

Solar Programs in Georgia and Proposed Amendments to the Georgia Cogeneration and Distributed Generation Act and Electric Territorial Act

Peter K. Floyd, Esq.

Alston & Bird, LLP

Southeastern Energy Society, Inc.

Atlanta, Georgia

March 18, 2013

- **Georgia Distributed Generation Act and Electric Territorial Act**
- **Georgia Solar Energy Programs**
- **Legislative Activity**

- **Atlanta Headquarters with 800+ attorneys**
- **Attorneys ranked among the best in the U.S. and the world**
- **Strong practices in energy and infrastructure development**
- **Public and private finance**
- **International construction & government contracts practice**
- **Tax Expertise (Intl., Fed., State & Local)**
 - Represent: Ga. state and local governments, public and private owners, engineering and design firms, contractors and subcontractors.
 - Extensive Experience with: public finance, commercial construction, tax, grants and incentives, energy regulation, hospital-medical office building projects, college and university projects, retail and hospitality projects, sporting venues, industrial plants and facilities.

The logo for ALSTON + BIRD LLP is displayed within a dark blue rectangular box. The text "ALSTON + BIRD" is in a large, white, serif font, with "LLP" in a smaller, white, sans-serif font to the right. A thin white horizontal line is positioned above the text.

ALSTON + BIRD_{LLP}

A&B is counsel to a number of municipal electric providers and related entities in Georgia

Also, represents G&T operators and owners, customer generators and traditional and renewable independent power providers (IPP) in Georgia and nationally

Disclaimer – Though this presentation is intended to be a neutral summary of existing law, programs and proposed legislation, nothing in this presentation should be interpreted as the formal position of A&B or any of its clients

Disclaimer – Very high level summary and not intended as legal advice re: a particular project

The logo for Alston + Bird LLP is displayed within a dark blue rectangular box. The text "ALSTON + BIRD" is in a large, white, serif font, with "LLP" in a smaller, white, sans-serif font to the right. The background of the box is a solid dark blue.

ALSTON + BIRD LLP

- Georgia Distributed Generation Act and Electric Territorial Act
- Georgia Solar Energy Programs
- Legislative Activity

Georgia Distributed Generation Act and Electric Territorial Act

This discussion relates to two Acts of the Georgia General Assembly:

- Ga. Territorial Electric Service Act of 1973
 - Provides for exclusive service areas for each electric service provider (GPC, EMC and Municipals) with limited exceptions, e.g., large load customer choice and corridor (existing line) rights.
 - Also, provides protections from discrimination by electric providers.
- Ga. Cogeneration and Distributed Generation Act of 2001
 - Provides that customers that generate their own electricity may use that electricity free from most PSC regulation.
 - Also, provides for the process by which customer generators may sell electricity back to an electric supplier in certain circumstances.

Georgia Distributed Generation Act and Electric Territorial Act

Ga. Territorial Electric Service Act of 1973

- Prior to the enactment of the Territorial Act, location of electric lines was largely unregulated.
- Resulted in increasingly dangerous situations where electric suppliers literally “raced” to build lines faster to reach customers first, especially in metropolitan areas that were “booming” in the early ’70, e.g., Cobb Co.
- I understand that there were even situations where suppliers cut each others lines and at least one major water main breach that highlighted unsafe conditions related to the “race.”

Georgia Distributed Generation Act and Electric Territorial Act

Territorial Act – other purposes:

- Limited exclusive territories make it clear who customers should look to for service and helps reduce the overall number of distribution lines (economic and environmental efficiency).
- Nondiscrimination rules assure that all customers are treated in a fair manner.
- Limited competition for large loads and crossing corridors balances territorial efficiencies cost effectively with free market efficiencies.
- Rate oversight via other rules (PSC for GPC and customer elected ratemakers for EMC and Municipals).

Georgia Distributed Generation Act and Electric Territorial Act

Georgia Cogeneration and Distributed Generation Act of 2001

- Provides that customers that generate their own electricity may use that electricity free from most PSC regulation.
- Also, provides for the process by which customer generators may sell electricity back to an electric supplier.

