

Georgia Territorial Electric Service Act 101

Peter K. Floyd, Esq.

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Thomasville Utilities

ALSTON+BIRD_{LLP}

Peter K. Floyd, Esq.

Please note that this presentation is a high level summary of a complex area of law and is not legal advice. It contains paraphrases of portions of the Territorial Act and important cases. When considering actual issues, the full annotated text of the Territorial Act and the many decisions related thereto should be reviewed.

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Peter K. Floyd, Esq.

- Public Power, Gas and Other Utilities
 - Taxable and tax-exempt financings,
 - Energy regulation,
 - Energy-related transactions,
 - Economic incentives,
 - Interest rate and commodity swaps and hedges (e.g., gas hedges), and
 - Corporate governance
- Principal Clients
 - General Counsel for Electric Cities of Georgia, Inc.,
 - MEAG Power,
 - The Gas Authority,
 - Main Street Natural Gas, Inc., and
 - Public Gas Partners, Inc.

Introduction

In 1973, the Georgia General Assembly passed the Georgia Territorial Electric Service Act (O.C.G.A. § 46-3-1, *et seq.*, the "Act"), which provides a comprehensive regulatory scheme governing retail electric service in the State of Georgia. Every geographic area within the State is either assigned to an electric supplier or declared unassigned.

What does that mean? 100,000 ft overview.

Overview

1. Public Purpose and History
2. Important Terms and Concepts
3. Assignment of Territory
4. Unassigned Areas
5. Corridor Rights
6. Territorial Maps
7. Large Load (Consumer Choice) Exception
8. Grandfather Rights
9. Right to Serve Own Facilities Devoted to Public Service

Overview

10. Temporary/Construction Service
 1. Rights Where Premises Straddle Boundary Lines
 2. When Lines Do Not Acquire Service Rights
 3. Prohibition Against Discriminatory Rates and Certain Tying Arrangements
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 4. Frequently Asked Questions

Public Purpose and History

The legislative purpose of the Act is to:

- Assure efficient, economical and orderly retail electric service;
- Stop duplication of lines;
- Foster extension and location of lines in a manner compatible with the environment; and
- Protect and conserve lawful line investments.

Public Purpose and History (Cont.)

So, what does that mean?

General Principles of Act:

- Assigns electric service territory for most customers.
- Promotes competition for some customers.

Public Purpose and History (Cont.)

Constitutional Challenge:

- Calhoun v. North Ga. EMC (1975)
 - This was the first court test of the Act. The Georgia Supreme Court upheld the Act's constitutionality and rejected arguments questioning
 1. municipal rate regulation and taxation,
 2. monopolization,
 3. non-uniform operation,
 4. the PSC's authority, and
 5. arbitrary and unreasonable classification of electric consumers.

Public Purpose and History (Cont.)

Antitrust Challenges:

- Gresham v. North Ga. EMC (1983)
 - North Georgia EMC brought an action to collect \$4,924.32 owed by Jack Gresham, Inc. on an open electricity purchase account.
 - Gresham claimed:
 1. that it purchased the electricity pursuant to an unenforceable contract of adhesion;
 2. that it was forced to purchase electricity from North Georgia EMC; and
 3. that it had to discontinue purchasing less expensive power from GPC because the two utilities had entered into an unlawful conspiracy in restraint of trade by restricting their respective service areas geographic zones.
 - The Court of Appeals denied these defenses and held that electricity providers do not engage in an unlawful conspiracy in restraint of trade by limiting their service to those areas assigned to them by the PSC under the Act.

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Important Terms and Concepts

- Assigned Area – an enclosed geographic area assigned to only one electric supplier and inside which such assigned electric supplier has the exclusive right to extend and continue furnishing service to new premises.
- Corridor – The protected area of a line that is captured in another electric supplier's Assigned Area.
- Line – any conductor for the distribution or transmission of electricity other than a conductor operating at a potential of 120,000 volts or more.
 - Note: a conductor that initially constitutes a line shall not cease being a line if, after March 29, 1973, it is operating at a potential in excess of 120,000 volts.

Important Terms and Concepts (Cont.)

- Premises – the building, structure, or facility to which electricity is being or is to be furnished.
- Provided that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land **and** are utilized by one electric consumer shall together constitute a premises. Any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one premises if the permanent service to it is separately metered and the charges for such service are calculated independently.
- An outdoor security light or an outdoor sign requiring less than 2200 watts does not constitute a premises.

Important Terms and Concepts (Cont.)

Sawnee EMC v. GPC (2001)

- Question: Is an apartment complex a Premises if it is master metered with individual meters for each unit?
- Answer: The Supreme Court held that it was not a "Premises" because the complex's tenants were the ultimate "consumers". It reasoned that the Legislature never contemplated parties like the Complex being the "consumer" because the "ordinary and everyday meaning" of "consumer" envisions that the consumer be the end user, i.e., the tenants in this situation.
- Citing *City of Norcross v. GPC* (1990), where the Georgia Court of Appeals held that a multi-building office park, which had a master meter and individual tenant meters, was not a "Premises". The court reasoned that the master metering arrangement was a "means to technically confer the benefits of the exception upon a premises that would not otherwise be within the contemplation of the legislature."

