A Basic Guide to the Georgia Territorial Act

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■ A Basic Guide to the Georgia Territorial Act ■
Introduction

Purpose of the Guide

- The purpose of this Guide is to summarize and explain those provisions of the Georgia Territorial Electric Service Act that are most commonly implicated in competitive disputes.

- For ease of reading, provisions of the Territorial Act have been paraphrased throughout the Guide. However, because the specific terms of the Act are often critical, this Guide should not be used as a substitute for a close reading of the Act. For this reason, citations to the relevant provisions of the Territorial Act are provided. The complete Act is set forth at O.C.G.A. §§ 46-3-1 through 46-3-15.

Judicial Interpretation of the Territorial Act; Definitions

- Since the Territorial Act was adopted in 1973, the Act has been the subject of numerous interpretations by the Public Service Commission and the Courts, and new interpretations are issued every year. In determining legal rights, these interpretations can be as important as the specific language of the Act itself. Accordingly, advice of counsel is recommended in order to obtain the most recent interpretations of the Territorial Act.

- Certain terms have specific definitions under the Territorial Act. These definitions can be found at O.C.G.A. § 46-3-3. Some of the more important definitions are set forth in a glossary at the end of this Guide. These include the terms "assigned area," "line," "premises," "primary supplier" and "secondary supplier."
I. Assignment of Territory

See O.C.G.A. §§ 46-3-3(1); 46-3-4; 46-3-5.

General rule

- Generally, an electric supplier has the exclusive right to provide electric service to all new “premises” locating within its assigned area. The term “premises” has a special definition under the Territorial Act, which is set forth in the Glossary at the end of this Guide.

Assignment of territory

- Geographical areas located within municipalities were assigned under the Territorial Act to the primary supplier in each municipality.

- Geographical areas located outside municipalities were assigned to electric suppliers by the Public Service Commission in the mid-1970s, after the Territorial Act was passed.

- Assigned areas are shown on territory maps on file with the Public Service Commission, often referred to as "B" maps.
II. Unassigned Areas

See O.C.G.A. §§ 46-3-3(11); 46-3-3(12); 46-3-4.

General rule

- Some areas have not been assigned to any electric supplier. If an area has not been assigned, it may qualify as either an “unassigned area-A” or an “unassigned area-B.” The different rights and restrictions applicable to these areas are set forth at O.C.G.A. §§ 46-3-3(11) and (12).

- An “unassigned area-A” is a geographic area which, between March 29, 1973 and September 1, 1975, was not an assigned area and was not declared to be an unassigned area.

- An “unassigned area-B” is a geographic area which has not been assigned and which has been declared by the Commission to be an unassigned area-B or which becomes an unassigned area-B by operation of the Territorial Act.

- If an area qualifies as an “unassigned area-B,” premises locating therein generally are customer choice loads – any electric supplier may serve the premises if chosen by the consumer. However, if such premises are located within 500 feet of an electric supplier’s line, and more than 500 feet from the lines of every other electric supplier, the electric supplier owning the line has the exclusive right to serve such premises. See Section III below (“Corridor Rights”).
III. Corridor Rights

See O.C.G.A. §§ 46-3-3(12); 46-3-4(4); 46-3-5.

General rule

- Certain lines carry "corridor rights," giving the electric supplier owning such lines the right to serve new premises locating within 300 or 500 feet of such lines.

- Corridor rights give an electric supplier the right to serve premises located within another electric supplier's assigned area.

- As explained below, corridor rights may be exclusive or non-exclusive (customer choice).

- Different requirements and restrictions apply, depending on whether the line having corridor rights is located outside municipal limits, inside municipal limits, or within an “unassigned area-B.”

  - These requirements and restrictions are set forth below.

Notes

- The Territorial Act does not use the phrase "corridor rights." The provisions granting corridor rights are found at O.C.G.A. §§ 46-3-4(4) (for areas outside municipalities) § 46-3-5 (for areas inside municipalities), and § 46-3-3(12) (for lines located in an unassigned area-B).

- If a line operates at a potential of 120,000 volts or more, it probably does not qualify as a "line" under the Territorial Act. See definition of "line" below.
Corridor rights OUTSIDE municipal limits

■ For a line located outside municipal limits to possess corridor rights, the following requirements must be met:

■ The line must be “enclosed,” i.e., it must extend into or completely cross the assigned area of another electric supplier.

