

Georgia State University College of Law

Reading Room

Law Review Blog Posts

Publications

3-24-2023

Renewable Energy's Role in Georgia's Energy Regulatory Compact

Matthew Daigle

Michael Foo

Holly Ingram

Follow this and additional works at: https://readingroom.law.gsu.edu/gsulr_blogposts

RENEWABLE ENERGY'S ROLE IN GEORGIA'S ENERGY REGULATORY COMPACT⁺

Authors: Matthew Daigle,^{*} Michael Foo,^{} & Holly Ingram^{***}**

In recent years, there has been a large, growing interest in the renewable energy sector among utilities and other innovators.¹ Renewable energy includes generation sources such as “biomass, geothermal, hydropower, solar, [and] onshore and offshore wind.”² Wind and hydropower currently provide the most generation capacity; however, solar and wind are the two fastest-growing renewable energy sectors.³

The regulation of these renewable energy sources sits at the crossroads of technology, economics, and law. Whether the latest advancements in renewable energy take hold depends on the effectiveness of the technology, the demand that consumers have for the energy produced, and how easily the regulatory compact allows for its implementation. Thus, although renewable energy has grown in the United States, energy regulation among the states continues to be just one of many hurdles that proponents of renewable energy must overcome.⁴

⁺ Originally published on the Georgia State University Law Review Blog (Mar. 24, 2023).

^{*} Associate, Troutman Pepper Hamilton Sanders LLP, Atlanta, Georgia. Georgia Institute of Technology (B.S., 2018); Georgia State University College of Law (J.D., 2021). Member, State Bar of Georgia.

^{**} Associate, Troutman Pepper Hamilton Sanders LLP, Atlanta, Georgia. The University of Georgia (B.A. and A.B., 2016); Georgia State University College of Law (J.D., 2020). Member, State Bar of Georgia.

^{***} Associate, Troutman Pepper Hamilton Sanders LLP, Atlanta, Georgia. The University of South Carolina (B.A., 2016); Wake Forest University School of Law (J.D., 2019). Member, North Carolina State Bar.

1. See Joel Jaeger, *Explaining the Exponential Growth of Renewable Energy*, WORLD RES. INST., <https://www.wri.org/insights/growth-renewable-energy-sector-explained> [https://perma.cc/HP9K-UBZM] (Oct. 5, 2022).

2. FED. ENERGY REGUL. COMM'N, U.S. DEP'T ENERGY, ENERGY PRIMER: A HANDBOOK FOR ENERGY MARKET BASICS 50 (2020).

3. See *Renewable Energy*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY, U.S. DEP'T ENERGY, <https://www.energy.gov/eere/renewable-energy> [https://perma.cc/5DUD-R7EA].

4. See *State Renewable Energy Resources*, U.S. ENV'T PROT. AGENCY,

This Article outlines the legal and regulatory framework affecting Georgia’s investor-owned utility (IOU). First, it discusses the concept of the regulatory compact—the agreement that underlies the regulation of all public utilities. Second, it discusses the specific regulatory body that oversees that compact in Georgia and two types of procedures that Georgia Power Company (Georgia Power), the state’s only investor-owned electric utility, uses to advance the growth of renewable energy. When regulatory bodies explain the processes that govern energy regulation in Georgia, proponents of renewable energy can tailor their approaches to achieve successful implementation of renewable energy.

I. THE REGULATORY COMPACT

At the heart of all energy regulation lies the “regulatory compact,” a term that refers to the relationship between the government and a government-regulated utility.⁵ Electric utilities are “natural monopolies”:⁶ Rather than having multiple electricity providers, one provider can “realize economies of scale” by using established “generation, transmission, and distribution” methods—without competing with other utilities for customers—thereby allowing the provider to supply electricity at the cheapest cost.⁷

But this also means that a single provider controls the pricing and supply of a socially desirable (and necessary) good.⁸ Therefore, under the regulatory compact, the government allows the utility company to monopolize its service territory because the utility provides an essential service: electricity.⁹ In return, the utility agrees to guarantee reliable service at reasonable rates to all customers in its captive

<https://www.epa.gov/statelocalenergy/state-renewable-energy-resources#Barriers%20to%20Renewable%20Energy> [https://perma.cc/ZN3P-R4PN] (Feb. 10, 2023).

