tactics. Mr. Ro-Trock also suggested that third-parties could use the information "to slow down or stop our project or understand what the project timing was, project trajectory, liquidated damages, whatever it might be, termination rates, that's valuable information to any party outside of VoltaGrid.").

[13] Trade Secret Order at 4.

[14] *See, e.g.*, VoltaGrid, LLC's Emergency Appeal from the Hr'g Officer's Nov. 4, 2026 Ord. and Mot. for Stay (Nov. 5, 2026) (hereinafter "VoltaGrid's Emergency Appeal"); Chairman's Ord. Temporarily Staying Hr'g Off. Ord. (Nov. 12, 2026).

case. At this stage, both parties have presented factual allegations and provided documents—but nearly all facts remain in dispute.

VoltaGrid asks that the Commission stay the Hearing Officer's ruling in order to allow VoltaGrid time to seek judicial review. That is not only inefficient and unnecessary, but it is also prejudicial to Petitioners.

VoltaGrid claims—without any citation to the record—that if the Commission allows Petitioners access to its purported trade secrets, its "harm is irreparable."[15] But this Commission must ask: What harm? VoltaGrid did not identify any harm in the evidentiary hearing before the Hearing Officer, and it does not identify any harm in its emergency appeal request. Because there is no economic harm to VoltaGrid from the limited disclosure to Petitioners ordered here. VoltaGrid had the burden of demonstrating potential economic harm, but it did not articulate *any* economic harm that may arise from providing Petitioners with access to the documents. Though VoltaGrid's counsel has argued that disclosure of these documents would allow the Petitioners to use them generically in the course of this docket, Georgia courts have clearly said that kind of harm—being held accountable for your actions—is not the kind of harm that the trade secrets protections are designed to protect.[16] Trade secrets statutes are a protection for business interests, not a shield for accountability.

VoltaGrid has admitted that it is fighting discovery because it believes it should not be subject to discovery at all, <u>not</u> because it believes there is economic harm to VoltaGrid. Its witness "refused to speculate" what harm might befall VoltaGrid if Petitioners could access its trade secrets under a protective order. And the only basis given by VoltaGrid for its refusal to enter into a

[15] VoltaGrid's Emergency Appeal at 16.
[16] *Vito v. Inman*, 286 Ga. App. 646, 650 (2007) (holding that revealing a trade secret to attorneys who will hold the trade secret owner accountable for misconduct is not the kind of harm that Georgia's trade secrets act protects against).

protective order is its claim that Petitioners do not have a right to discovery until the Hearing Officer rules on VoltaGrid's motion to dismiss. But the sequencing of litigation is not up to VoltaGrid: Those choices belong to the Hearing Officer.[17]

VoltaGrid is incorrect as a matter of law when it asserts that a stay is required.[18] A stay is neither required nor justifiable. The Commission regulation requiring a stay which VoltaGrid cites is Section 7 of the Trade Secret Rule, which pertains to the public disclosure of information that the Commission determines is not a trade secret at all. Public disclosure is not at issue here. Section 7 does not apply. The relevant regulation is Section 3, which does not require a stay because access under a protective order is designed to prevent economic harm or loss of property interests. Decisions under Section 3 are routine discovery matters which do not merit disruption of the development of a case towards litigation. Interlocutory review (review in the middle of litigation) is only appropriate if there is some irreparable harm.[19] Here, there is no harm at all.

VoltaGrid claims that without a stay, it is in an "untenable position" because it does not want to sign a protective order and because it fears—without any citation or basis—that signing a protective order will waive its right to challenge that protective order.[20] First, compliance with a Commission order does not waive any rights to litigate the propriety of that order. VoltaGrid cites nothing suggesting otherwise. Second, being forced to comply with an order that you disagree with is the plight of litigants—it is not a basis to bend procedural rules or to declare an emergency.

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[17] O.C.G.A. § 46-2-58(b)(4) ("(b) In all utility proceedings commenced after July 1, 1981, any hearing may be conducted by a hearing officer, who shall have authority to: . . . (4) Regulate the course of the hearing, setting the time and place for continued hearings[.]"); Assignment to H'rg Officer Ord. (Aug. 24, 2026).

[18] VoltaGrid's Emergency Appeal at § IV.

[19] *See, e.g.*, O.C.G.A. § 50-13-19 (a "preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy" (emphasis added)); *Schlachter v. Georgia State Bd. of Examiners of Psychologists*, 215 Ga. App. 171, 171 (1994) (upholding a decision to deny review of an administrative order for discovery and denial of a motion to dismiss "because review is not appropriate at this juncture in the proceedings" and because "there must be some suggestion that the administrative ruling . . . could not be remedied so as to cause irreparable harm.").