■ The line must not have “occasioned an assignment or unassignment of land.” This has been interpreted to mean that a line which serves as a territorial boundary line does not have corridor rights.

■ The line must have been enclosed on the date of territorial assignment.

■ When these requirements are met, a 500 foot corridor is created. It may be exclusive or non-exclusive (customer choice):

■ The electric supplier owning such a line has the exclusive right to extend service to all new premises locating at least partially within 500 feet of such a line, so long as no part of the premises is located within 500 feet of the lines of the electric supplier to whom the territory has been assigned (the “assignee electric supplier”).

■ The electric supplier owning such a line has the right, if chosen by the consumer, to extend service to new premises which are
located at least partially within 500 feet of its lines and partially within 500 feet of the lines of the assignee electric supplier.

- The line must not be disqualified from acquiring service rights under the Territorial Act. See Section VIII below and the definition of “line.”

**Corridor rights INSIDE municipal limits**

- Ordinarily, the primary supplier within a municipality has the exclusive right to serve new premises locating within the municipality. However, a line owned by a secondary supplier within a municipality may have corridor rights.

- For a line located inside municipal limits to possess corridor rights, the following requirements must be met:
  
  - The line must have been located within the corporate limits of a municipality as of **March 29, 1973**.
  
  - The line must not be disqualified from acquiring service rights under the Territorial Act. See Section VIII below and the definition of “line.” Among other restrictions, if a line was located within a municipality as of March 29, 1973, but was not providing retail service within the municipality on that date, the line does not acquire corridor rights as to any premises located within such municipal limits as they existed on that date.
When these requirements are met, a 300-foot corridor is created. It may be either exclusive or non-exclusive (customer choice).

A secondary supplier owning such a line has the **exclusive** right to extend service to new premises locating at least partially within 300 feet of its line, so long as no part of the premises is located within 300 feet of the lines of any other electric supplier.

A secondary supplier owning such a line has the right, **if chosen by the customer**, to extend service to new premises locating at least partially within 300 feet of both its lines and the lines of any other electric supplier.

**Corridor rights in an "unassigned area-B"**

Ordinarily, new premises locating within an "unassigned area-B" are customer choice loads.

However, if the new premises in such an area are located within 500 feet of an electric supplier's line and more than 500 feet from the lines of every other electric supplier, the electric supplier owning the line has the exclusive right to serve such premises.

Lines constructed on March 29, 1973 or thereafter lawfully constructed may acquire corridor rights under this provision. The line must not be disqualified from acquiring service rights under the Territorial Act. See Section VIII below and the definition of “line.”
IV. Large Load Exception
(Customer Choice)

See O.C.G.A. § 46-3-8(a).

General rule

- New premises that have a connected load of 900 kilowatts or greater at the time of initial full operation may qualify as "customer choice" loads. If so, the consumer may select its electric supplier from among those suppliers eligible to serve the premises.

- Several requirements must be met before this rule applies. These are described below.

Requirements for large load exception to apply

- The premises must be utilized by only one consumer.

- The premises must have single-metered service.

- The connected load must be 900 kilowatts or greater at the time of "initial full operation."

- The rule applies to "one or more new premises," but if more than one, such premises must be located on the same tract or on contiguous tracts of land.

Electric suppliers eligible to serve under the large load exception

If the above requirements are met, the following electric suppliers may serve the premises if chosen by the consumer:
If the premises are located anywhere within the limits of a municipality as they existed on March 29, 1973, then the primary supplier within that municipality may serve the premises.

If the premises are located within the limits of a municipality as they existed on March 29, 1973, and within 300 feet of the lines of the secondary supplier within the municipality, then the secondary supplier may serve the premises.

If the premises are located within the initial corporate limits of a wholly new municipality, any electric supplier may serve the premises.

If the premises are located in a geographic area annexed to a municipality after March 29, 1973, then any electric supplier owning lines in the municipality may serve the premises.

If the premises are located outside the limits of a municipality, then any electric supplier may serve the premises.

Notes

The large load provision of the Territorial Act has been the subject of considerable litigation. Disputed issues have included the following:

- Can the loads of individual buildings or facilities be combined for purposes of this exception?
- What qualifies for single-metered service?
- When is initial full operation reached?
What is the proper method for calculating connected load?

