

HABERSHAM ELECTRIC MEMBERSHIP CORPORATION

**Rules and Procedures
Governing Conduct of PURPA Proceedings**

Pursuant to the Public Utility Regulatory Policies Act of 1978

**(as amended by the Energy Independence
and Security Act of 2007)**

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Rule 1. GENERAL INFORMATION

1.1 Construction and Intent

These Rules have been adopted by Habersham EMC (“EMC”) to govern the hearing(s) to be conducted by non-regulated electric utilities in accordance with the Public Utility Regulatory Policies Act of 1978, as amended by the Energy Independence and Security Act of 2007 (hereinafter “PURPA”). The Rules are intended to facilitate the orderly and efficient conduct of these PURPA hearings.

1.1.1 Computation of Time

Where any deadline specified herein falls on a Saturday, Sunday or legal holiday recognized by the State of Georgia, any filing or other action due on that date shall be due by the close of business on the next business day following the weekend/holiday. Unless otherwise specified, the “close of business” shall be 4:30 p.m. Eastern time, and all due dates shall be construed to mean that the action is due by the close of business. Unless otherwise specified, filings due to the EMC and/or the Moderator shall be considered to have been “filed” on the date they are received. Unless otherwise specified, requests for information or responses shall be considered to have been “served” on the date on which they are postmarked, delivered to an overnight delivery carrier, and/or hand-delivered to the recipient, except that documents hand-delivered after the close of business shall be considered to have been served on the next business day. The Moderator for good cause shown may extend or enlarge any deadlines set forth herein.

1.2 Scheduling and Content of Hearings

The EMC shall in its sole discretion determine the number, location and scheduling of the hearing(s) to address the PURPA standards set forth below. The EMC may hold the hearing(s) jointly with one or more other EMCs. The PURPA standards are as follows:

- (1) Integrated resource planning (16 U.S.C. § 2621(d)(16));
- (2) Rate design modifications (16 U.S.C. § 2621(d)(17)); and
- (3) Smart grid information (16 U.S.C. § 2621(d)(17)).

1.3 Moderator

The EMC may in its sole discretion appoint one or more Moderators to preside over the conduct of public hearing(s). The Moderator shall have the responsibility and authority to: administer oaths and affirmations; rule upon requests for information; regulate the course of the hearing; dispose of petitions to intervene; reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Moderator; and exercise such other powers as necessary to the fair and orderly conduct of the hearing.

1.4 Format and Timing of Filings

Any person submitting testimony, exhibits, comments, or other written submissions of any kind intended to become part of the hearing record must file with the EMC an original and twelve (12) copies of all materials, and, unless lacking the ability to do so, must in addition file a CD-ROM containing an electronic version of its filing in Microsoft Word, Excel and/or "pdf" format. Filings must be directed to the following address:

Habersham EMC
Attn: Rodney Pugh
P O Box 25
6135 State Highway 115
Clarkesville, GA 30523

Filings may be made by hand delivery, by United States mail, or by overnight delivery service, provided that a document shall be considered to have been "filed" on the date that it is received by the EMC. The EMC shall stamp each properly identified filing with the date of receipt, provided that any document delivered to the EMC for filing after 4:30 p.m. shall be stamped as having been filed on the following business day.

All filings must identify the person on whose behalf the filing is made, including that person's address.

Except as otherwise provided in these Rules, all documents, testimony, exhibits and other material filed with the EMC shall also be served upon all Parties of Record in the proceeding.

Rule 2. NOTICE OF HEARING

2.1 Timing

Public notice of the date, time and location of the hearing(s) shall be provided at least ninety (90) days prior to the date of such hearing. In the event that more than one hearing is scheduled, public notice of multiple hearing dates, times and locations may be disseminated on a consolidated basis, in accordance with Rule 2.3.

2.2 Content

The notice shall include the date, time and location of the hearing. The notice shall list the PURPA standards to be considered at the hearing. The notice shall also contain a concise description of the process for intervening or otherwise participating in the hearing, or the process by which interested persons may obtain a copy of these Rules and Procedures to ascertain that information.

2.3 Publication of Notice

Notice of each hearing may be provided by any one or more of the following means:

- (a) Posting on the website of the EMC;
- (b) Publication in Georgia Magazine;
- (c) Publication in the EMC's newsletter sent to members;
- (d) Inclusion of notice in members' monthly bills;
- (e) Publication in a legal notice to be placed in the legal organ in every county served by the EMC.