5. *Regulatory Compact*, ENERGY KNOWLEDGEBASE, <https://energyknowledgebase.com/topics/regulatory-compact.asp> [https://perma.cc/6D3A-8T9V].

6. Lincoln L. Davies, *Power Forward: The Argument for a National RPS*, 42 CONN. L. REV. 1339, 1347 (2010).

7. *Id.* (quoting Joseph P. Tomain, *The Persistence of Natural Monopoly*, 16 NAT. RES. & ENV’T 242, 242 (2002)).

8. *See id.*

9. Leigh H. Martin, Note, *Deregulatory Takings: Stranded Investments and the Regulatory Compact in a Deregulated Electric Utility Industry*, 31 GA. L. REV. 1183, 1185 (1997).

market¹⁰ and to be intensively regulated by the government.¹¹ The regulatory compact rests on “six pillars”: “the utility’s (1) exclusive provision of (2) a public good (3) at a reasonable price (4) in a fixed territory, (5) under an obligation to serve all members of the public in that area, but (6) subject to revision of the compact’s terms as technology evolve[s].”¹²

To mitigate the absence of a competitive market and protect the public from monopolistic interests, public utilities are subject to regulation at both the state and federal levels.¹³ State regulatory agencies govern the retail sale of electricity, setting the policies that affect how regulated utilities serve customers and the prices that the utilities can charge to provide the service.¹⁴ In contrast, the Federal Energy Regulatory Commission oversees the wholesale energy industry—the purchase and sale of energy between electric providers *before* it is sold to consumers on the retail side.¹⁵ State regulators, in particular, must balance the societal needs for safe and reliable electricity service against a utility’s interest in generating profit.¹⁶ Additionally, regulators undertake other policy considerations, such as environmental protections, public health and safety, and utilities’ economic prosperity.¹⁷

10. See Davies, *supra* note 6 (“[T]he flipside of the regulatory compact’s guarantee of exclusivity is the utility’s obligation of ‘reasonable’ rates.”).

11. Martin, *supra* note 9; Off. of Pub. Util. Counsel v. Pub. Util. Comm’n, 104 S.W.3d 225, 227–28 (Tex. App. 2003) (“Under a fully regulated system, an electricity utility enters into a regulatory compact with the public: in return for a monopoly over electricity service in a given area; the utility agrees to provide service to all requesting customers and to charge only the retail rates set by the Commission.” (internal quotation marks omitted)); Jersey Cent. Power & Light Co. v. Fed. Energy Regul. Comm’n, 810 F.2d 1168, 1189 (D.C. Cir. 1987) (Starr, J., concurring) (“The utility business represents a compact of sorts; a monopoly on service in a particular geographical area (coupled with state-conferred rights of eminent domain or condemnation) is granted to the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to the free market.”).

12. Davies, *supra* note 6, at 1346–47.

13. *Id.* at 1354.

14. *Id.*

15. FED. ENERGY REGUL. COMM’N, *supra* note 2, at 35.

16. See JIM LAZAR, ELECTRICITY REGULATION IN THE US: A GUIDE 4–5 (2d ed. 2016), <https://www.raonline.org/wp-content/uploads/2016/07/rap-lazar-electricity-regulation-US-june-2016.pdf> [<https://perma.cc/56S4-J6SF>].

17. See *id.* at 34.

II. SETTING JUST AND REASONABLE RATES

Setting and approving electricity prices is known as ratemaking.¹⁸ When exercising their ratemaking authority, state utility commissions are charged with establishing electricity rates that are “just and reasonable.”¹⁹ Two seminal Supreme Court cases, *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia* and *Federal Power Commission v. Hope Natural Gas Co.*, form the jurisprudential basis for what amount a utility is entitled to recover in ratemaking procedures.²⁰

Under *Bluefield*, an electric utility is entitled to rates that permit it to earn a return on the equipment and property that it uses to generate electricity.²¹ The utility can also earn a return that enables it to maintain a sufficient credit rating so as to properly provide its essential service.²² On the other hand, the Court held that *profits* that might be expected or realized in private enterprises are not constitutionally guaranteed.²³ Accordingly, a utility must be able to earn enough money to carry out its important societal function, but it is not necessarily guaranteed economic prosperity.²⁴