It is recommended that cooperatives seek legal advice to determine the latest rulings from the Commission on these and other issues.
V. Grandfather Rights

See O.C.G.A. § 46-3-8(b).

General rule

- Regardless of other provisions of the Territorial Act, including territorial assignments and corridor rights, an electric supplier that was lawfully serving any premises on March 29, 1973, has the exclusive right to continue serving such premises.

- An electric supplier that lawfully extends service to any premises after March 29, 1973, also has the exclusive right to continue serving such premises.

Rights when premises are later disconnected

- The exclusive right to serve described above continues even if the premises have become disconnected from service.

Reconstruction in substantial kind

- The exclusive right to serve described above continues even if the premises have been destroyed or dismantled, so long as the premises are reconstructed in substantial kind on approximately the same site.
VI. Right to Serve Own Facilities
Devoted to Public Service

See O.C.G.A. § 46-3-8(e)(5).

General Rule

- An electric supplier may extend service to any of its own premises devoted to public service, even if such premises have already been served by another electric supplier.

- No line constructed for such purpose after March 29, 1973, shall acquire service rights.
VII. Rights Where Premises Straddle Boundary Lines

See O.C.G.A. § 46-3-8(g).

General Rule

- When new premises are located partially within one assigned area and partially within another, the consumer may choose its electric supplier from among those electric suppliers which are eligible to extend service within either area.

- The same rule applies when new premises straddle the boundary lines of unassigned areas.
VIII. When Lines Do Not Acquire Service Rights

See O.C.G.A. § 46-3-8(e).

As noted above, important service rights--corridor rights, for example--may attach to lines. In some circumstances, however, lines that would otherwise acquire service rights do not acquire such rights. These circumstances are described below.

- **A line constructed under the large load exception**
  - If, after March 29, 1973, an electric supplier builds a line inside another electric supplier's assigned area or inside a municipality to serve premises which, but for the "large load" exception, it would not have had the right to serve, then no portion of that line shall acquire any other service rights therein.

  - Also, such a line shall not impair or diminish any service rights of an assignee electric supplier or the service rights accruing to the lines of any electric supplier inside any assigned area or municipality.

  - The electric supplier owning such a line may extend service from the line to any other premises which it otherwise has the right to serve.

  - This rule also applies to such lines built in unassigned areas. See O.C.G.A. § 46-3-8(e)(1) and (2).
- **A line constructed for the purpose of furnishing wholesale service**
  - If a line is built after March 29, 1973, for the initial sole purpose of furnishing service at wholesale, then no portion of the line shall acquire any other service rights.
  - Also, such a line shall not impair or diminish the service rights of any assignee electric supplier or the service rights accruing to the lines of any electric supplier.
  - The electric supplier owning such a line may extend service from the line to any other premises which it otherwise has the right to serve.

- **A line constructed to serve an electric supplier's own premises**
  - If a line is built after March 29, 1973, for the purpose of extending service to an electric supplier's own premises devoted to public service, then the line shall not acquire any other service rights.
  - Also, such a line shall not impair or diminish the service rights of any assignee electric supplier or the service rights accruing to the lines of any electric supplier.
  - The electric supplier owning such a line may extend service from the line to any other premises which it otherwise has the right to serve.
A line of a secondary supplier which is not providing service inside a municipality on March 29, 1973

If a secondary supplier owns a line within a municipality, but the line is not providing retail service within the municipality on March 29, 1973, then the line does not acquire any service rights to provide retail service to any premises located within such municipal limits as they exist on that date.

Lines not built in accordance with sound utility standards

If an electric supplier constructs a line in violation of sound utility standards so as arbitrarily to preempt areas or arbitrarily to gain service rights for such a line, then the Commission has the authority to declare that the line shall not acquire service rights.

The Commission also has authority to order the offending electric supplier to stop building the line or to relocate it.
IX. Prohibition Against Discriminatory Rates and Certain Tying Arrangements

See O.C.G.A. § 46-3-11.

Discriminatory rates

- Electric suppliers are prohibited from having any rate, charge, or service rule or regulation that is unreasonably discriminatory.

- The specific rule provides in pertinent part:

  - Every electric supplier is prohibited from having or applying any rate, charge, or service rule or regulation which unreasonably discriminates against or in favor of (1) any member of a class of consumers as opposed to any other consumer who is or should be in the same class of consumers for such purposes, or (2) any class of its consumers as opposed to another class of consumers for such purposes.