Important Terms and Concepts (Cont.)

GPC v. Carroll EMC (2001).

- PSC determined that that a multi-building manufacturing complex was a Premises even though the complex had two meters, provided that the sole purpose of the two meters is to allow different types of electric voltage for each building.
- Take Away:
 - When in doubt go back to the purpose of the Act.
 - Don't be fooled. The PSC can be difficult to predict. Being a test case can be costly.

Important Terms and Concepts (Cont.)

- Primary Supplier – an electric supplier within a municipality in existence on March 29, 1973:
 - that, on March 29, 1973, was furnishing service to the majority or to a plurality, whichever was the case, of the retail electric meters then inside the corporate limits of the municipality; or
 - to which the PSC reassigned a geographic area, previously assigned to another electric supplier, located within such municipality as its limits existed on March 29, 1973.
- PSC – Public Service Commission.
- Secondary Supplier – a supplier within a municipality in existence on March 29, 1973, which owns lines on that date within such municipality and which is not a primary supplier.

Important Terms and Concepts (Cont.)

- Unassigned Area-B – a geographic area which has not been assigned and which the PSC has declared to be, or by operation of the Act becomes, an unassigned area-B.
- Unassigned Area-A – a geographic area which, between March 29, 1973, and Sept. 1, 1975, was not an assigned area and was not declared to be an unassigned area-B.

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Assignment of Territory – Gen. Principle

- The general principle underlying the Act is the establishment of Assigned Areas, which are each assigned to only one electric supplier by the PSC under the Act.
- Within an Assigned Area, the assigned electric supplier has the exclusive right to extend and continue furnishing service to new Premises, with limited exceptions.

Assignment of Territory – Process

- Following passage of the Act, a process was initiated whereby in each of Georgia's 159 counties the territory was carved up into Assigned Areas and assigned to an electric supplier, or in rare instances declared unassigned.
- All of the electric suppliers within the area were a part of this process, and once the territorial assignments were negotiated and finalized, official Territorial Maps were filed and approved with the PSC approving the territorial assignments and the negotiated arrangements.

Assignment of Territory – Within Municipalities

- Within municipalities, the electric supplier with a preponderance of Lines was declared the Primary Supplier, and other electric suppliers serving within the municipality upon passage of the Act were declared to be Secondary Suppliers.
- In municipalities in which the host municipality owned and operated an electric distribution system, such municipality was by definition declared to be the Primary Supplier.

Assignment of Territory – Outside Municipalities

- In other areas, the given territory was generally assigned to the electric supplier with the preponderance of lines in the area.

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Unassigned Areas

- Certain areas were not assigned to any electric supplier. Such areas are classified as either an Unassigned Area-A or an Unassigned Area-B.
- Unassigned Area-A is an area that was not assigned and was not declared to be an Unassigned Area-B.

Unassigned Areas (Cont.)

- An Unassigned Area-B is an area that has not been assigned to a particular electric supplier, but that has been declared by the PSC to be an Unassigned Area-B or which becomes an Unassigned Area-B by operation of the Act.
- In an Unassigned Area-B, an owner of a new Premises is generally given the right to choose its own electric suppliers unless the new Premises is located within 500 feet of an electric supplier's line, and more than 500 feet from the lines of every other electric supplier, in which case the electric supplier owning the line has the exclusive right to serve the new Premises (i.e., "Corridor Rights").

Exceptions to the General Principle

Exclusive service rights are the general rule, but there are several exceptions under the Act:

- Corridor Rights
- Large Load Exception
- Grandfather Rights* (exception or rule?)
- Right to Serve Own Facilities Devoted to Public Service
- Temporary/Construction Service
- Reminder: An outdoor security light or an outdoor sign requiring less than 2200 watts does not constitute a premises.

Exceptions to the General Principle (Cont.)

- Territorial Agreements
- Burden of proof regarding exceptions

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Corridor Rights – Generally

- "Corridor Rights" apply when an enclosed Line of a Secondary Supplier that is located in another Primary Supplier's Assigned Area (and which provided retail electric service on March 29, 1973) maintains certain service rights.
- Corridor Rights are granted in order to protect the integrity of the Line and the investment made by the Secondary Supplier.

Corridor Rights – Within Municipalities

- Generally, within a municipality's corporate limits existing on March 29, 1973, an enclosed Line maintains corridor rights.
- The Secondary Supplier owning the Line (as of March 29, 1973) has the exclusive right to extend and continue furnishing service to new Premises located therein at least partially within 300 feet of its Line and wholly more than 300 feet from the Lines of every other electric supplier.
- "Overlapping corridors" results in customer choice.

Corridor Rights – Outside Municipalities

- In areas outside of a municipality's corporate limits existing on March 29, 1973, the Secondary Supplier owning such enclosed Lines has the exclusive right to extend and continue furnishing service to all new Premises located at least partially within 500 feet of such Line and wholly more than 500 feet from the assignee electric supplier's Lines.
- "Overlapping corridors" results in customer choice.