[20] VoltaGrid's Emergency Appeal at 17.

Because VoltaGrid refused to even discuss protective order terms, VoltaGrid had an entire evidentiary hearing to demonstrate the nature or magnitude of the harm that it would suffer from complying with the Hearing Officer's order, and rather than present evidence of harm or propose strengthened protective order terms, it challenged the Hearing Officer's authority to manage discovery at all. Furthermore, to the extent that VoltaGrid truly is in an "untenable position," it is one of its own making. VoltaGrid provided, without objection, documents to the Commission pursuant to its trade secret rules—which transparently and clearly identify the protective order process.[21] The Trade Secret Rules' requirement that the parties sign a protective order does not empower a recalcitrant party to produce documents pursuant to the rule's protections, rely on those documents in its defense, fail to carry its burden to show harm, and then hold discovery hostage by refusing to sign.

Finally, VoltaGrid wrongly alleges that "a stay will not prejudice Petitioners."[22] To the contrary, an evidentiary hearing on Petitioners' Petition is scheduled less than a month away, on December 9. In order to prepare an effective and efficient presentation for the Hearing Officer, and, ultimately, for the Commission, Petitioners need access to the documents that VoltaGrid has provided in response to several discovery responses.[23] If the hearing is delayed and VoltaGrid's

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[21] VoltaGrid relies on *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984) to claim that it will lose its "property interest in the data" if it is disclosed to others. However, in *Ruckelshaus*, the Court stated that "[t]he economic value of that property right lies in the competitive advantage over others that Monsanto enjoys by virtue of its exclusive access to the data, and disclosure or use by others of the data would destroy that competitive edge." *Id.* at 1011-12. Here, Petitioners are not requesting to disclose or use the data to impact VoltaGrid's competitive edge. VoltaGrid's data would remain protected through the protective order and would not harm their investment-backed expectations.

[22] VoltaGrid's Emergency Appeal at 17.

[23] *See* Brief in Sup. of Resp., VoltaGrid, LLC's Mot. to Dismiss at 4-5 (Sept. 16, 2026) ("Under [VoltaGrid's] contract with Serverfarm . . . it is not compensated based on the power it produces. . . . And VoltaGrid is not required to provide any particular amount of energy to Serverfarm's data center, beyond providing certain minimum capacity requirements ensuring its Conversion Assets are available to convert Serverfarm's gas if and when Serverfarm chooses to do so.") (hereinafter "VoltaGrid's Brief ISO MTD"); *see also* Answer of Resp., VoltaGrid, LLC at 16, ¶ 14 ("the Territorial Act is a statutory enactment of the State of Georgia and that its terms, conditions and requirements speak for themselves. . . . Respondent, VoltaGrid denies that the Territorial Act applies to its contractual arrangement with and the services that it will provide to Serverfarm.").

operations are not simultaneously stayed, Petitioners will be prejudiced by the extended duration of the unlawful operation of a power plant in their community. Furthermore, while Petitioners have not found any caselaw suggesting that a protective order harms a party or merits emergency review, the Georgia Supreme Court has found that depriving a party "necessary discovery" to adequately prepare for an administrative hearing is a substantial irreparable harm.[24]

In sum, none of VoltaGrid's bases for the Commission's review of this issue or for an "emergency" stay withstand scrutiny. The Commission should decline this invitation, deny VoltaGrid's motion as premature, and revisit VoltaGrid's procedural concerns when this matter is scheduled to come before the Commission, following full development of the facts of this case. However, if the Commission does wish to entertain VoltaGrid's arguments, Petitioners briefly respond to VoltaGrid's claims below.

II. The trade secret hearing was not procedurally defective.

Throughout VoltaGrid's motion, it raises various claims alleging that the trade secret hearing process was procedurally defective. These claims can be raised at the time this case is certified to the Commission following the scheduled December 9 trial, as planned for in the Procedural Scheduling Order. Nonetheless, VoltaGrid's arguments have no merit. The Trade Secret Rule does not require an "in-camera" review, Commissioner review, or 30-day notice before disclosing trade secret information under a protective order.