Rule 3. PARTIES OF RECORD; INTERVENTION PROCEDURE

3.1 Parties of Record

In any proceeding conducted pursuant to these Rules, the EMC and all persons who have been granted intervenor status shall be Parties of Record with full rights of participation as set forth in these Rules. The EMC shall not be required to submit a petition to intervene.

3.2 Right to Intervene

The United States Secretary of Energy and any electric consumer of the EMC may petition to intervene and participate as a matter of right in any proceeding conducted pursuant to these Rules.

3.3 Petitions to Intervene

3.3.1 Filing and Service

Any person or entity identified in Rule 3.2 above who wishes to participate in the hearing process as an intervenor shall file with the EMC in accordance with Rule 1.4 a petition for intervenor status not later than sixty (60) days before the scheduled date of the hearing.

3.3.2 Contents

All petitions to intervene shall be in writing; shall be verified by the person or entity requesting intervention; shall set forth with particularity the facts pertaining to his interest and the grounds upon which his application for intervention are based; shall identify which of the three PURPA standards the petitioner intends to address; shall include the name, address and telephone number of the petitioner; and shall, as to Members, include the EMC electric service account number of the Member represented. Where the EMC is a joint participant with other EMCs in a single hearing, the petition shall indicate the particular EMC proceeding in which the petitioner seeks to intervene.

3.4 Approval or Denial of Petition to Intervene

Upon receipt of a petition to intervene, the Moderator shall review the petition to determine compliance with Rules 3.2 and 3.3. Upon receiving the result of the review from the Moderator, the EMC shall notify the petitioner whether the petition to intervene has been granted. Upon granting the petition, the Moderator shall assign a unique identification number to the intervenor for purposes of better accounting for and creating the record of the hearing. The intervenor must include the identification number on all written testimony, exhibits and other submissions.

3.5 Rights of Parties of Record

Each Party of Record shall have the right to participate in the hearing process, including the right to request information, and to present direct testimony and exhibits; provided, however, that the Moderator may, in his sole discretion, limit the scope of intervenor participation where necessary or appropriate to prevent duplication, waste of time, confusion, or presentation of cumulative material.

Rule 4. LIMITED APPEARANCE

4.1 Scope

Any interested person may make a limited appearance, by oral or written statement (or both), without intervening. Any such statement shall be included in the record of the proceeding, but such person shall not be entitled to receive copies of filings by Parties of Record, shall not have the right to request information as provided in Rule 5, and shall not otherwise participate in the proceeding.

4.2 Written Statement

Any interested person, no later than thirty (30) days after the conclusion of the hearing, may file a written statement setting forth his or her views on the relevant issues. Such statement shall be filed in accordance with Rule 1.4, except that the statement need not be served on all Parties of Record.

4.3 Oral Statement

Any interested person may make an oral statement at the hearing in accordance with Rule 7.1.4.

Rule 5. REQUEST FOR INFORMATION

5.1 Scope

Parties of Record are entitled, upon proper request, to review and copy such materials in the possession, custody or control of another Party of Record as are relevant to their participation. No discovery shall be had of materials: (1) that contain trade secrets; (2) that contain confidential or proprietary information; (3) that are protected against disclosure by the attorney-client privilege, the work-product doctrine, or any other legal protection against disclosure; (4) that the Moderator determines are not reasonably related to the issues as to which the Party of Record's participation relates; or (5) as to which the Moderator determines production would be unreasonably burdensome, costly or time-consuming.

5.2 Discovery Period

All requests for information shall be served no later than forty-five (45) days before the scheduled date of the hearing, and all discovery, including requests to the Moderator pursuant to Rule 5.3.3, shall be completed not later than twenty (20) days prior to the hearing date.

5.3 Requests for Information

5.3.1 Format and Content

Requests for information shall be in the form of: (1) requests for the production of documents, or (2) requests for information. Requests must identify with specificity the documents or information sought, including (where applicable) the scope of the time period covered by the request. Where the hearing involves multiple EMC participants, a Party of Record may request information only in the proceeding in which intervenor status has been granted. Each Party of Record shall serve no more than twenty (20) requests for the production of documents and no more than twenty (20) requests for information, including subparts, upon any other Party of Record, except that the Moderator may, for good cause shown, expand these limits.

