

September 2, 2010

Public Service Commission Affirms Hearing Officer's Decision that a Switch from Master Meter to Individual Metering of Apartments Does Not Impact Territorial Rights

On August 18, 2010, the Public Service Commission ("Commission") affirmed the Hearing Officer's decision in *In Re: Excelsior Electric Membership Corporation v. Georgia Power Company* (Docket No. 28607), in which Excelsior EMC challenged Georgia Power's provision of electric service to approximately 984 apartment units comprising the Campus Club-Statesboro apartment complex. The Commission held that there was "no basis under the Territorial Act to require Georgia Power to surrender its right to serve Campus Club." (Order Adopting The Hearing Officer's Initial Decision, p. 5.)

The dispute involved an apartment complex located exclusively within Excelsior EMC's assigned service territory. The apartments were housed in approximately 17 separate buildings. When the apartments were completed in 2001, they were treated more like furnished dormitory rooms than apartments and were served through a master meter. Because the connected electrical load at initial full operation was greater than 900 kW for the entire Campus Club apartment complex, the premises was "customer choice," and the customer selected Georgia Power to serve. Georgia Power has been serving the apartments since that time.

In late 2007, new additional meters were added to each of the individual apartments within Campus Club. Excelsior EMC brought suit alleging that because the apartments were now individually metered, Georgia Power was not entitled to serve the apartment complex pursuant to O.C.G.A. § 46-3-8(a) (the "large load exception"). Further, Excelsior EMC contended that Georgia Power was not entitled to continue serving the premises under the "grandfather clause," O.C.G.A. § 46-3-8(b), because each bedroom in each apartment was billed individually based on electricity usage. No individual apartment building, apartment unit or bedroom had a connected load of 900 kW or greater when the individual meters were installed. Georgia Power argued that because it lawfully extended electric service through one meter serving the *entire* apartment complex pursuant to the large load exception, it had the right to extend service to the individual apartments by virtue of the grandfather clause.

The main issue in the dispute was whether the entire Campus Club apartment complex continued to constitute one "premises" even after the apartment units were separately metered, or if each unit should be considered a separate premises. Excelsior EMC asserted that the statutory definition of "premises" prohibits multiple structures from being aggregated into "one premises" if, at any time, permanent service to any of those structures is separately metered, and the charges are calculated independently of charges for service to any other building, structure or facility. O.C.G.A. § 46-3-3(6).

On November 25, 2008, Georgia Power filed a motion to dismiss. The basis for the motion was that Georgia Power had been lawfully serving Campus Club as a large load for seven years and was entitled to continue to do so under the grandfather clause. On March 25, 2009, Excelsior EMC filed a short motion for summary judgment. The Hearing Officer issued a decision on April 9, 2010, in which he agreed with Excelsior EMC that when separate meters were installed, each of the individual apartments became separate premises. (Initial Decision, pp. 4, 5) ("Campus Club by law is no longer a single premises. . . . It is clear that by law the individual units at Campus Club are each new premises.")

The Hearing Officer rejected Excelsior's argument, however, that under *Sawnee EMC v. Georgia PSC*, 273 Ga. 702 (2001), Georgia Power no longer had the right to serve the apartments because none of the

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individual apartments met the conditions of a large load. Instead, the Hearing Officer concluded because Georgia Power had been lawfully serving the apartments and none of the exceptions to the grandfather clause applied, there was no basis under the Territorial Act to deny Georgia Power the right to continue to serve. The Hearing Officer stated that *Sawnee* did not apply because Georgia Power's service was lawful at the time it was extended.

The full Commission adopted the Hearing Officer's Initial Decision, agreeing that while the apartments became new, separate premises when individual meters were installed, there was no legal basis for denying Georgia Power the right to continue service under the grandfather clause.

Excelsior EMC was represented by Steven T. Minor and Richard G. Tisinger, Jr. of Tisinger Vance, PC. Georgia Power was represented by Robert P. Edwards and Heather Shirley Smith of Troutman Sanders LLP.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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