Georgia Distributed Generation Act and Electric Territorial Act

- Both the Territorial Act and the Distributed Generation Act were carefully crafted through debate and consideration taking into account, among other things:
 - economic efficiency (less duplicate facilities = lower rates)
 - environmental efficiency (less duplicate facilities = less unsightly lines)
 - balancing those efficiencies with free market competition for certain loads
 - providing for certain customer rights
- Both Acts function today to achieve those goals and permit some development of renewable and distributed generation
- **[Note: more on that later]**

Federal - PURPA

The Public Utility Regulatory Policies Act of 1978 (PURPA) was implemented to encourage, among other things,

- The conservation of electric energy,
- Increased efficiency in the use of facilities and resources by electric utilities,
- Equitable retail rates for electric consumers,
- Expeditious development of hydroelectric potential at existing small dams, and
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable.

One of the ways PURPA set out to accomplish its goals was through the establishment of a new class of generating facilities which would receive special rate and regulatory treatment. Generating facilities in this group are known as qualifying facilities (QFs), and fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.

In certain circumstances, PURPA requires electric utilities to buy power from QFs, including consumers and IPPs, if that cost was less than the utility's own "avoided cost" rate to the consumer; the avoided cost rate is the additional costs that the electric utility would incur if it generated the required power itself, or if available, could purchase its demand requirements from another source.

Source: FERC Website 3/18/13: <http://www.ferc.gov>

- **Georgia Distributed Generation Act and Electric Territorial Act**
- **Georgia Solar Energy Programs**
- **Legislative Activity**

What Programs in Georgia Already Promote Solar?

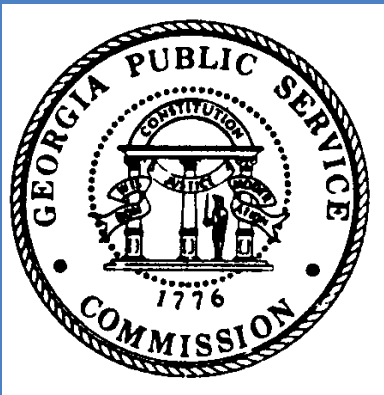
The Georgia Cogeneration and Distributed Generation Act of 2001

What Is It?

- In certain circumstances, the Act requires electric service providers to compensate customers for any renewable power (including solar power) produced in excess of on-site needs or for all of the power generated from the system.
- Some utilities have specific programs for which a qualifying customer may apply. Georgia Power, for example, has a “Solar Buy Back” program, where customers may sell solar power back to it at a specific rate set by the GPSC. What rate applies depends on the amount of power generated. Other utilities address customer generation on a when requested basis.

How Does It Work?

Georgia Solar Energy Programs



What Is the GPSC Currently Doing to Promote Solar?

- **Docket No. 36325:** Georgia Power Company's Advanced Solar Initiative

*What Is the GPSC
Doing
to Promote Solar?*

**Georgia Power Company's Advanced Solar Initiative
("GPASI")**

What Is It?

- GPASI Is Set To Acquire 210 MW of Solar Capacity

**When Was It
Approved?**

- The GPSC Approved the GPASI on November 20, 2012
(Dkt. No. 36325)

*What Is the GPSC
Doing
to Promote Solar?*

**Georgia Power Company's Advanced Solar Initiative
("GPASI")**

The GPASI Will Procure Solar Energy in:

**How Does
the GPASI
Work?**

- 1. RFP's from Large-Scale Solar Developers**
- 2. Distributed Scale Solar Purchase Offerings from Small and Medium-Scale Facilities**

What Is the GPSC Doing to Promote Solar?

Georgia Power Company's Advanced Solar Initiative ("GPASI")

How Does the GPASI Work?