5.3.2 Service

All requests for information shall be served upon the entity from whom discovery is sought. The party upon whom the request is served shall serve a written response and objections, if any, within fourteen (14) days after the service of the discovery requests. The time for serving responses and objections may be extended by the Moderator for good cause.

5.3.3 Rulings on Discovery Requests

A party dissatisfied with a discovery response may file a request to compel discovery with the Moderator within ten (10) days of service of such response. A copy of the request must be served simultaneously upon the party from whom discovery is sought, who may file a brief response to the request within seven (7) days of the date of service. The party filing such a request with the Moderator shall simultaneously file a certificate, signed by such party or his representative, stating that the parties have conferred in a good faith effort to resolve their discovery dispute. The Moderator shall have the sole and exclusive authority to rule on such request and the propriety of any discovery response, and may refuse to grant discovery, may limit the scope of a discovery request, and may impose reasonable preconditions upon receipt of discovery, including the redaction of confidential portions of documents or entry into a confidentiality agreement.

5.3.4 Payment of Costs

Any party requesting discovery shall pay the reasonable costs associated with retrieving and copying requested information or documents.

Rule 6. PRE-FILED TESTIMONY

6.1 Testimony and Exhibits

All Parties of Record shall file with the EMC, and serve upon all other Parties of Record, no later than ten (10) days prior to the date of the hearing, copies of all testimony to be offered at the hearing, along with a copy of any exhibits intended to be offered into the record. All pre-filed testimony shall be in question/answer format. Rebuttal testimony offered live at the hearing need not be pre-filed.

6.2 Availability of Pre-Filed Testimony and Exhibits

All pre-filed testimony and exhibits shall be made available for public inspection by interested persons at the headquarters office of the EMC by appointment during the hours of 9:00 a.m. to 4:00 p.m., Monday – Friday. Copies of pre-filed testimony and exhibits will be available for purchase at the cost of copying during these hours at the headquarters office of the EMC.

Rule 7. HEARING PROCEDURE

7.1 Order of Presentation

The Moderator shall, to the extent practical, adhere to the following sequence of presentation: (1) limited appearances; (2) direct testimony of EMC witnesses; (3) direct testimony of intervenor witnesses; (4) rebuttal testimony; provided, however, that the Moderator,

in his sole discretion, may vary from this order of presentation as necessary or appropriate. All testimony shall be taken down by a certified court reporter.

7.1.1 Method of Presenting Direct Testimony

To the extent that a witness has pre-filed written testimony, such testimony may be accepted into the record upon being sponsored by the witness, and need not be repeated in full at the hearing.

7.1.2 Rebuttal Testimony

Any Party of Record may offer at the hearing rebuttal testimony and exhibits in response to any pre-filed testimony.

7.1.3 Examination of Witnesses

The Moderator and any member or representative of the EMC Board of Directors (“Board”) may ask questions of witnesses and presenters. Cross-examination of witnesses shall not be permitted, except that Parties of Record may submit questions to the Moderator, who may in his discretion pose such questions to witnesses if the Moderator believes that such inquiry will clarify the record or assist the Board in reaching its decision.

7.1.4 Limited Appearance

Any interested person who has not previously qualified as an intervenor may make an oral statement at the hearing regarding his or her position on the issues within such limits and on such conditions as may be fixed by the Moderator; but he or she may not otherwise participate in the proceeding. For updated information regarding the time and place for making oral statements, interested persons should check the EMC website prior to the date of hearing or call the PURPA Compliance Officer of the EMC.

7.2 Rules of Evidence and Admissibility

The Moderator shall not be bound by strict rules of evidence, but may receive any information that the Moderator, in his discretion, believes may be helpful to the Board in reaching its decision. The Moderator should exclude irrelevant, immaterial or unduly repetitious evidence. The Moderator should give effect to the rules of privilege recognized by law. The Moderator may be guided by the rules of evidence as applied in the trial of civil nonjury cases.

7.3 Documentary Evidence

Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. It shall be the responsibility of the party sponsoring any exhibit to ensure that the Moderator, court reporter and all Parties of Record receive a copy of such exhibit at the time of its introduction at the hearing.

7.4 Transcription

A transcript of the proceeding shall be made and copies thereof made available for review by interested persons in accordance with the provisions of Rule 9.