[24] *Wills v. Composite State Bd. of Med. Examiners*, 259 Ga. 549, 549-53 (1989) (finding that a physician who was subject to investigation by the Composite State Board of Medical Examiners had a right to interlocutory review when the Board denied his motion requesting access to "information necessary to receive a fair hearing."); *See also Bellsouth Telecommunications, Inc. v. GPSC*, No. Civ. Action E-07376, 1993 WL 596956, at *27 (Ga. Super. Ct. Apr. 14, 1993) ("Lacking adequate staff and expertise, both the PSC and the consumer utility counsel must depend upon interested and affected members of the public intervening to raise and to focus the issues. For intervenors to adequately take part they must have access to the 'trade secrets'. . .").

Throughout VoltaGrid's motion, it conflates and misinterprets the requirements of two distinct Commission processes related to trade secrets: One process for disclosure of trade secrets to an identified party (or intervenor) pursuant to a protective order (Section 3); and another process for disclosure to the public of purported trade secrets because the information is deemed not to be a trade secret (Section 7).

Petitioners' motion to access trade secrets sought a ruling under both processes: Petitioners claimed that VoltaGrid has failed to meet its burden of demonstrating that any of its information was trade secret (under Section 7) and that the benefits of providing Petitioners access under a protective order outweighed the potential for economic harm to VoltaGrid (Section 3). The Hearing Officer only ruled on the latter: The Hearing Officer granted Petitioners access pursuant to a protective agreement (Section 3), and it reserved the question of whether or not the documents are, actually, trade secrets (Section 7).[25] There is nothing in the Hearing Officer's order that finds that VoltaGrid's documents are not actually trade secret or allows VoltaGrid's purported trade secrets to be disclosed publicly.

A. <u>There is no "in-camera" review requirement.</u>

Section 7 does not apply. As such, the requirements for "in-camera" review—found only in Section 7—do not apply.[26] Thus, the only issue is whether the process for disclosing trade secrets under Section 3 was adequately followed. It was.

[25] Order on Pet'rs' Mot. Challenging Trade Secret Designations and for Access to Trade Secret Info at 5-6 (Nov. 4, 2026) (hereinafter "Trade Secret Order").

[26] Even if the "in-camera" review provisions did apply, the Hearing Officer has access to every single document in question, and it can review the documents. Further, the Trade Secret hearing afforded VoltaGrid the ability to seek an "in-camera" review or a closed session as part of that hearing. VoltaGrid had the burden of demonstrating that each document was a trade secret, but it did not request a closed session to meet that burden as part of the hearing. VoltaGrid cannot now complain about its own procedural shortcomings.

B. The Commission is not required to vote on this trade secret determination.

The Hearing Officer did not exceed his authority. VoltaGrid's argument suggests that Trade Secret Rules reserve decisions pursuant to that rule solely to the full five-member Commission. But nothing in the rule supports that strained interpretation. VoltaGrid's proposed interpretation would require any regulation that requires an action of "the Commission" to be handled by the five Commissioners, personally. That tortured reading would make the regulations unworkable. It is plain that, generally, the regulations refer to the Public Service Commission, as a body, and that specific acts of the Commission may be handled by the Commissioners or their delegates.

C. VoltaGrid's new argument that it needed additional time to prepare for a hearing has been waived by its failure to raise it with the hearing officer.

In this appeal, VoltaGrid raises for the first time that the Hearing Officer should have given VoltaGrid 30 days before scheduling a hearing.[27] VoltaGrid had three opportunities to raise this: when it filed its response to Petitioner's motion for trade secrets; at the scheduling conference held by the Hearing Officer to discuss timing; and in VoltaGrid's objection to the Hearing Officer's scheduling of the hearing. VoltaGrid never asserted that it needed more time to prepare or that it wanted to avail itself of a 30-day clock. Rather, VoltaGrid objected to the hearing occurring at all. VoltaGrid cannot now object to the timing of the hearing.

III. The Hearing Officer adequately balanced the parties' interests, as required, before ordering Petitioners access pursuant to a protective order.

Section 3 provides a balancing test that must be considered before the Commission will provide a party access, under a protective order, to documents that have been provided to it and identified as trade secrets:

[27] VoltaGrid's Emergency Appeal at 13.

