BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

GEORGIA POWER COMPANY, **Petitioner,** **v.** **THE WALTON ELECTRIC MEMBERSHIP CORPORATION,** **Respondent,** **NESTLÉ PURINA PETCARE COMPANY,** **Intervenor.**	**DOCKET NO. 42509**

THE WALTON ELECTRIC MEMBERSHIP CORPORATION'S AND NESTLÉ PURINA PETCARE COMPANY'S RESPONSE IN OPPOSITION TO GEORGIA POWER COMPANY'S APPLICATION FOR REVIEW OF INITIAL DECISION

COME NOW, Respondent Walton Electric Membership Corporation ("Walton EMC") and Intervenor Nestlé Purina PetCare Company ("Nestlé Purina" or "NPPC"), and hereby submit their Response in Opposition to Georgia Power Company's Application for Review of Initial Decision ("Application"). The Initial Decision correctly applies Georgia's Territorial Electric Service Act ("Territorial Act") to the record evidence, and, thus, the Application should be denied. Walton EMC and Nestlé Purina further state as follows:

INTRODUCTION

Georgia Power Company (hereinafter "Georgia Power" or "GPC") initiated this proceeding when it filed its Petition and Complaint (the "Complaint") with the Georgia Public Service Commission (hereinafter the "Commission") on April 26, 2019. In filing its Complaint, Georgia Power attempted to prevent Walton EMC from serving Nestlé Purina's Hartwell facility

(the "Hartwell Pet Food Facility" or the "Premises") and requested a ruling: (1) that the Commission find and determine that Walton EMC is in violation of the Territorial Act by attempting to provide retail electric service to the Premises; (2) that the Commission find and determine that Georgia Power is the lawful supplier of electricity to the Premises; and, (3) that the Commission order Walton EMC to cease its efforts to serve the Premises or, if Walton EMC has established service, then to order Walton EMC to disconnect service to the Premises and transfer such service to Georgia Power. Walton EMC responded and Nestlé Purina intervened, both contending that Walton EMC has the right to service the Hartwell Pet Food Facility because the old Premises was "destroyed or dismantled" within the meaning of the Territorial Act. Furthermore, the Hartwell Pet Food Facility was not reconstructed in substantial kind as to the prior Premises because the Hartwell Pet Food Facility is a hygienic wet pet food manufacturing plant whereas the old Premises was a non-hygienic textile mill.

After undertaking discovery and pre-filing testimony, the Parties presented evidence before Hearing Officer Nancy Gibson (the "Hearing Officer") on September 4-5, 2019 (the "Hearing"). On January 24, 2020, the Hearing Officer issued the Initial Decision denying the relief sought in Georgia Power's Complaint. The Ordering paragraphs state, in pertinent part:

> [T]he Petition of Georgia Power Company claiming that Walton Electric Corporation is in violation of the Georgia Territorial Act is DENIED as the Hearing Officer finds that the Premises was destroyed or dismantled, that a new Premises exists and there has been no reconstruction in kind so as to afford Georgia Power any grandfather rights at the Premises.

(Initial Decision, at 12 (emphasis added).)

Georgia Power has now filed its Application requesting the Initial Decision be reversed. Georgia Power's Application contends that the Hearing Officer failed to adhere to the plain language of the Territorial Act. Georgia Power is wrong and ignores both the evidence presented regarding the extensive work done by Nestlé Purina at the Hartwell Pet Food Facility and the

controlling legal authority applied in the Initial Decision. The Application should be denied. Upon conclusion of these proceedings, Walton EMC and Nestlé Purina are prepared to commit to a new solar energy project that will serve the Hartwell Pet Food Facility.

ARGUMENT AND CITATION OF AUTHORITY

I. The Initial Decision's Holding is Correctly Decided.

Georgia Power's central argument is that the Hartwell Pet Food Facility is not a "new premises" as applied to the Territorial Act. Therefore, Georgia Power contends that, because the Hartwell Pet Food Facility is not a "new premises," the large load customer choice exception in Section 8(b) of the Territorial Act does not apply, and Georgia Power's "grandfather rights" allow it to serve the Hartwell Pet Food Facility. Georgia Power's arguments contradict the record evidence and are contrary to Commission precedent and Georgia law. In ruling against Georgia Power, the Initial Decision correctly finds: (1) the Hartwell Pet Food Facility is a "new premises" under the Territorial Act; (2) Nestlé Purina "destroyed" and "dismantled" the old textile mill Premises in constructing the Hartwell Pet Food Facility; and (3) Nestlé Purina reconstructed the hygienic, food-safe Hartwell Pet Food Facility not in substantial kind to the old Premises. Georgia Power's Application should be denied.