Rule 8. POST-HEARING SUBMISSIONS

Any Party of Record may submit written post-hearing comments within thirty (30) days following the conclusion of the hearing. Comments filed timely and in proper format shall be made part of the hearing record. Any response to written post-hearing comments shall be filed within fourteen (14) days of the filing of such comments.

Rule 9. TRANSCRIPT

Within 45 days of the date of the hearing, each participating EMC shall make available a copy of the hearing transcript upon request of a Party of Record. If the hearing involved more than one EMC, only that portion of the hearing transcript that addresses the proceeding in which the Party of Record participated shall be made available. The Party requesting such transcript shall be required to furnish advance payment of the actual cost of copying and distributing the transcript, as determined by the EMC.

Rule 10. DECISION

10.1 Form and Content of Decision

The EMC Board shall issue a written decision based upon findings included in such decision and the evidence presented at the hearing. The written decision shall set forth the Board's determination separately as to each of the PURPA standards addressed at the hearing(s).

10.2 Time for Decision

The decision shall be rendered as soon as reasonably practical after compilation of the hearing transcript and conclusion of the post-hearing comment period, but no later than December 19, 2009.

10.3 Publication of Decision

A copy of the Board's decision shall be served via United States mail on each Party of Record. Copies of the decision shall be made available for public inspection and copying at the headquarters office of the EMC during regular business hours within ten (10) days of the date of

the decision. Copies of the decision shall be made available, upon receipt of a proper request accompanied by a self-addressed, postage-paid return envelope, within thirty (30) days of the date of the decision.

Rule 11. REQUEST FOR INTERVENOR COMPENSATION

11.1 General Eligibility Criteria

An electric consumer who has properly intervened may be entitled to reimbursement of reasonable expenses related to participation in the proceeding if:

- (a) The Board finds that the consumer substantially contributed to the Board's approval, in whole or in part, of a position advocated by such consumer;
- (b) Participation in the proceeding by such consumer without reimbursement of expenses would impose a substantial financial hardship on the consumer; and
- (c) The consumer complies with all other eligibility determination requirements set forth in this Rule.

11.2 Scope of Reimbursable Expenses

For purposes of this Rule, the expenses for which reimbursement may be sought shall be limited to reasonable attorney's fees, reasonable expert witness fees, and the actual cost of expenses directly relating to preparation and participation in the hearing(s), including postage, travel, and printing/copying costs. Wages or salary of the consumer or, in the event of a group consumers, of staff members or employees in the regular employ of the group, shall not be reimbursable, nor shall any consumer be eligible to claim compensation for any lost wages or other losses arising out of preparation for or participation in the proceeding.

11.3 Application for Preliminary Approval

Not less than 40 days before the scheduled date of the hearing, any consumer wishing to apply for reimbursement shall submit a petition for preliminary approval and supporting materials to the EMC, directed to the attention of the Moderator, including the following contents:

- (a) All facts known to the consumer demonstrating that, but for the award of compensation, participation in the proceeding would work a substantial financial hardship on the consumer. If the consumer is an individual, then the required showing shall include a copy of the consumer's federal and state income tax returns for the last three years, together with all other relevant financial information that will aid the Moderator and the Board in ascertaining the consumer's financial condition and resources. If the consumer is an organization, association or business entity, then the

required showing shall include certified balance sheets and income and expense statements for the last three fiscal years, where such documents are available, together with all other relevant financial information that will aid the Moderator and the Board in ascertaining the consumer's financial condition and resources.

- (b) A statement of the interest represented by the consumer, and why the consumer's participation is necessary to a full and fair determination of the issues at the hearing.
- (c) A statement describing the position that the consumer intends to advocate on each issue for which reimbursement is sought, together with a brief summary of the evidence that the consumer intends to present on each such issue.
- (d) An estimate of the costs for which the consumer anticipates requesting reimbursement, specifically including legal fees and expert witness fees.
- (e) The identity of all known parties with common interests to the consumer.
- (f) The identity of all parties who are sharing the use of legal counsel and/or expert witness services with the consumer.
- (g) A statement regarding the appropriateness or inappropriateness of consolidating the consumer's presentation with that of other parties who will advocate the same or similar position.