RFP's from Solar Developers

- Aimed at purchasing utility-scale solar from multi-megawatt projects (1 MW to 20 MW)
- Key Dates
 - **Jan. 15, 2013:** Accion Group selected to serve as IM
 - **Apr. 25, 2013:** Final RFP due to be filed
 - **May 7, 2013:** Deadline to submit bids
 - **Sept. 13, 2013:** Competitive tier determined
 - **Jan. 1, 2015:** In-service date for the RFP

What Is the GPSC Doing to Promote Solar?

Georgia Power Company's Advanced Solar Initiative ("GPASI")

Distributed Scale Solar Purchase Offerings

- Focused on purchasing solar energy from either:
 - Residential or smaller commercial customers with small-scale facilities (up to 100kW in size); or
 - Larger commercial customers or developers with medium-scale facilities (100kW to 1 MW)
- The application process for small to medium-scale facilities ended on March 11, 2013, and the results should be available by April 5th.

How Does the GPASI Work?

What Is the GPSC Doing to Promote Solar?

Where Can I Find Out More?



The GPSC: The online docket for the GPASI

- <http://www.psc.state.ga.us/factsv2/Docket.aspx?doCKETNumber=36325>



Georgia Power: The company's advanced solar initiative website

- <http://www.georgiapower.com/about-energy/energy-sources/solar/asi/advanced-solar-initiative.cshtml>



Accion Group: The independent monitor's website

- https://gpscim.accionpower.com/solar_1301/accionhome.asp

What Programs in Georgia Already Promote Solar?

Renewable Energy Credit Programs

- Some utilities are making renewable energy credit (RECs) available to customers either actively or upon request.
- Sterling Planet, Inc. is a Georgia company assisting with RECs, among other things.
<http://www.sterlingplanet.com/>

What Programs in Georgia Already Promote Solar?

What Rebates Are Available?

Utility Rebate Programs

- Although many utilities offer rebates to promote the use of solar power, the specific rebate programs available vary greatly. Georgia Power, for example, offers qualifying residential customers a rebate of up to \$250 for installing a 50 gallon or greater solar water heater, whereas Sawnee EMC offers residential customers with qualifying photovoltaic systems a rebate of up to \$3,000.

Where Can I Find Out More?

- Any rebate programs or other incentives offered by a utility can typically be found on the utility's website. The U.S. Department of Energy also provides a searchable database of all tax credits, rebates, and other savings at:
<http://energy.gov/savings>.

What Programs in Georgia Already Promote Solar?

Solar Test/Demonstration Projects

- Some utilities, via ARRA grants and other funds, have put in place solar test projects.
- Example: Marietta Power has two solar test projects that it has installed and turned over to customers (schools)

What Programs in Georgia Already Promote Solar?

Solar Distributed Generation Project

Education notebook: Dublin schools break ground on solar project

“Dublin city school ... Solar panels will be installed on the roof and on the grounds of Dublin High School, and they are expected to be up and running by June...”

“generate more than one megawatt of solar energy.”

“The district is projected to save \$3.5 million over the lease’s 25-year term”

“The lease will be paid with bonds the school district obtained through an intergovernmental agreement with the Dublin-Laurens County Development Authority, the Dublin superintendent said.”

Equipment supplier: MAGE Solar, a German company with offices in Dublin

Equipment owner/lessor: Greenavations, a Macon-based alternative energy company

The Macon Telegraph, March 17, 2013, By Staff : <http://www.macon.com/2013/03/17/2400414/dublin-schools-break-ground-on.html#storylink=cpy>

What Programs in Georgia Already Promote Solar?

Solar energy project benefiting Cobb EMC back on track

“Energy provider Dominion has signed a deal to take over a planned solar energy project in east-central Georgia that will have Cobb Electric Membership Corp. as its customer.

The 40-acre solar project, called the Azalea Solar Power Facility, will be on farmland and forest acreage about 60 miles southwest of Augusta. The plant will produce about 7.7 megawatts of electricity using photovoltaic technology.

Dominion said it has a 25-year purchase power agreement with Cobb EMC, which serves about 176,000 customers.”

“The solar project is expected start of commercial operations in December.”