Corridor Rights – Application of the Act

- Marietta BLW v. GPC (1985)
 - A construction project more than 500 feet from a City line was started and requested service from the City of Marietta Board of Lights and Water (“MBLW”). GPC complained that a shed was built within 300 feet of the MBLW line in an attempt to meet the distance limitation. The PSC held for GPC. The Court of Appeals affirmed, stating that the construction of the shed was not contemplated at the start of the project when service was requested. The project was outside the 500 foot limit and thus, MBLW could not serve the project.

Corridor Rights – Application of the Act

- City of Thomaston v. Upson EMC (1982)
 - Fulton County Superior Court found that there is a local and statewide understanding of what is included in “corridor rights” and that the EMC had legally waived its corridor right because:
 - “there is some evidence that the EMC waived their corridor rights vis-à-vis arms length negotiations.” and
 - there was no evidence that Upson Co. EMC’s waiver under O.C.G.A. § 45-3-8 would be detrimental to competitiveness in the industry in violation of GA. Const.

Corridor Rights – Application of the Act

- Central GA EMC v. GPC (1987)
 - A mobile home was located within 500 feet of both an EMC and a GPC line inside the City of Griffin. EMC petitioned the PSC alleging that GPC's extension of electric service to the subject premises was unlawful, claiming that GPC gave up its corridor rights in an agreement with Griffin contained in a 1975 joint application for assignment of service area in Spalding County. GPC claimed that the agreement should never have been used to limit customer choice, but if the agreement could limit customer choice, the agreement was only with Griffin and did not effect GPC's corridor rights as to EMC. The PSC held in favor of EMC and held that GPC's agreement giving up its corridor right ran to all parties signing the territorial agreement under contract law, which included EMC.

Corridor Rights – Application of the Act

- City of Calhoun v. NGEMC (1995)
 - Calhoun petitioned the PSC complaining that North Georgia EMC violated the Act. The central argument revolved around a definition in a Territorial Agreement entered into by Calhoun, EMC, and GPC on April 8, 1975.
 - The parties to the Agreement had operated under it since 1975, assuming the PSC had approved it. Following the hearing in this case, however, it was discovered that the Agreement was not on file with the PSC and there was no record of the PSC approving the Agreement. The parties to the Agreement requested that the PSC issue an order in this case approving the Agreement. The PSC declined to do so, finding among other things, that it would not be in the public interest to adopt the Agreement, as the parties disagree about the meaning of a key term. It concluded that the Agreement issue be decided in a separate proceeding.
 - Records management is very important!

Corridor Rights – Application of the Act

- Cobb EMC v. GPC (1987)
 - Cobb EMC argued that since the GPC transmission line in question served as a territorial boundary, no corridor rights were conferred upon the line. The Hearing Officer held that because the line occasioned an assignment in establishing a territorial boundary, GPC had no corridor rights and could not serve the premises.
 - Rejected GPC's Argument: that when a transmission facility (line) containing three conductors (lines) serves as a boundary line, the line runs through the center. Thus, the outside conductor would not have occasioned an assignment, because it was outside the line and thus always in the adjoining supplier's service territory.
 - Note: GPC withdrew its Application for Review based on the order's statement that each case must be decided on the evidence presented and that the decision in this case should not be construed to effect other cases dealing with corridor rights with territorial boundaries.

Corridor Rights – Application of the Act

- Excelsior EMC v. GPC (1987)
 - Excelsior EMC alleged that GPC unlawfully served a portion of a subdivision. The boundary line between Excelsior EMC's assigned territory and GPC's assigned territory was a 115 kW transmission line owned by GPC. GPC claimed that this line had a 500 foot corridor rights. Excelsior EMC claimed that electrical lines forming a boundary do not have corridor rights because such lines occasion a territory assignment and do not extend into or completely cross the assigned territory of Excelsior EMC. GPC argued that, because the transmission facility contained three conductors, the outside conductor could not have occasioned an assignment.
 - The Hearing Officer held that GPC violated the Act because the transmission line occasioned an assignment of territory and thus, GPC possessed no corridor rights.

Corridor Rights – Application of the Act

- City of Barnesville v. GPC (1994)
 - Barnesville petitioned the PSC complaining that GPC violated the Act by serving the Gordon College Fine Arts Building. GPC argued that it was entitled to provide electric service because the building is within 300 feet of a GPC line that was both in existence and providing service to a retail customer within the city limits on the effective date of the Act.
 - The Hearing Operator's holding for Barnesville was based on the definition of "line." He found that the GPC line serving the Building was not the same line serving a retail customer within the city limits on the Act's effective date because the two were "separate and distinct," being separately operable, identified, and maintained. Thus, GPC had no corridor right in the line serving the Building.