In *Hope*, the Supreme Court held that the ultimate ratemaking result reached—not the methods employed in determining the ratemaking treatment—is controlling.²⁵ In other words, the individual accounting methods used to determine just and reasonable rates can vary so long as the final rates are deemed “just and reasonable” by the state regulator.²⁶ The Court in *Hope* also held that state regulators’ decisions

18. See *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602–03 (1944).

19. *Id.*; e.g., GA. CODE ANN. § 46-2-23(a) (2022) (“The commission shall have exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction.”); MINN. STAT. ANN. § 216B.03 (West 2023); 220 ILL. COMP. STAT. ANN. 5/9-101 (West 2022); N.C. GEN. STAT. § 62-131(a) (2022); CAL. PUB. UTIL. CODE § 451 (West 2022).

20. *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923); *Hope*, 320 U.S. at 591.

21. *Bluefield*, 262 U.S. at 692.

22. *Id.* at 693.

23. *Id.* at 692–93.

24. *Id.*

25. *Hope*, 320 U.S. at 602.

26. See *id.*

are presumptively valid, which limited the scope of judicial review to overturn state commission findings.²⁷

Although energy regulators may look different from state to state, they all share the same basic responsibility of setting just and reasonable rates, thanks to *Hope* and *Bluefield*.²⁸ Thus, renewable energy must fit within this judicial framework and individual state regulatory frameworks. In Georgia, the regulatory framework is the Georgia Public Service Commission (PSC).²⁹

III. THE GEORGIA PUBLIC SERVICE COMMISSION

The PSC oversees all Georgia utilities, including electricity, natural gas, telecommunications, and rail transportation.³⁰ In Georgia, electricity suppliers consist of one IOU, forty-two electric membership corporations (EMCs), and fifty-two municipally owned electric power companies.³¹ Georgia Power, the state's only IOU, serves the most people in Georgia.³² Accordingly, it is heavily regulated by the PSC, which has the exclusive power, derived from constitutional, statutory, and regulatory sources of law, to determine just and reasonable rates for this utility.³³

First and foremost, the PSC's mandate is based in the Georgia constitution.³⁴ Article IV, Section One mandates the creation of the

27. *See id.*

28. *See id.*; *Bluefield*, 262 U.S. at 692–93.

29. *See The PSC*, GA. PUB. SERV. COMM'N, <https://psc.ga.gov/about-the-psc/> [https://perma.cc/3VPN-YE6P].

30. *Id.*; GA. CODE ANN. § 46-2-20(a) (2022); GA. COMP. R. & REGS. § 515-1-1-.09 (2023).

31. *The PSC*, *supra* note 29. Although this Article focuses on the authority that the PSC has over IOUs, the PSC has more limited authority with respect to EMCs and municipally owned electric power companies. *See id.* With EMCs, the PSC resolves territorial issues and can approve authority over financing applications. *Id.* But with municipally owned power companies, the PSC only resolves territorial issues. *Id.*

32. *Id.* Savannah Electric and Power Company, previously the state's only other IOU, merged with Georgia Power in 2006. James Barlament, *Savannah Electric and Power Company*, NEW GA. ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/business-economy/savannah-electric-and-power-company/> [https://perma.cc/6QPJ-E2E4] (June 8, 2017).

33. *See Ga. Power Co. v. Cazier*, 815 S.E.2d 922, 926 (Ga. 2018), *remanded to 2019 WL 5581526* (Ga. P.S.C. Aug. 20, 2019); GA. CODE ANN. § 46-2-30 (2022).

34. *See* § 46-2-30; GA. CONST. art. IV, § 1.

PSC “for the regulation of utilities.”³⁵ The constitution requires that the PSC consist of five commissioners, each elected to six-year terms.³⁶ Commissioners must be residents of one of five PSC districts, but each is elected in a statewide partisan election.³⁷ The commissioners select a chairperson amongst themselves by a simple majority, and any vacancies are filled by appointment by the Governor; the gubernatorial appointee, however, must then run for reelection in the next regular general election.³⁸

Importantly, the Georgia constitution provides that the PSC’s “jurisdiction, powers, and duties [are] provided by law,” meaning that the scope of its authority comes from the General Assembly as well as the PSC’s own rules and regulations.³⁹ The PSC’s statutory authority is found in Chapters 1 through 4A of Title 46 of the Official Code of Georgia Annotated.⁴⁰ These statutes imbue the PSC with broad authority to examine power companies. For example, the PSC can examine the condition, capitalization, and compliance with the law of “all companies under its supervision.”⁴¹ The PSC can also set a “uniform system of accounts” and examine a utility’s books.⁴² Perhaps most importantly, the PSC has the “exclusive power to determine what are just and reasonable rates” for utilities.⁴³

To that end, the PSC conducts a variety of hearings where it considers a multitude of factors to determine whether to raise or reduce

35. GA. CONST. art. IV, § 1.

36. *Id.* For commissioners’ minimum qualifications, see GA. CODE ANN. § 46-2-2 (2022).