11.4 Preliminary Approval

Subject to these rules, the Moderator shall have the sole and exclusive authority to grant or deny, in whole or in part, preliminary approval for a consumer to qualify for expense reimbursement. The Moderator shall review each petition for preliminary approval for compliance with Rules 11.1 and 11.3 and, if the petition is found compliant, shall issue a ruling not less than 20 days after the petition is filed, stating:

- (a) Whether and to what extent the consumer is preliminarily eligible for reimbursement; and
- (b) Whether, as a condition to receiving reimbursement, those parties with the same or similar interests shall consolidate their representations by having a common legal representative in the proceeding. No award of reimbursement shall be made to those parties who fail to share a common legal representative in the proceeding after being so directed by the Moderator.

The Moderator's determination may indicate the issue(s) as to which the consumer is determined to be preliminarily eligible for reimbursement, along with any conditions on eligibility. A

determination of preliminary eligibility shall not be determinative upon the Board's ultimate decision whether and to what extent to award consumer reimbursement, but a favorable determination of preliminary eligibility by the Moderator shall be a precondition to presenting a Final Reimbursement Claim as provided in Rule 11.5.

11.5 Filing of Final Reimbursement Claim

A consumer who received a favorable preliminary determination of eligibility for an award of compensation may, following the conclusion of the hearing, file a Final Reimbursement Claim with the Board. Final Reimbursement Claims must be filed within twenty (20) days of the close of the hearing, and must contain at a minimum the following information:

- (a) Identification of every issue for which the award is sought; provided that reimbursement shall be limited to the issue(s) as to which the Moderator certified the consumer to be preliminarily eligible for reimbursement.
- (b) For each issue, the contribution made by the consumer with respect to that issue, including a summary of all direct evidence submitted by the consumer, and the major points of any legal argument made by the consumer.
- (c) For each issue, an itemized statement supporting the amount of compensation sought by the consumer. If compensation for the services of an attorney or expert witness is sought, then the itemized statement must be accompanied by:
 - (i) An affidavit of the attorney or expert for whose services compensation is sought, setting forth the professional's hourly rate, a description of the professional's qualifications or credentials, the number of hours worked, and a general description of the tasks performed, and;
 - (ii) Sufficient supporting evidence from which the Board may conclude that the rate and hours for which compensation is sought are reasonable and not excessive in the applicable market, given factors including, but not limited to: the rate charged by professionals of comparable skill and experience in the relevant market; the time and labor required; the novelty and difficulty of the issues; the complexity of the tasks performed; the skill required; and the time limitations imposed.
- (d) Such supplementary information as the Board may reasonably request in aid of its decision.

11.6 Board Review of Final Reimbursement Claim

11.6.1 Standards

The Board of the affected EMC shall have the sole and exclusive authority to grant or deny, in whole or in part, the Final Reimbursement Claim of any consumer. The Board shall determine for each issue as to which reimbursement is sought whether the consumer's participation substantially contributed to the Board's adoption of any position advocated by the consumer. The consumer shall have the burden of proving the reasonableness of any expense for which reimbursement is sought.

11.6.2 Ruling on Final Reimbursement Claims

As part of its decision issued pursuant to Rule 10, or within 30 days after issuance of such decision, the Board shall issue a written determination setting forth the amount of reimbursement, if any, awarded to each eligible consumer. If the Board determines that the consumer's presentation substantially contributed to only a portion of the position adopted by the Board, the award of reimbursement shall be limited to the allowable fees and expenses incurred in preparing for and advocating that position. The Board's award shall consist only of those fees and expenses that, if paid by the consumer, would result in substantial financial hardship in the absence of such award, regardless of whether such award totally reimburses the consumer for all fees and expenses incurred as a result of the presentation of the issues for which the award is made.

A consumer may request reconsideration of a Board decision regarding the consumer's Final Reimbursement Claim as provided in Rule 12.

Rule 12. REQUEST FOR RECONSIDERATION

Within fourteen (14) days of the date of the Board's final decision, any Party of Record may petition the Board for reconsideration. The petition shall enumerate, together with applicable citations to the record or to legal authority, all alleged errors on which the request for reconsideration is based. Copies of the petition shall be served on all Parties of Record.

Rule 13. PETITION FOR JUDICIAL REVIEW

Any petition for judicial review shall be filed within 30 days of the date of the Board's final decision or within 30 days of the Board's ruling on any request for reconsideration if a request for reconsideration is filed.