> Any person who is a party or intervenor in a docket or non-docket matter, other than the Consumers' Utility Counsel, and desires access to protected information submitted to the Commission pursuant to this rule, may petition the Commission for such access. A hearing shall be held to consider the request, at which time the affected party or utility shall have the burden of providing that the potential for economic harm to them outweighs the public benefit derived from allowing the party or intervenor access to such information.[28]

The Hearing Officer observed the witness, cross-examined the witness himself, heard argument from the parties, and ultimately he found "that any potential for economic harm to VoltaGrid can be adequately minimized to a reasonable level through the use of [a] protective agreement."[29] This finding follows an evidentiary hearing in which VoltaGrid bore the burden of demonstrating its potential for economic harm if documents were disclosed pursuant to a protective order. Prior to the hearing, the Hearing Officer ordered both parties to submit recommended protective order terms. VoltaGrid refused.[30] At the hearing, VoltaGrid's witness testified that it was refusing to enter into a protective order because it did not believe that Petitioners had a right to access the documents and because it does not believe the Commission has authority to investigate VoltaGrid.[31] VoltaGrid never testified that it was refusing to enter into a protective order because of a potential for disclosure of its trade secrets or because of a fear that the protective order was insufficient to protect the information from public disclosure. Instead, when VoltaGrid was asked about the economic harm it would face if particular information was disclosed to Petitioners, VoltaGrid could not answer or "refused to speculate." Not only did VoltaGrid fail to identify any particular sensitivity concerning disclosure to Petitioners, but VoltaGrid's sole witness had "not

[28] GA. COMP. R. & REGS. 515-3-1-.11(3) (emphasis added).
[29] Trade Secret Order at 3.
[30] Scheduling Order Response at 2, fn. 1 (Oct. 27, 2026) ("To be clear, VoltaGrid disputes both the Commission's power to release its trade secrets to Petitioners and others over its objection, as well as its power to compel VoltaGrid to "voluntarily" agree to provide confidential business information to third parties, which VoltaGrid declines to do.").
[31] H'rg on Trade Secret Motion at 00:17:50.

done any research on the petitioners" and had no reason to believe that petitioners are competitors.[32] As the Petition and Petitioners' witness' pre-filed direct testimony in this matter show, Petitioners are a nonprofit, volunteer community group and four individuals who live in the community and are either retired or work in unrelated professions.

The Hearing Officer spends significant time acknowledging VoltaGrid's legal arguments about whether it should be subject to discovery at all. But it is indisputable that Petitioners are a party to the case. (VoltaGrid's own witness testified that, "As I understand, there's only one party to the case, and that's Petitioner.") Likewise it cannot be seriously disputed that the Commission has express jurisdiction to investigate and hold hearings on alleged violations of the Territorial Act. If either issue were in doubt, the Commission's unanimous vote to assign this matter to a hearing officer resolves the issue. And this motion is an untimely and improper vehicle to belatedly dispute that assignment.

The only legal question at hand is whether VoltaGrid met its burden pursuant to the balancing test provided in Section 3 of the Trade Secret Rules.

IV. <u>The Commission can provide parties access to documents in its possession pursuant to a protective order.</u>

VoltaGrid argues that the Hearing Officer does not have authority to order discovery and enforce the Commission's trade secret regulations because the Hearing Officer has not yet ruled on whether the Commission has the authority to regulate VoltaGrid.[33]

VoltaGrid begins its argument by stating that "the Hearing Officer has yet to determine whether VoltaGrid is subject to the Commission's jurisdiction."[34] This is false, and it reflects

[32] *Id.* at 01:26:52.
[33] VoltaGrid's Emergency Appeal at 14.
[34] *Id.*

VoltaGrid's continued conflation of two kinds of jurisdiction: The jurisdiction to investigate VoltaGrid's activities (which is at issue here) and the jurisdiction to regulate VoltaGrid as an electric supplier under the Territorial Act (which is the ultimate issue in the case). In the order, the Hearing Officer acknowledges the distinction between the jurisdictional question of whether VoltaGrid is an "electric supplier," which subjects it to *regulation* by the Commission, and the jurisdictional question of "whether the Commission, and the Hearing Officer acting under the Assignment, may issue the orders necessary to conduct the proceeding the Commission has directed."[35] As for the second question, the Hearing Officer correctly concludes that the Commission has the authority to conduct this investigation. As is plain from the law and as has been held by the Hearing Officer, the Commission does not need to determine whether it has authority to regulate a company under the Territorial Act in order to know it has the authority to investigate that company's actions to make that determination.[36]

The Act's plain language vests jurisdiction in the Commission to hold a hearing to investigate complaints of Territorial Act violations.[37] The Commission unanimously voted to assign this case to a hearing officer to conduct discovery on the Petition and the question of whether VoltaGrid's planned activities are subject to the Commission jurisdiction.[38] The Hearing Officer has the authority to direct the course of the efficient progress towards a hearing, including the resolution of discovery disputes.[39]

VoltaGrid also argues that it cannot be compelled to enter into a Protective Order with Petitioners. VoltaGrid submitted documents to the Commission with full knowledge of the trade