37. § 46-2-1(a). The election process and its related residency requirements were recently challenged in federal court in *Rose v. Raffensperger*, No. 1:20-cv-02921, 2022 WL 3135915 (N.D. Ga. Aug. 5, 2022). The U.S. District Court for the Northern District of Georgia determined that the statewide election of commissioners from each of the five districts resulted in vote dilution in violation of Section 2 of the Voting Rights Act of 1965. *Id.* at *12, *22. The district court issued a permanent injunction, preventing the commission from electing new commissioners until the Georgia General Assembly enacts a method for conducting the elections that does not violate Section 2 and is approved by the district court. *Id.* at *23. The State’s appeal of the injunction was stayed by the U.S. Court of Appeals for the Eleventh Circuit; that stay was then overturned by the Supreme Court and the district court’s permanent injunction was reinstated. *See Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022).

38. GA. CONST. art. IV, § 1; §§ 46-2-4, -5.

39. *See* GA. CONST. art. IV, § 1; *see also* § 46-2-30.

40. §§ 46-1-1 to 46-4A-14.

41. § 46-2-20(e).

42. § 46-2-20(f).

43. § 46-2-23(a).

rates.⁴⁴ Two main types of proceedings play an important role in promoting renewable energy: integrated resource planning and rate cases.⁴⁵ Integrated resource planning refers to the process whereby an electric utility lays out its service plan, including how renewable energy will be used to serve customers.⁴⁶ Rate cases then address how the utility plans to recover the costs of such service from customers.⁴⁷

A. *Integrated Resource Planning*

Integrated resource planning is an intensive and detailed process that all utilities in Georgia must go through on a regular basis.⁴⁸ Electric utilities must develop and file an integrated resource plan (IRP) every three years for approval by the PSC.⁴⁹ An IRP outlines how a utility will serve its customers over the next twenty years and is meant to “ensure[] the long-term reliability of delivered energy at the lowest practical cost.”⁵⁰ Typically, a utility will propose “the most economic and reliable combination of demand and supply-side resources,” which must meet customer demand while minimizing bills and rates.⁵¹ A primary consideration for supply-side resources are

44. See § 46-2-25.

45. See *How the Public Service Commission, Georgia Power, the IRP and the 2022 Rate Case Affects You*, GA. CONSERVATION VOTERS (Aug. 4, 2022) [hereinafter *How the PSC Affects You*], <https://www.gcvoters.org/blog/2022/08/04/how-the-public-service-commission-georgia-power-the-irp-and-the-2022-rate-case-affects-you/> [https://perma.cc/N5UX-4CCJ]; see also *Investing in Georgia's Energy Future*, GA. POWER, <https://www.georgiapower.com/future.html> [https://perma.cc/D6X6-AZFJ].

46. See *How the PSC Affects You*, *supra* note 45.

47. *Industry 101 | Regulation in the Electricity Industry: Rate Case Process*, REDCLAY (Sept. 19, 2018), <https://redclay.com/industry-101-regulation-in-the-electricity-industry-rate-case-process/> [https://perma.cc/MCF2-NEEV].

48. See A. Craig Cleland, *PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Electrical Service: Require Long Range Energy Resource Planning and Certification of Plant Facilities, Long-Term Power Purchases, and Demand-Side Capacity Options*, 8 GA. ST. U. L. REV. 171, 172–73 (1992). IRP planning for Georgia utilities began in 1992. § 46-3A-2(a).

49. § 46-3A-2(a).

50. RACHEL WILSON & PAUL PETERSON, SYNAPSE ENERGY ECON., INC., *A BRIEF SURVEY OF STATE INTEGRATED RESOURCE PLANNING RULES AND REQUIREMENTS* 3, 7 (2011), http://www.cleanskies.org/wp-content/uploads/2011/05/ACSF_IRP-Survey_Final_2011-04-28.pdf [https://perma.cc/E3A7-URJJ].