The Atlanta Journal-Constitution, March 2, 2013, By [Christopher Seward](#)

Property Assessed Clean Energy (PACE) Bonds

- Legislation in Georgia and 14 other states
- Local gov. issues bonds to create loan pool
 - Local gov. makes loans to private building owners for energy-saving or renewable energy retrofits
 - Property taxes or utility bill on retrofitted buildings are increased by amount necessary to repay loan
 - Loans are backed by property-tax or utility lien on retrofitted buildings
- No increase for nonparticipating residents
- Owner can couple this with Guaranteed Energy Savings Performance Contracting (ESPCs)

Georgia's Version of PACE

- House Bill 1388, enacted in 2010, amended legislation related to certain Georgia development authorities to permit bond financing for the installation at residential, commercial, industrial or other qualifying property of:
 - renewable energy systems,
 - energy efficiency or conservation improvements, and
 - water efficiency or conservation improvements.
- Development authorities do not have the power to tax, but could contract with local governments to collect as part of utility bill (water, sewer, gas or electric) and establish a utility lien on improved property.
- *Notes: The Federal Housing Financing Agency (FHFA) issued a statement in July 2010 concerning the senior lien status associated with most PACE programs. In response to the FHFA statement, most local PACE programs have been suspended until further clarification is provided.*
- *Not aware of this statute having been used yet. But, I'm happy to help a local gov.*

What Programs in Georgia Already Promote Solar?

Clean Energy Atlanta Program

What Is It?

- Clean Energy Atlanta is a program that provides private funding for building energy upgrades at no installation cost, with such financing being repaid through property tax assessments. Clean Energy Atlanta provides 100% financing to commercial property owners for renewable energy and energy efficiency improvements. The capital for improvements is repaid over a long term through property taxes at modest interest rates, making projects affordable.
- \$200 million of energy retrofit funds were released by Invest Atlanta, the economic development authority of Atlanta, for the Clean Energy Atlanta program.
- Clean Energy Atlanta is sanctioned by the City of Atlanta and administered by Ygrene Energy Fund, a provider of clean energy finance projects. *cont'd.*

What Properties are Eligible?

- condos, dorms, and nursing homes of 5+ units)
- Small commercial buildings (e.g. warehouses, office buildings, retail spaces, hotels, restaurants)
- Large commercial buildings (e.g. large warehouses, multistory office buildings, convention centers, malls)
- Industrial properties (e.g. breweries, factories, mills, power plants)

What Programs in Georgia Already Promote Solar?

Clean Energy Atlanta Program

What Projects are Eligible?

- Envelope and insulation (e.g. add/replace insulation)
- Renewable energy (e.g. add solar PV systems)
- Replace windows and doors
- Upgrade HVAC systems
- Convert to natural light; add skylights, solar tubes, window filming, and occupancy sensors
- Replace or upgrade water heating and cooling systems
- And many more!

What are the Benefits?

- Improved energy efficiency
- Lower energy-related operating costs
- Enhanced property value
- Increased net operating income (“NOI”)
- Increased occupancy and lease rates
- Decreased carbon footprint

What Programs in Georgia Already Promote Solar?

Clean Energy Atlanta Program



- \$5,000,000 available as grants.
- Eligibility limited to energy utilities.
- 100% of funds must be allocated towards one or more of following residential energy-efficiency incentive programs:
 - On-bill loan
 - On-bill tariff
 - Interest rate buy-down
- Eligible residential energy efficiency activities:
 - Whole Home Performance with Energy STAR
 - Energy STAR appliance upgrades
 - Home weatherization

NOTE: no reason that a program like this couldn't be used with customer generation as a permitted activity.