[35] Trade Secret Order at 4.
[36] *Id.* at 4-5; *see also* Pet'rs' Resp. to VoltaGrid's Mot. to Dismiss at 15 (Oct. 16, 2026) (hereinafter "Pet'rs' Resp. to VoltaGrid's MTD").
[37] Pet'rs' Resp. to VoltaGrid's MTD at 14-15; O.C.G.A. § 46-3-14.
[38] Assignment to H'rg Officer Ord. (Aug. 24, 2026).
[39] *Id.*; O.C.G.A. § 46-2-58.

secret protections available at the Commission, and the potential disclosure of those documents under Section 3, which provides a clear process for protective orders. As the Hearing Officer correctly found in its Trade Secret Order, VoltaGrid "cannot rely on the [Trade Secret] Rule to withhold the documents while maintaining the Rule's access provisions do not reach it." VoltaGrid submitted these documents in support of its defense of its position that the Commission should not regulate it. It cannot now claim coercion when the Commission applies other aspects of the same Rule to VoltaGrid.[40]

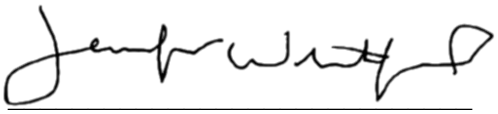
Finally, VoltaGrid argues that "compelled disclosure" of VoltaGrid's trade secrets to Petitioners is an unjust taking of VoltaGrid's property in violation of the Constitution. This claim also has no merit. VoltaGrid does not cite a single case in which a court-ordered disclosure to identified parties pursuant to a protective order constituted a taking of property, and Petitioners know of none. To the contrary, there is a mountain of authority—including those cited by VoltaGrid—in which courts order (or are authorized to order) parties and non-parties to disclose trade secrets pursuant to a protective order.[41] A trade secret has value because it is not shared with competitors in the industry who could otherwise use it to cause the holder competitive, economic harm.[42] And so, a trade secret only loses value when shared with competitors who could use it to cause the holder economic harm.[43] Furthermore, when an entity chooses to take advantage of the

[40] *See, e.g.*, Ruckelshaus, 467 U.S. at 1002 (noting that when a company voluntarily submits its trade secrets to a regulator, it subjects itself to the regulatory scheme and cannot then argue that it does not have "a reasonable, investment-based expectation that [the regulator] would keep the data confidential beyond the limits prescribed in the amended statute itself.").
[41] *See, e.g.* note 1, *supra.*
[42] *See Ruckelshaus*, 467 U.S. at 1002 ("[t]he extent of the property right therein is defined by the extent to which the owner of the secret protects his interest from disclosure to others"); *Vito*, 286 Ga. App. at 650 (holding that revealing a trade secret to attorneys who will hold the trade secret owner accountable for misconduct is not the kind of harm that Georgia's trade secrets act protects against).
[43] *See, e.g.*, *Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 U.S. 340, 362 (1979) ("[T]here is no absolute privilege for trade secrets and similar confidential information in discovery. . . . The courts have not given trade secrets automatic and complete immunity against disclosure, but have in each case weighed their claim to privacy against the need for disclosure.").

benefits of a regulatory process—as here—and submit documents to that regulator, it subjects itself to the full regulatory process.[44] VoltaGrid cannot now seek to complain about the disclosure provisions that are clearly spelled out in the Commission's regulatory process that VoltaGrid seeks to use to its benefit. Finally, and most importantly, a taking requires a harm. Here, there is none.

CONCLUSION

Based on the foregoing, Petitioners ask the Commission to dismiss VoltaGrid's appeal and deny VoltaGrid's request for a stay.



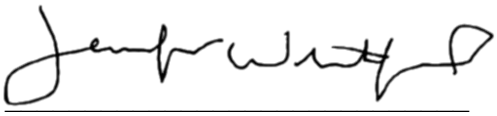
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[44] *See Ruckelshaus*, 467 U.S. at 1007 ("[A]s long as [the trade secret holder] is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate Government interest, a voluntary submission of data [to an agency] by an applicant in exchange for the economic advantages of a registration can hardly be called a taking"); *Phillip Morris, Inc. v. Reilly*, 312 F.3d 24, 32 (1st Cir. 2002) ("Holders of trade secrets can always voluntarily submit their information to a state, consequently losing their property right.").

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petitioners' Response to VoltaGrid's Emergency Appeal and Motion to Stay was caused to be filed with the Public Service Commission in Docket No. 57243 by electronic delivery on the 12th of November, 2026. An electronic copy of same was served upon all parties listed below by electronic mail as follows:



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