51. GA. COMP. R & REGS. § 515-3-4-.05(1)(a) (2023). Supply-side resources generally create new energy options, either by building new power plants or purchasing energy from external suppliers. John R. Sigety, *An Examination of Demand-Side Management in the U.S. Since the Energy Crises of the 1970s*, 7 APPALACHIAN NAT. RES. L.J. 1, 3 (2013). Demand-side resources influence customer demand, often by

generation plants, the facilities used to produce energy.⁵² Renewable energy sources such as wind, hydroelectricity, and solar plants must be outlined in an IRP.⁵³ Additionally, an IRP addresses a number of factors regarding the utility's risks: fuel prices, load growth, resource variability, market structures, and environmental and emission regulations.⁵⁴ Typically, a utility will provide a host of information in its initial IRP filing, including twenty-year forecasts of energy demand, the size and type of facilities that are owned or operated, ongoing research projects, the plan's estimated impact on the environment, and the plan's impact on customers.⁵⁵

Within sixty days of submitting an IRP, the commission holds public hearings wherein interested parties may comment on the IRP's contents and adequacy.⁵⁶ After reviewing the evidence presented at the hearings, the commission must either: (1) approve the IRP; (2) approve the IRP subject to conditions; (3) approve the IRP with modifications; (4) approve the IRP in part and reject it in part; (5) reject the IRP as filed; or (6) provide an alternate plan.⁵⁷ The commission must approve the IRP if it is found to "substantially comply with the[] regulations" and "be in the public interest."⁵⁸

In 2022, the PSC approved Georgia Power's IRP after "months of an open, constructive review process" that resulted in a stipulated agreement between Georgia Power and a host of interested parties, including interest groups such as the Georgia Association of Manufacturers and the Georgia Coalition of Local Governments.⁵⁹ Part of this IRP included an additional 2,300 megawatts from

promoting conservation, shifting usage to off-peak times, or utilizing strategies like smart thermostats that limit the need for additional power usage. *Id.*

52. *See generally* § 515-3-4-.02(39) (defining supply-side resource).

53. *See* § 515-3-4-.05(1)(b)(4).

54. WILSON & PETERSON, *supra* note 50, at 3–4.

55. *See* § 515-3-4-.05(1)(b).

56. GA. CODE ANN. § 46-3A-2(b) (2022).

57. GA. COMP. R. & REGS. § 515-3-4-.06(4)(d) (2023).

58. *Id.*

59. *Georgia Power's Transformational Plan for State's Energy Future Approved, Helps Ensure Company Will Continue to Meet Needs of Customers and State*, GA. POWER (July 21, 2022), <https://www.georgiapower.com/company/news-center/2022-articles/georgia-power-transformational-plan-for-states-energy-future-approved-helps-ensure-company-will-continue-to-meet-needs-of-customers-and-state.html> [https://perma.cc/TD3W-6EMR].

renewable energy sources over three years, including additional investments in hydroelectric generation facilities and battery energy storage systems.⁶⁰ Thus, the IRP process is an important process that enables the continued development of renewable energy in Georgia.

B. Rate Cases

Rate cases are the primary method by which electric utilities in Georgia change their rates.⁶¹ To do so, the utility must first serve a public notice of intent to change its rates.⁶² Under Georgia law, at least thirty days must pass before any proposed rate change can take effect, but the PSC will usually postpone this for a longer period of time to give the commissioners and the public time to assess the proposed changes.⁶³ This begins the rate case process.

The PSC first issues a scheduling order delineating the dates of public hearings and proceedings; all public hearings occur three to four months after the utility's initial filing.⁶⁴ During these proceedings, which are presided over by the commissioners and led by the chairperson, the parties can present witnesses, file testimony, and conduct cross-examination.⁶⁵ These parties include the utilities' "officers, directors, managers, or employees," "the consumer's utility counsel division," the "Public Interest Advocacy Staff" (PIA staff),⁶⁶

60. *Id.*

61. See GA. CODE ANN. § 46-2-25(a) (2022); e.g., *Georgia Public Service Commission Approves Georgia Power's Amended 2022 Rate Request*, GA. POWER (Dec. 20, 2022) [hereinafter *PSC Approves Rate Request*], <https://www.georgiapower.com/company/news-center/2022-articles/georgia-power-service-commission-approves-georgia-powers-amended-2022-rate-request.html> [https://perma.cc/ZAT2-A8NC].