Corridor Rights – Points to Remember

- Line had to serve retail load as of 3/29/73
- Corridor rights associated with Lines outside 1973 city limits established on approval date on "B" maps
 - Other proof of Lines locations?
- Corridor does not move if Line is relocated
- Corridor does not disappear if Line is removed
 - Permanent abandonment?
- 115 kV line upgraded to 230 kV retains corridor
- Annexation of area containing another suppliers line does not reduce corridor from 500 to 300 feet

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Territorial Maps (Cont.)

- City Maps
 - One map that is fairly easy to read
- County Maps
 - Three maps
 - DOT Maps - Started with 1970ish maps
 - "A" Map – Layered Lines as of 3/1973
 - "B" Map – Layered Territories, Notes and Agreements
- All Maps signed by effected electric suppliers and approved by the PSC

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Large Load (Consumer Choice) Exception

What is a Large Load?

- One or more new Premises, if utilized by one consumer and having single meter service in a connected electric load that, at the time of initial full operation of the Premises, is 900 kilowatts or greater (excluding redundant equipment).

Large Load (Consumer Choice) Exception

- Premises located anywhere within the limits of such municipality as they existed on March 29, 1973
 - the primary supplier within a municipality
- Premises located at least partially within 300 feet of the lines of such secondary supplier – a secondary supplier within the limits of a municipality as they existed on March 29, 1973
- Premises located within the initial corporate limits of a wholly new municipality – any electric supplier
- Premises located in a geographic area annexed in any manner to such municipality after March 29, 1973
 - any electric supplier owning lines in a municipality
 - What about consolidated governments?
- Outside the limits of a municipality – any electric supplier if the premises are located

Large Load (Consumer Choice) Exception

Note:

Being an exception to the general rule of assignment of exclusive service areas, the large load (consumer choice) exception is to be strictly construed.

Large Load (Consumer Choice) Exception

- Premises
- Initial Full Operation
- Connected Load – "Load Counts"
- Redundant Equipment

Large Load (Consumer Choice) Exception

- Premises – the building, structure, or facility to which electricity is being or is to be furnished, provided that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer shall together constitute a premises. Any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one premises if the permanent service to it is separately metered and the charges for such service are calculated independently. An outdoor security light or an outdoor sign requiring less than 2200 watts does not constitute a premises.

Large Load (Consumer Choice) Exception (Cont.)

Premises – Expansion

- Carroll EMC v. GPC (1983)
- The premises consisted of a main manufacturing plant ("main building") and sheet metal/steel framework building ("Building no. 2") both located on the same or contiguous tracts of land. EMC requested that the PSC order GPC to cease and desist extending and providing service to Building no. 2.
- GPC provided service to the main building when it was constructed and continued to do so.
- The main building, as originally constructed, was more than 300 feet from Carroll EMC's line.
- Building no. 2 was located within 300 feet of the Carroll EMC line and Carroll EMC entered into an electric service contract to serve it.
- The PSC found that both buildings constituted single "Premises" because the initial and subsequent additions did not constitute separate buildings, structures, or facilities and because the main building's owner and Building no. 2's owner were not separate "Consumers." Thus, the PSC held that GPC had the exclusive right to serve Building no. 2.
- Note: how the building function together is very important.

Large Load (Consumer Choice) Exception (Cont.)

Initial Full Operation

- Douglas EMC v. GPC (1991)
- “Initial full operation” means the load when the customer is operating at full capacity as designed.
- Distinguished situation where plans to reach a 900 kW load had always been speculative

Large Load (Consumer Choice) Exception (Cont.)

Initial Full Operation

- GPC v. Central Georgia EMC (1990)
- Future plans not part of premises when there was no specific timetable for added construction though designed for additional capacity

Large Load (Consumer Choice) Exception (Cont.)

Initial Full Operation

- Carroll EMC v. GPC (2000)
- PSC found that, although the first building was in use prior to the completion of the second, the complex had not commenced initial full operations during that time.
- PSC held that “initial full operation of the premises” means “the load to be furnished the customer at the time the customer commences full operation of the facility *as designed*.”
- Since the complex was conceived and designed as a facility comprised of the two buildings and the paint shop, the PSC held that HLA had not commenced initial full operations until the whole complex was online and the combined load exceeded 900 kW. Consequently, the complex fell within the customer choice exception.
- Note: definiteness of future construction is the issue.

Large Load (Consumer Choice) Exception (Cont.)

Connected Load – "Load Counts"

- Troup EMC v. GPC (1989)
- Interpreted the phrase "at the time of initial full operation of the premises" as not the empty structure's connected load nor every receptacle's theoretical load but the actual load at the time the premises began operation, calculated by including those items that would be plugged into receptacles in the ordinary course of operation.

Large Load (Consumer Choice) Exception (Cont.)