Georgia ESPC Legislation

- Constitutional prohibition limited certain types of multi-year contracts for Ga. Governmental Units
- Guaranteed Energy Savings Performance Contracting Act of 2010 and Constitutional Amendment 4
- Governmental Units
 - State government agencies
 - Colleges and universities
 - Counties and municipalities
 - Public school districts
- Contract for up to 20 years – solves the one year contract limit applicable to many GA gov. units
- ESCO guarantees that cost savings or revenue increases will meet or exceed project cost within 20 years

Georgia ESPC Legislation

- “Energy conservation measure” means a program, or facility alteration, or technology upgrade designed to reduce energy, water, waste-water, or other consumption or operating costs. The term may include, without limitation:
 - Insulation, windows, doors, energy control systems, HVAC, lighting, water and sewer.
 - Training program.
 - A program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, or use of alternative suppliers* as otherwise provided by law.
 - Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other tech.*

* Must understand and comply with Georgia Territorial Electric Service Act of 1973 and Georgia Cogeneration and Distributed Generation Act of 2001. I have another presentation on these Acts if anyone would like a copy. The ESPC Act requires notice to utility providers of ESPCs.

Georgia ESPC Legislation

- State Agencies are subject to GEFA Regs and Review
 - GEFA has been tasked with prequalifying Qualified ESCOs
 - GEFA to issue regs and policies necessary to carry out ESCO Act contracting and procurement procedures for State Agencies
 - GEFA to provide technical assistance to State Agencies
 - GEFA to develop model contractual and related documents for use by State Agencies.
 - State Agencies required to proposed contract or lease to GEFA for review and approval

Georgia ESPC Legislation

- GSFIC is authorized to establish certain financial criteria and policies related to State Agency ESPCs
- No State Agency ESPCs may be entered into before GEFA and GSFIC regs and policies
- Noncompliant ESPCs are “void and of no effect”

What Programs in Georgia Already Promote Solar?

The Clean Energy Property Tax Credit (“CEPTC”)

What Is It?

- The CEPTC was originally created to operate as a credit for taxpayers who install clean energy systems in their homes or businesses. For instance, homeowners with a photovoltaic energy system could qualify for a credit of up to \$10,500; homeowners with a solar hot water system could qualify for a credit of up to \$2,500.

Is the CEPTC Still Available?

- No. While the CEPTC was originally created to operate through 2014, funding for the tax credit is currently unavailable. It is unclear whether funds will become available in the future.

Financing Option

- May combine many incentives and structures, but complex
- Incentives may have conflicting requirements
- ESCO financing – lease purchase or installment sale
- Direct funding – independent project or as part of larger project
- Public finance – tax-exempt bonds, tax-exempt lease obligations
- Tax credits – some transactions permits sharing of ESCO tax savings
- White tags – developing market to monetize energy efficiency credits for sale in states where permitted (Sterling Planet)

More Information:

GPC's Presentation on the Solar Power Initiative:

www.georgiapower.com/.../Georgia-Power-Advanced-Solar-Initiativ...

Georgia Solar Energy Association - <http://www.gasolar.org/>

GSEA December 2012 Presentation:

[www.southeastgreen.com/.../Putting_the_Sun_to%20Work_for_GA....](http://www.southeastgreen.com/.../Putting_the_Sun_to%20Work_for_GA...)

- **Georgia Distributed Generation Act and Electric Territorial Act**
- **Georgia Solar Energy Programs**
- **Legislative Activity**

Legislative Activity

2011-2012 Session

HB 515 - Public utilities; voluntary portfolio standard goals for renewable energy; provisions

HB 516 - Public utilities; voluntary portfolio standard goals for renewable energy; provisions

**HB 520 - Energy purchase; amount of energy provider required to purchase from generator; change

HB 961 - Homeowners' Solar Bill of Rights; enact

SB 9 - Georgia Energy Freedom Act; cap and trade system; permit Governor to delay implementation; comprehensive assessment

**SB 401 - The Georgia Cogeneration and Distributed Generation Act of 2001; change provisions; provide declaration of policy

SR 326 – Renewable Energy Industries in Georgia; create joint study committee

Legislative Activity

2013-2014 Session

HB 430 – Sales and use tax; eligibility of solar energy electric generation equipment for tax exemption; clarify

HB 503 – Public utilities; establishment of voluntary portfolio standard goals for renewable energy; provide