62. § 46-2-25(a) ("Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect.").

63. See § 46-2-25(a), (b). The postponement period cannot exceed five months unless the PSC applies for and receives an extension from the Superior Court of Fulton County. § 46-2-25(b).

64. *How Does the Commission Decide a Rate Case?*, GA. PUB. SERV. COMM'N, <https://psc.ga.gov/how-does-the-commission-decide-a-rate-case/> [https://perma.cc/J5M4-3CVR].

65. See § 46-2-51 ("The commission shall prescribe the rules of procedure and the rules for the taking off evidence in all matters that may come before it."); GA. COMP. R. & REGS. § 515-2-1-.06 (2023). Code section 46-2-51 also notes that the commission is not "bound by the strict technical rules of pleading and evidence, but [instead] may exercise such discretion as will facilitate its efforts to ascertain the facts bearing upon the right and justice of the matters before it." GA. CODE ANN. § 46-2-51 (2022).

66. See GA. COMP. R. & REGS. § 515-2-1-.14(1)(b) (2023).

and any approved intervenors.⁶⁷ The PIA staff is a group of attorneys separate from the commissioners that essentially prosecute the rate case by investigating the data presented by the utility, cross-examining the utility's witnesses, and otherwise representing the public; the PIA staff is usually in opposition to the utility's rate request.⁶⁸

The PSC also hears petitions from potential intervenors—parties with some kind of articulable interest in the case.⁶⁹ Approved intervenors become parties to the case and can present their own witnesses and cross-examine the witnesses of the utility, the PIA staff, and other intervenors.⁷⁰ Some frequent intervenor groups include renewable energy proponents such as Vote Solar, Solar Energy Industries Association, and the Georgia Solar Energy Association, as well as environmental groups such as the Sierra Club and Georgia Interfaith Power and Light.⁷¹ Thus, a variety of renewable energy interests are often included in the ratemaking process when these parties successfully intervene.

The first set of scheduled hearings is typically reserved for the utility to present its case.⁷² Over the course of three to five days, the utility will call its own witnesses,⁷³ usually employees of the utility who helped develop the underlying policies that warranted a rate increase. Notably, the utility will typically file pre-written direct testimony—usually consisting of complex economic, financial, and technical

67. *How Does the Commission Decide a Rate Case?*, *supra* note 64.

68. *Id.*

69. GA. CODE ANN. § 46-2-59(b), (e) (2022). Intervenors must be either a person with a statutory right to intervene, a person with some demonstrated legal, property, or other interest in the case, or any member of the Georgia General Assembly. § 46-2-59(e).

70. *How Does the Commission Decide a Rate Case?*, *supra* note 64; *see* GA. COMP. R. & REGS. § 515-2-1-.06 (2023) (noting that approved intervenors may be entered as a party of record in a rate case).

71. *See* Allison Kvien, *Georgia PSC Vote Prioritizes Utility Profits Over Residents and Solar Customers*, VOTE SOLAR (Dec. 20, 2022), <https://votesolar.org/georgia-psc-vote-prioritizes-utility-profits-over-residents-and-solar-customers/> [<https://perma.cc/NR27-U7TR>]. *See generally* *Climate & Energy*, SIERRA CLUB <https://www.sierraclub.org/climate-and-energy> [<https://perma.cc/HRS6-FMQR>] (providing examples of the group's initiatives to increase the utilization of renewable energy); *About*, GA. INTERFAITH POWER & LIGHT, <https://gipl.org/our-story/> [<https://perma.cc/VC5Z-99XE>] (describing the organization's dedication to promoting “stewardship of our natural resources” and “helping [faith communities] reduce their energy consumption”).

72. *See How Does the Commission Decide a Rate Case?*, *supra* note 64.

73. *See id.*

matters—rather than calling the witness to provide oral direct testimony on the stand.⁷⁴ The benefits of this method are twofold: first, it allows all opposing parties the chance to review the complex written testimony in advance of the hearing, and second, the written testimony can then be admitted into the record as if it were given orally at the hearing, resulting in shorter proceedings. Upon the direct testimony's admission into the record, the utility's witnesses are then subject to cross-examination by PIA staff and intervenors,⁷⁵ typically followed by questioning from the commissioners and any redirect examination by the utility.