Connected Load – "Load Counts"

- Central Georgia EMC v. GPC (1990)
 - At issue was what formula to use to rate motors to determine connected load. GPC contended that the correct method for calculating connected load was to multiply the total horsepower times the factor of .746, which they argue is the general practice in the industry. Using this formula, GPC calculated the connected load at the facility to be less than 900 kW.
 - Central Georgia EMC used a formula from the National Electric Code, which takes into account the inefficiency of motors. The formula they used was kilowatts = $1.73 \times E \times I \times \text{pF}/1000$ where E equals rated voltage, I equals line current, and pF equals power factor. Using this method, Central Georgia EMC calculated a connected load exceeding 900 kW.
 - The Hearing Officer held for Central Georgia EMC, finding that its method, used by a standard reference (here, the National Electrical Code) was reasonable under the Act. The Hearing Officer held that the GPC method did not comply with this rationale because it was based upon the energy output of the motors and not the electrical energy needed to drive the motors and that due to the inherent inefficiency of all motors, it took more energy to drive the motor than was produced by the motor. Thus, GPC's method understated the amount of energy to drive the pumps.

Large Load (Consumer Choice) Exception (Cont.)

Connected Load – "Load Counts"

- North Georgia EMC v. City of Calhoun (2001).
 - The Hearing Officer concluded that even if the large load exception was available to Calhoun, it has failed to meet its burden of proof respecting load. Expert testimony has generally been required for proof of connected load.
 - Live load count by a qualified electric engineer important; experience with the Act and load count cases essential.

Large Load (Consumer Choice) Exception (Cont.)

Connected Load – Redundant Equipment

- Load count excludes redundant equipment

Large Load (Consumer Choice) Exception

Take Away Comments:

- Master metering has generally been held to not create one premises when there are multiple ultimate users (consumers).
- Single-metered service is not always required, e.g., when different phase service is required.
- “Initial full operation” means when operated begins as initially designed, e.g., a ramp up period is permissible if the schedule is definite.
- Official load counts should be conducted by electric engineer familiar with PSC requirements.
- Expansions can be considered part of the same premises if expansions function as part of the original facility (e.g., short distance, operated by same entity, same purpose, functions together).
- Intent to “beat” the Act, e.g., adding a facility to achieve load or premises requirement, can backfire.

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Grandfather Rights

- Grandfather rights were established in favor of the electric supplier providing lawful electric service to a Premises as of passage of the Act.
- "Every electric supplier shall have the exclusive right to continue serving any premises lawfully served by it on March 29, 1973, or thereafter lawfully served by it pursuant to this part, including any premises last and previously served by it which before or after March 29, 1973, have become disconnected from service for any reason, and including premises which before or after March 29, 1973 have been destroyed or dismantled and which are reconstructed after March 29, 1973 in substantial kind on approximately the same site."

Grandfather Rights — Application of the Act

- GPC v. Marietta BLW (1998)
- GPC petitioned the PSC, complaining that MBLW violated the Act by contracting to serve a doctor's office. The parties stipulated to all the facts.
- The Hearing Officer held that contrary to the parties' contentions, it simply did not matter whether the disputed Premises were destroyed, dismantled, reconstructed, or merely remodeled. Nor did it matter how long electric service had been disconnected. The central issue was whether the remodeled or reconstructed disputed Premises were of a substantially different kind than the pre-existing structure on approximately the same site before the remodeling was undertaken.
- He held for MBLW finding that the remodeled or reconstructed Premises were of a substantially different kind than the pre-existing structure because "in substantial kind" has been interpreted to mean:
 - A facility which is largely, but not wholly, of the same fundamental nature or quality as the previous facility.
 - Under the Act, this made the building a new premises, i.e., available for customer choice.

Grandfather Rights — Application of the Act

- Colquitt EMC v. GPC (2001)
- This is a “reconstruction in substantial kind” case brought by Colquitt EMC, involving the provision of service to a recently reconstructed gas station/convenience store (“Shell/Wendy’s”) just outside Tifton, Georgia. Colquitt EMC had been serving a much smaller gas station/convenience store (“Po Boys”) on substantially the same site. GPC admitted extending permanent service, but argued that the premises in question was a new and substantially different premises, not subject to the grandfather clause. The primary issue in the case is whether the premises in question is a new premises, or merely the reconstruction of an existing premises. Following GPC v. Marietta BLW, the Hearing Officer held that the party arguing against reconstruction in substantial kind (here GPC) bears the burden of proof. The Hearing Officer then concluded that GPC failed to carry that burden and that the Shell/Wendy’s is a premises that had been reconstructed in substantial kind on the same site as the previously existing Po Boys convenience store/gas station; therefore, under the grandfather clause, Colquitt EMC should be the supplier.