Illegal tying arrangements

- The Territorial Act also prohibits certain so-called "tying arrangements," that is, the practice of "tying" one product or service to another.

- The specific rule provides that every electric supplier is prohibited from, directly or indirectly:

  - Requiring that a consumer receive retail electric service from such electric supplier as a condition for such consumer to receive from such electric supplier or
any other person any goods or other services that are not reasonably related to the furnishing of retail electric service to such consumer's premises.

- 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 goods or other services that are not reasonably related to the furnishing of retail electric service to such consumer's premises.

- 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.
X. Transfers of Service

See O.C.G.A. § 46-3-8(c) and (d).

In certain situations, the Commission has authority to transfer service from one electric supplier to another, or to reassign an assigned area. These situations are outlined below.

Transfer of service upon joint application of utilities

Upon joint application of the affected electric suppliers, the Commission has the authority to find that the public convenience and necessity require the transfer of service to a premises from one electric supplier to another.

Certain procedures must be followed before the Commission may order a transfer of service under this rule.

Transfer of service due to inadequate service or discriminatory rates or practices

If the Commission finds that an electric supplier's service to any premises is not adequate or dependable, or that such electric supplier's rates, charges, service rules or regulations are unreasonably discriminatory, or that an electric supplier has engaged in unlawful tying arrangements (as described above), then the Commission has the authority to order the electric supplier to stop serving the premises and to order another electric supplier to provide service.

The Commission may take such action only after giving the offending electric supplier the opportunity to correct its ways.
Transfer of assigned service area due to breach of tenets of public convenience and necessity

- If the Commission determines that an assignee electric supplier has breached the tenets of public convenience and necessity within an assigned area, the Commission may reassign all or any portion of the assigned area to another electric supplier.
XI. Franchise Fees

See O.C.G.A. 46-3-14.

The Territorial Act contains provisions regarding the imposition of franchise fees by municipalities. However, other provisions of law not contained in the Territorial Act are relevant on the matter of franchise fees. Also, the Courts of Georgia have issued decisions regarding franchise fee disputes. Therefore, it is beyond the scope of this Guide to summarize the law regarding franchise fees. It is recommended that advice of counsel be sought on such matters.
Glossary

Note: Below are selected definitions from the Territorial Act. These and other definitions are set forth at O.C.G.A. § 46-3-3.

"Assigned area"

An enclosed geographic area assigned to only one electric supplier and inside which the assignee electric supplier has the exclusive right to extend and continue furnishing service to new premises, except as otherwise provided in the Territorial Act.

"Line"

Any conductor for the distribution or transmission of electricity other than a conductor operating at a potential of 120,000 volts or more. However, 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.

"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 one premises; provided, however, that 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 of charges for service to any other building, structure, or facility; provided, further, that an outdoor light, or an outdoor sign requiring less than
2200 watts, shall not constitute a premises.

"Primary supplier"

The "primary supplier" within a municipality in existence on March 29, 1973, means, either:

- (a) That electric supplier which, on March 29, 1973, is furnishing service to the majority or to a plurality, whichever is the case, of the retail electric meters then inside the corporate limits of the municipality; or

- (b) That electric supplier to which the commission has reassigned a geographic area, previously assigned to another electric supplier, located within such municipality as its limits existed on March 29, 1973.

"Secondary supplier"

The "secondary supplier" within a municipality in existence on March 29, 1973, means any electric supplier which owns lines on that date within such municipality and which is not a primary supplier.
About the Author

For many years, the lawyers in the Electric and Utility Practice Group of Sutherland Asbill & Brennan have been involved in assisting the EMCs of Georgia in disputes with competitors. This work has included cases before the Public Service Commission, franchise fee litigation and competitive bidding disputes.

Additionally, James Orr has extensive expertise in matters involving the Georgia Territorial Electric Service Act. This includes:

**Litigation Experience**
- Lead counsel in over 30 Territorial Act cases for 19 different EMCs.

**Territorial Act Newsletter**
- Conceived of and launched publication of the *Georgia Territorial Act Newsletter* in 1990, reporting on cases and developments under the Territorial Act.
- The *Newsletter* is distributed approximately three times a year to the EMCs and EMC attorneys, at no charge.

**Speaker on Territorial Act Matters**
- Frequent speaker to EMCs and EMC lawyers on Territorial Act issues and other matters of interest to EMCs.