At the next set of hearings, PIA staff and intervenors present their own witnesses.⁷⁶ Like the utility, these witnesses will typically pre-file their direct testimony and then submit to cross-examination at the hearing by the utility.⁷⁷

Following the same procedures, a third set of hearings is held to allow the utility to file testimony in rebuttal to the PIA staff's and intervenors' findings.⁷⁸ After this rebuttal hearing, the case is submitted to the PSC, which then determines what rate changes, if any, are warranted.⁷⁹ The commissioners hold a public vote and publish their reasoning for the vote in a final order,⁸⁰ which lays out the issues in the case, its decision and ruling, and any findings necessary to its ruling.⁸¹

If the utility disagrees with the commission's decision, it may move for a rehearing.⁸² Rehearing proceedings may occur, and appeals, if any, can be made to the Superior Court of Fulton County, then the

74. See GA. COMP. R. & REGS. § 515-2-1-.04(3)(a) (2023). This requirement is particularly relevant for any “witness who testifies as an expert or about matters of a technical nature.” *Id.*

75. See *How Does the Commission Decide a Rate Case?*, *supra* note 64.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* The PSC must make their determination “within six months of the original filing date or the utility is legally entitled to 100 percent of its request.” *Id.*

80. See *id.*; GA. COMP. R. & REGS. § 515-2-1.03(1) (2023) (“Any action taken by the [c]ommission shall be reduced to writing by the [c]ommission and signed by the [chairperson] and [e]xecutive [s]ecretary thereof.”).

81. GA. CODE ANN. § 46-2-51 (2022).

82. *How Does the Commission Decide a Rate Case?*, *supra* note 64; GA. COMP. R. & REGS. § 515-2-1-.08 (2023).

Georgia Court of Appeals, and finally to the Supreme Court of Georgia.⁸³ Importantly, if Georgia ratepayers disagree with the commission's decision, they cannot sue the utility.⁸⁴ Instead, their remedy is at the ballot box.⁸⁵ Rather than suing the utility for its rates, voters should apply their vote towards commission candidates who will implement favorable ratemaking on their behalf.

IV. RENEWABLE ENERGY IN GEORGIA

Although Georgia has made strides towards implementing renewable energy under this regulatory framework, renewable energy's potential in Georgia is yet to be fully realized. Georgia's keynote legislation in this area, the Cogeneration and Distributed Generation Act of 2001 (Co-Gen Act) further supports this notion.⁸⁶ In the Co-Gen Act, the legislature pronounced that it was in the public interest to: "(1) [e]ncourage private investment in renewable energy resources; (2) [s]timulate the economic growth of Georgia; and (3) [e]nhance the continued diversification of the energy resources used in Georgia."⁸⁷ The Co-Gen Act also outlines utilities' obligations to service customer generators.⁸⁸ It requires that regulated utilities "make either bidirectional metering or single directional metering available to customer generators" and directs the process by which the commission

83. *How Does the Commission Decide a Rate Case?*, *supra* note 64; *see, e.g.*, *Ga. Power Co. v. Cazier*, 815 S.E.2d 922, 926 (Ga. 2018), *remanded to* 2019 WL 5581526 (Ga. P.S.C. Aug. 20, 2019).

84. *Georgia Power Co. v. Allied Chem. Corp.*, 212 S.E.2d 628, 630–31 (Ga. 1975).

85. *Id.* at 631 ("There is no statutory nor common law right in a Georgia consumer to obtain judicial review of the *reasonableness* of a rate order made by the Public Service Commission." (emphasis added)). Note that if a consumer was alleging *discrimination* in rates, he or she would have an equal protection claim. *Id.* at 630–31. "But an attack on rates solely because they are alleged to be too high" is a substantive due process claim which requires the consumer to be deprived of a property right, and consumers have "no property right in the rate [they] pay[] for utilities." *Id.* (internal quotation marks omitted).

86. *See* 2001 Ga. Laws 352 (codified at GA. CODE ANN. §§ 46-3-50 to -56 (2001)).