Grandfather Rights — Application of the Act

- Troup EMC (Diverse Power) v. City of LaGrange
- Diverse Power complained that the City of LaGrange was in violation of the Territorial Act by providing electrical service to a building located in LaGrange, Troup County. It argued that the building, a recently opened gasoline station/ convenience store, was merely a reconstruction “in substantial kind” on approximately the same site where a building that existed before was served by it for fifty years. Since, at the time of Act’s effective date, Diverse Power was serving the building, pursuant to the grandfather clause, it claimed the exclusive right to continue serving the location. The City contended that the relocation of the building, as well as changes in its size, functions and uses by the current occupants from the immediate past tenant resulted in the building’s being categorized as a new structure and not one reconstructed in substantial kind. Thus, the City argued that the building was not subject to the grandfather clause and that it could provide electric service from an existing line within 300 feet of the building.
- In his Initial Decision, the Hearing Officer concluded that Diverse Power had the exclusive right to serve the building. He found that the City failed to meet its burden to show that the facility was new and different than its predecessor as contemplated by O.C.G.A. § 46-3-8(b). He also ruled that since the building was not found to be new premises where the customer had a choice of electric providers, the issue of whether the City could serve it pursuant to its corridor rights became moot.
- The City appealed to the Full Commission which disagreed with the City’s narrow interpretation of the grandfather clause that, if correct, would require the function of the most immediate predecessor to be looked at for purposes of determining whether the successor facility to a torn down building constitutes a new premises. Like the Hearing Officer, the PSC noted that the phrase “in substantial kind” is not defined anywhere in the Act, but that past decisions had defined the phrase to mean “a facility which is largely, but not wholly, of the same fundamental nature or quality as the previous facility.” Using this reasoning, the PSC found that the replacement facility was a reconstruction “in substantial kind” and not new premises.

Grandfather Rights — Application of the Act

- Grady EMC v. Thomasville (1995)

Holding: a new school located adjacent to an existing school are separate premises when the site of the new school has been physically separated from the site of the existing school for educational reasons. Moreover, the two schools are functionally independent of each other, having separate staffs and facilities.

Grandfather Rights — Application of the Act

- Marietta BLW v. Cobb EMC
 - QuikTrip Case

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Right to Serve Own Facilities Devoted to Public Service

- An electric supplier may extend service to any of its own Premises devoted to public service, regardless of whether such Premises have already been served by another electric supplier.
- Lines constructed for service to its own facilities devoted to public service after March 29, 1973, shall not acquire service rights.

Right to Serve Own Facilities Devoted to Public Service (Cont.)

Premises Devoted to Public Service

- NGEMC v. City of Calhoun (1990)
- Calhoun notified North Georgia EMC that it planned to serve its own water pumping station pursuant to O.C.G.A. § 46-3-8(e)(5). The station had previously been served by the North Georgia EMC. The North Georgia EMC petitioned the PSC, claiming that the station was outside Calhoun's territory established by their Territorial Agreement, and could not be served by it. Calhoun responded that its facility was devoted to "public service."
- The Hearing Officer denied North Georgia EMC 's complaint and ruled that Calhoun's water intake facility was a premises devoted to public service because it provided a quintessential municipal function and served the needs of the general public as a basic city service. The Hearing Officer further held that the Territorial Assignment Agreement between the parties applied to retail electric service. Since the provision of electric service to Calhoun's own facility devoted to public service did not constitute retail electric service, the Territorial Assignment Agreement had no effect on the dispute.
- North Georgia EMC filed an Application for Review, arguing that the Hearing Officer erred. The PSC denied its application. North Georgia EMC appealed to the Superior Court, which denied the appeal. Finally, it appealed to the Court of Appeals, which affirmed the lower court.

Right to Serve Own Facilities Devoted to Public Service (Cont.)

Premises Devoted to Public Service

- North Georgia EMC v. City of LaFayette (1988)
- The City of LaFayette built and served a speculative building within its territory but within North Georgia EMC's 500 foot corridor. North Georgia EMC claimed the right to serve under its "corridor rights." LaFayette claimed that under O.C.G.A. § 46-3-8(e)(5) it could extend service to a building that was promoting industrial development, arguing for a broad interpretation of the phrase "devoted to public service." It argued that public service should include any function that a municipality is authorized to engage in under Georgia law.
- The Hearing Officer held that the building was not a "premises devoted to public service;" finding that "public service. . . refers to buildings, structures or facilities owned by electric suppliers that are used or useful in the provision of electric service." Thus, North Georgia EMC was entitled to serve the building.
- The Hearing Officer issued a Supplemental Initial Decision that redefined the term "public service" to services provided by a utility to serve general public needs that could not otherwise be provided economically or properly by competitive private business. He found that a speculative building's sale or lease is not such a service.
- Upon appeal, the Superior Court affirmed the decision.

Right to Serve Own Facilities Devoted to Public Service (Cont.)

Premises Devoted to Public Service

- Mitchell EMC v. City of Sylvester (1982)
- The City of Sylvester's Housing Authority built a development partially located in territory claimed by Mitchell EMC under its 500 foot corridor rights. Mitchell EMC asserted its right to supply the portion of the Housing Authority property within its territory, but the City of Sylvester extended electric service to the entire development Sylvester claimed the right to serve the development as city premises devoted to public services under O.C.G.A. § 46-3-8(e)(5).
- The PSC held for Mitchell EMC finding that the Housing Authority, which is a separate entity from Sylvester, owned the property. The premises were located within Mitchell EMC line's 500 foot corridor, and thus, it had the right to provide electric service.

Grandfather Rights (Cont.)