HB 564 – Electric suppliers; energy savings plans to optimize use of demand-side capacity options; provide

****SB 51 – "The Georgia Cogeneration and Distributed Generation Act of 2001"; provisions**

Note: March 7, 2013 was crossover day

Legislative Activity

2013-2014 Session

SB 51 – "The Georgia Cogeneration and Distributed Generation Act of 2001"; provisions

Sponsor: Buddy Carter (R), 1st District

Status: in Senate Regulated Industries and Utilities

Didn't make it through crossover day

Still alive in 2014 half of session

Legislative Activity

SB 51 – "The Georgia Cogeneration and Distributed Generation Act of 2001"; provisions

28 "~~(4) 'Customer generator' means the owner and operator of a distributed generation~~
29 facility a customer who utilizes the electrical energy from a distributed generation
30 facility, whether the customer finances the distributed generation facility by purchase,
31 lease, loan, or other form of financing, including a power purchase agreement.

Effectively amends the Territorial Act by permitting a PPA sale to a retail customer

Solar Industry and customers desiring solar: makes it clear that certain tax advantaged transaction structures are permitted

Incumbent utilities: allows a third party to sell power to its customers, which has implications for existing generation and transmission infrastructure stranded costs among other planning and potentially shifting a portion of that cost to other customers

Legislative Activity

SB 51 – "The Georgia Cogeneration and Distributed Generation Act of 2001"; provisions

(5) 'Distributed generation facility' means a facility ~~owned and operated by a customer of the electric service provider~~ provided by or for a customer generator for the production of electrical energy that:

(A) Uses a solar ~~Photovoltaic~~ photovoltaic system; ~~fuel cell; generator fueled by biomass, municipal solid waste, landfill gas, or hydropower;~~ or wind turbine;

(B) ~~Has a peak generating capacity of not more than 10kw for a residential application and 100kw for a commercial application;~~

~~(C)~~ Is located on the customer's premises;

~~(D)~~(C) Operates in parallel with the electric service provider's distribution facilities;

~~(E)~~(D) ~~Is connected~~ Connected to the electric service provider's distribution system on either side of the electric service provider's meter; and

~~(F)~~(E) Is intended primarily to offset part or all of the customer generator's requirements for electricity."

Legislative Activity

SB 51 – "The Georgia Cogeneration and Distributed Generation Act of 2001"; provisions

53 (2) Shall enter into a written agreement with the customer generator to charge the
54 customer generator ~~the~~ a commercially reasonable rate established by the commission,
55 or the appropriate governing body, in the case of any other electric service provider or
56 electric supplier, for metering services;

67 (4) Shall not charge a customer generator any monthly fee or standby charge or require
68 any equipment, insurance, or any other requirement unless the fee, charge, or requirement
69 shall apply to other similarly situated customers who are not customer generators; and

70 (5) In all cases, shall reasonably conform any and all charges or fees imposed on a
71 customer generator to the actual cost of providing the service for which the charges or
72 fees are imposed.

Georgia Distributed Generation Act and Electric Territorial Act

- Both the Territorial Act and the Distributed Generation Act were carefully crafted through debate and consideration taking into account, among other things:
 - economic efficiency (less duplicate facilities = lower rates)
 - environmental efficiency (less duplicate facilities = less unsightly lines)
 - balancing those efficiencies with free market competition for certain loads
 - providing for certain customer rights
- Both Acts function today to achieve those goals and permit the development of renewable and distributed generation
- Proposals to amend either of these Acts should be carefully considered as these Acts represent an intricate and intertwined balancing act regarding multiple issues
- Amendments to these Act could result in intended or unintended ratepayers subsidization the distributed generation of a few parties

Questions:

Contact:

Peter K. Floyd, Esq.
Phone: 404-881-4510
E-mail: peter.floyd@alston.com

Alston & Bird LLP

www.alston.com

Atlanta • Charlotte • Dallas • Los Angeles • New York • Research Triangle •
Silicon Valley • Ventura County • Washington, D.C.