87. GA. CODE ANN. § 46-3-51(a) (2022). In recent years, the effects of the Co-Gen Act have been most relevant for customers opting to install rooftop solar panels. *See* Peter K. Floyd, Alston & Bird, LLP, Presentation on Solar Programs in Georgia and Proposed Amendments to the Georgia Cogeneration and Distributed Generation Act and Electric Territorial Act, at the Southeastern Energy Society, Inc. (Mar. 18, 2013), <https://www.alston.com/-/media/files/insights/events/2013/03/solar-programs-in-georgia-and-proposed-amendments/files/view-event-presentation/fileattachment/solar-programs-powerpoint-presentation.pdf> [<https://perma.cc/W2J9-UZQT>].

88. § 46-3-54.

sets the price that customer generators are compensated for excess co-generation.⁸⁹ Currently, this is set for each electric service provider at the avoided cost of energy.⁹⁰ The avoided cost calculation relies upon filings from electric service providers and is updated annually by the commission.⁹¹

Despite the Co-Gen Act, Georgia is in the minority of states that have not yet implemented renewable portfolio standards (RPS) legislation to establish certain carbon-reduction targets.⁹² Therefore, the adoption of renewable energy in Georgia has largely been guided by market factors and actions of the commission and regulated utilities.⁹³ As such, the majority of the state's investments in renewable energy are adopted through the IRP process, discussed above, wherein individual utilities propose to source electric generation from renewable sources. Utilities also have an interest in recovering the costs of investment in such renewable sources and will seek that recovery through the rate case process.⁹⁴

The rate at which renewable energy sources are adopted depends on a conflux of many factors at the state and federal level. For example, the recently passed federal Inflation Reduction Act (IRA) provides financial incentives for the clean energy transition.⁹⁵ Considered to be landmark legislation, the IRA provides expansive tax credits for a variety of qualified renewable energy investments, including solar,

89. § 46-3-54(1), (3)–(4).

90. § 46-3-56(a).

91. See GA. COMP. R. & REGS. § 515-3-4-.02(2) (2023).

92. See *State Renewable Portfolio Standards and Goals*, NAT'L CONF. ST. LEGISATURES, <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx> [https://perma.cc/SKP3-UTGP] (Aug. 13, 2021). “Renewable Portfolio Standards” is the broad term for standards, usually legislation, that require that a certain percentage of electricity that utilities supply come from renewable energy generation. *Id.*

93. See Andrea Hsu & Mary Louise Kelly, *How Georgia Became a Surprising Bright Spot in the U.S. Solar Industry*, NPR, <https://www.npr.org/2019/06/24/733795962/how-georgia-became-a-surprising-bright-spot-in-the-u-s-solar-industry> [https://perma.cc/CHX2-FVCQ] (June 24, 2019, 3:22 PM).

94. See *PSC Approves Rate Request*, *supra* note 61.

95. See Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818; Michael Rodgers, Taylor Pullins & Caitlin Dunham, *Inflation Reduction Act Offers Significant Tax Incentives Targeting Energy Transition and Renewables*, WHITE & CASE LLP (Aug. 17, 2022), <https://www.whitecase.com/insight-alert/inflation-reduction-act-offers-significant-tax-incentives-targeting-energy-transition> [https://perma.cc/CHC5-QUUD].

geothermal, fuel cell, and hydropower.⁹⁶ The legislation could triple clean energy production in the United States.⁹⁷

Given these factors, Georgia's renewable energy potential remains to be fully realized. However, with strong incentives to invest in renewable energy, it is foreseeable that many neighboring state legislatures will continue to pass legislation and state commissions will approve initiatives aimed at increasing renewable generation. What remains to be seen, however, is whether Georgia will follow suit. Proponents of renewable energy should use Georgia's regulatory compact to their advantage to ensure that renewable energy remains a critical part of the state's energy portfolio.

96. See Rodgers et al., *supra* note 95; Kevin Pearson & Michael Such, *Inflation Reduction Act and Renewable Energy Development: Its Advantages and Limitations*, REUTERS (Sept. 23, 2022, 12:31 PM), <https://www.reuters.com/legal/legalindustry/inflation-reduction-act-renewable-energy-development-its-advantages-limitations-2022-09-23/> [https://perma.cc/Z6VS-AC2V].

97. *U.S. Inflation Reduction Act: Impacts on Renewable Energy*, UL SOLS. (Sept. 14, 2022), <https://www.ul.com/news/us-inflation-reduction-act-impacts-renewable-energy> [https://perma.cc/JK6E-GMDG].