- "In Substantial Kind" – Like Kind
 - Substantial Renovation
 - Changes in physical structure
 - Changes in use

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Temporary/Construction Service

- “The location of a premises for temporary construction service shall be deemed to be the same as the location of the premises which shall require permanent service after construction.”
- “If temporary construction service is required at one site for the purpose of beginning the construction of premises at two or more sites, this subsection shall not preclude an electric supplier, if chosen by the builder and having the right to serve at least one of the premises to be constructed, from furnishing all of such temporary construction service, notwithstanding the fact that one or more other electric suppliers may have and may exercise the exclusive right thereafter to extend and furnish the permanent service to one or more of the premises being constructed.”
- Also remember – lighting and signs...

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Rights Where Premises Straddle Boundary Lines

When new Premises are located in two or more areas (whether Assigned Areas, Unassigned Area-A, or Unassigned Area-B), the consumer may choose its electric supplier from among those electric suppliers that are eligible to extend service within any of such areas.

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When Lines Do Not Acquire Service Rights

Certain Lines may acquire service rights, such as in the case of corridor rights. However, there are circumstances under which Lines that would otherwise acquire service rights do not acquire such rights.

Service rights do not attached to the following Lines:

- Lines constructed under the large load (consumer choice) exception;
- Lines constructed for the purpose of furnishing wholesale power;
- Lines constructed to serve an electric supplier's own Premises;
- Lines of a Secondary Supplier that are not providing service inside a municipality as of March 29, 1973; and
- Lines not built in accordance with sound utility standards.

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Prohibition Against Discriminatory Rates and Certain Tying Arrangements

Discriminatory rates

- Electric suppliers are prohibited from having or applying any rate, charge, or service rule or regulation which unreasonably discriminates against or in favor of:
 1. any individual consumer as opposed to any other consumer who is or should be in the same class of consumers, or
 1. any class of its consumers as opposed to another class of consumers.
- This prohibition does not apply to any rate, charge, or service rule or regulation relating solely to service rendered by a municipality to consumers whose Premises are located within its limits as they existed on March 29, 1973.
- Remember general equal protection and due process issues.

Prohibition Against Discriminatory Rates and Certain Tying Arrangements (Cont.)

Illegal tying arrangements

Electric suppliers are prohibited from:

1. Requiring that a consumer receive retail electric service from such electric supplier as a condition for receipt of any other goods or other services that are not reasonably related to the furnishing of retail electric service to such consumer's Premises;
1. Offering a consumer lesser charges or more favorable terms or conditions for retail electric service because of such consumer's receiving or agreeing to receive from such electric supplier any other goods or other services that are not reasonably related to the furnishing of retail electric service to such consumer's Premises;

Prohibition Against Discriminatory Rates and Certain Tying Arrangements (Cont.)

Illegal tying arrangements (cont.)

Electric suppliers are prohibited from:

3. Imposing higher charges for any goods or other services that are not reasonably related to the furnishing of retail electric service to a consumer's Premises because of such consumer's failure or refusal to receive retail electric service from that supplier; or
1. Furnishing retail electric service to any Premises which such electric supplier is not entitled to serve.

Prohibition Against Discriminatory Rates and Certain Tying Arrangements (Cont.)

Filing of Rates and Service Rules with PSC

Acworth/DOAS/GPC

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Transfers of Service - Involuntary

- The PSC has the authority to find and determine that the service of an electric supplier is not adequate or dependable or that such electric supplier's rates, charges, service rules and regulations, or the application thereof unreasonably discriminate in favor of or against the consumer utilizing such Premises, or that an electric supplier has instituted illegal tying agreements.
- Upon such determination, the PSC may order such electric supplier to cure its deficiencies.

Transfers of Service - Involuntary (Cont.)

- If the PSC finds and determines that such electric supplier is unwilling or unable within a reasonable time to cure its deficiencies, the PSC may then order such electric supplier to cease or desist from serving such Premises and order any other electric supplier which may reasonably do so to extend and furnish service to such Premises.

Transfers of Service - Voluntary

- Upon the joint application of the affected electric suppliers, the PSC may find and determine that the public convenience and necessity require the transfer of service from one electric supplier to another electric supplier.
- All parties must approve – Customer and both Suppliers
- Must be filed and approved by PSC
- Does not change territorial assignments
- Corridor rights can't be given or taken

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Franchise Fees

- No municipality may, by unreasonably withholding or conditioning right-of-way easements or franchises, defeat, impair, or interfere with the rights and restrictions applying to electric suppliers therein as provided for in the Act.
- However, any Secondary Supplier within a municipality existing on March 29, 1973, and any electric supplier other than the Primary Supplier within any geographic area thereafter annexed to such municipality, shall pay the municipality for street franchise rights a sum of money calculated and payable in the same manner and on the same basis as is utilized with respect to the payment, if any, by the Primary Supplier (other than the municipality itself) for the same or substantially identical rights.

Franchise Fees (Cont.)

