

July 18, 2013

Georgia Court of Appeals Answers One Critical Question—But Declines to Answer Another—on the Effect of Single Metering for Apartment Units Under the Georgia Territorial Act

The Georgia Court of Appeals has recently affirmed the Public Service Commission's ruling that the grandfather clause permits an electric supplier to continue to serve an apartment building, even when the individual apartments are later converted to single metering. *Excelsior EMC v. Georgia PSC*, A13A0154 (Ga. Ct. App. July 5, 2013).

In explaining its decision, the court accepted that, when new meters are installed for individual apartments within a single complex, those apartments become new premises for purposes of the Georgia Territorial Act. But the court nonetheless determined that the grandfather clause permitted the original electric supplier—that previously had been serving the apartment building under a single meter—to continue serving the individually metered apartments because (1) the original service was lawfully provided; and (2) none of the exceptions to the grandfather clause applied.

The court further distinguished another Territorial Act case involving single metering in an apartment building, *Sawnee Electric Membership Corp. v. Georgia PSC*, 237 Ga. 702 (2001). In *Sawnee*, the Georgia Supreme Court held that where “electric service to the individual apartments is separately metered and the charges for service to each tenant are calculated independently, the complex cannot be considered ‘one premises’ within the statutory definition.” *Id.* at 705. Nonetheless, the Court of Appeals held that *Sawnee* only addressed the definition of “premises” at the time the customer makes its selection of an electrical supplier. The Court of Appeals also noted that the grandfather clause was not at issue in *Sawnee*.

Notably, the Court of Appeals declined to address whether the grandfather clause was inapplicable in this case because the original supplier, Georgia Power, no longer provides “retail electric service.” As defined by the Territorial Act, “retail electric service” excludes wholesale service and sales for resale. Excelsior argued that Georgia Power's service to the apartment complex was “wholesale” or a “sale for resale” to the owner of the complex (who had installed the submeters) and so that service was not protected under the grandfather clause. But the Court of Appeals affirmed the superior court's determination, after remand, that this argument had not been properly raised before the Public Service Commission, and thus the issue was not decided.

On July 12, 2013, Excelsior filed a notice of intent to petition the Georgia Supreme Court to review this decision.

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

■ ■ ■

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

[James A. Orr](#)

[Benjamin C. Morgan](#)

404.853.8578

404.853.8176

james.orr@sutherland.com

ben.morgan@sutherland.com