- The Act does not abolish any power that an incorporated municipality may have to grant street franchises or, to the extent existing on March 29, 1973, any requirement that any electric supplier must obtain such a franchise in order to use and occupy streets of an incorporated municipality for the purpose of rendering utility services.

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Service Selection and Contracts

- ERCO
- SPNewsprint

PSC Procedures

- General; maps; etc.
- Complaints
- Declaratory judgment
- Assignments
- Appeals
- PSC Hearing is different than a court hearing

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Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of 2001

(a) The legislature finds that it is in the public interest to:

1. Encourage private investment in renewable energy resources;
2. Stimulate the economic growth of Georgia; and
3. Enhance the continued diversification of the energy resources used in Georgia.

(b) The General Assembly further finds and declares that a program to provide distributed generation for eligible cogenerators is a way to encourage private investment in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of this state's energy resource mix, and reduce interconnection and administrative costs.

Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of 2001

1. “Bidirectional metering” means measuring the amount of electricity supplied by an electric service provider and the amount fed back to the electric service provider by the customer's distributed generation facility using the same meter.
2. “Cogeneration facility” means a facility, other than a distributed generation facility, which produces electric energy, steam, or other forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.
- ...
4. “Customer generator” means the owner and operator of a distributed generation facility.
 1. “Distributed generation facility” means a facility owned and operated by a customer of the electric service provider for the production of electrical energy that:
 - A. Uses a solar Photovoltaic system, fuel cell, 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. Operates in parallel with the electric service provider's distribution facilities;
 - E. Connected to the electric service provider's distribution system on either side of the electric service provider's meter; and
 - F. Is intended primarily to offset part or all of the customer generator's requirements for electricity.
- ...
7. “Electric service provider” means any electric utility, electric membership corporation, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.
 1. “Electric supplier” means any electric utility, electric membership corporation furnishing wholesale service, any municipal electric utility or any other person which furnishes wholesale service to any municipality, and the Tennessee Valley Authority.
- ...
- (12) “Renewable energy sources” means energy supplied from technologies as approved in the Georgia Green Pricing Accreditation Program.

Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of

2001 An electric service provider:

1. Shall make either bidirectional metering or single directional metering available to customer generators depending on how the distributed generation facility is connected to the distribution system of the electric service provider;
2. Shall enter into a written agreement with the customer generator to charge the customer generator the rate established by the PSC, or the appropriate governing body, in the case of any other electric service provider or electric supplier, for metering services;
3. In setting the fees for metering service, the PSC, or the appropriate governing body, in the case of any other electric service provider or electric supplier, will include the direct costs associated with interconnecting or administering metering services or distributed generation facilities and will not allocate these costs among the utility's entire customer base; and
4. In establishing such a fee for metering services, the electric service provider shall not charge the customer generator any standby, capacity, interconnection, or other fee or charge, other than a monthly service charge, unless agreed to by the customer generator or approved by the PSC, in the case of an electric utility, or the appropriate governing body, in the case of any other electric service provider or electric supplier.

Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of 2001

- a. Any person may operate a cogeneration facility without being subject to the jurisdiction or regulation of the PSC if such person uses all of the electric energy, steam, or other form of useful energy produced at such cogeneration facility. The electric energy shall not be sold to any other person except as provided in subsection (b) of this Code section.
- a. Any person may operate a cogeneration facility and sell any excess electric energy to an electric supplier without being subject to the jurisdiction or regulation of the PSC; provided, however, that nothing in this article shall except a person from compliance with federal law.

Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of 2001

- a. Any person may operate a cogeneration facility without being subject to the jurisdiction or regulation of the PSC if such person uses all of the electric energy, steam, or other form of useful energy produced at such cogeneration facility. The electric energy shall not be sold to any other person except as provided in subsection (b) of this Code section.
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Frequently Asked Questions

Georgia Cogeneration and Distributed Generation Act of 2001

- An electric service provider will only be required to purchase energy under the Act from an eligible customer generator on a first-come, first-served basis until the cumulative generating capacity of all renewable energy sources equals 0.2 percent of the utility's annual peak demand in the previous year.
- No electric service provider will be required to purchase such energy at a price above avoided energy cost unless that amount of energy has been subscribed under any renewable energy program.
- A distributed generation facility used by a customer generator shall include, at the customer's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the National Electrical Code, National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.
- The appropriate governing body may adopt by regulation additional safety, power quality, and interconnection requirements for customer generator as it determines are necessary to protect public safety and system reliability.
- No electric service provider or electric supplier shall be liable to any person, directly or indirectly, for loss of property, injury, or death resulting from the interconnection of a cogenerator or distributed generation facility to its electrical system.

Frequently Asked Questions

PURPA

Qualified Facilities

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What's a Supplier to do?

Contact us:

Peter K. Floyd, Esq.

Phone: 404-881-4510

[E-mail: peter.floyd@alston.com](mailto:peter.floyd@alston.com)

Timothy Wang, Esq.

Phone: 404-881-7348

[E-mail: timothy.wang@alston.com](mailto:timothy.wang@alston.com)

Alston & Bird LLP

www.alston.com

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