a. *The Initial Decision Correctly Finds the Hartwell Pet Food Facility to be a New Premises under the Territorial Act.*

Georgia Power argues the Hartwell Pet Food Facility is not "new," but pre-existing because the Hartwell Pet Food Facility did not "recently come into existence." (GPC Application, at 11-12.) As a result, customer choice under O.C.G.A. § 46-3-8(a) is not available to Nestlé Purina. (GPC Application, at 6.) Georgia Power's contention is contrary to the long line of Commission precedent, which the Initial Decision correctly applies to the record evidence. Specifically, the Initial Decision reads that "[i]n the context of existing Premises,

rather than greenfield lots, the Territorial Act deems a Premises as new when it has been (i) destroyed or dismantled and (ii) reconstructed not in substantial kind." (Initial Decision, at 9.) The Commission has recognized that a premises can be deemed "new" if it is destroyed or dismantled and reconstructed not in substantial kind.

> In this case, the above-quoted so-called "grandfather clause" of the Territorial Act gives [the existing utility] preeminent right to continue serving the disputed Premises, unless [the new utility] can show the [new] facility constructed thereon to be a new premises substantially different in kind from the [old premises]. . . .

Georgia Power Company v. Habersham Electric Corporation, Docket No. 23781-U, at *14 (Initial Decision March 26, 2007, Order Adopting and Modifying Initial Decision September 18, 2007), ("*Habersham*").

The Commission ruled in *Habersham*, "In these cases, the new, expanded or reconstructed facility is fundamentally different from the previous facility served on the premises in nature and function so as to constitute a new premises and not to qualify under the "grandfather clause" as a "reconstruction . . . in substantial kind." *Id.* at 16 (emphasis added). The Commission has never recognized or endorsed the extreme position Georgia Power now urges the Commission to adopt. Instead, the Commission has long interpreted O.C.G.A. § 46-3-8(b) to permit a customer to establish a "new premises" by destroying or dismantling an old premises and reconstructing the new premises not in substantial kind. The Initial Decision correctly relies on, and applies, the Commission's interpretation of O.C.G.A. § 46-3-8(b) in finding the Hartwell Pet Food Facility to be a "new premises."

The Initial Decision considers and applies the following Commission decisions while finding Nestlé Purina "destroyed or dismantled" the old Premises under the Commission's prior application of the plain meaning of "destroy" and "dismantle": *Ga. Power Co. v. Jackson Elec. Membership Corp.*, Docket No. 38658, (Order Adopting the Hearing Officer's Initial Decision,

November 11, 2015), ("*Jackson EMC*"); *Georgia Power Company v. Marietta Board of Lights and Water*, Docket No. 7545-U, at *8-9, (Initial Decision, January 12, 1998), ("*MBLW*"); *Georgia Power Co. and Southwire Co., LLC v. Carroll Electric Membership Corp.*, Docket No. 38275, (Order Adopting the Hearing Officer's Initial Decision, March 30, 2015), ("*Southwire*"); *Greystone Power Corporation v. Georgia Power Company*, Docket No. 40803 (Initial Decision, March 23, 2018), ("*Greystone*"); *In re Diverse Power v. City of Lagrange*, Docket No. 13392, at 7 (Final Commission Order, Dec. 4, 2003) (discussing the application of "in substantial kind"), ("*Diverse Power*"); *Colquitt EMC v. Georgia Power Co.*, Docket No. 12528, at 12-13 (Initial Decision, Jan. 18, 2002).

Similarly, the Initial Decision discusses and applies the following Commission decisions, while finding Nestlé Purina did *not* reconstruct the Hartwell Pet Food Facility in substantial kind to the old Premises under the Commission's prior application of the term "in substantial kind" — a facility which is largely, but not wholly, of the same fundamental nature or quality as the previous facility: *North Georgia Electric Membership Corporation v. City of Dalton*, Docket No. 3941-U, (Initial Decision, June 21, 1991), *Georgia Power Company v. Middle Georgia Electric Membership Corporation*, Docket No. 3826-U, (Initial Decision, May 16, 1989); *Central Georgia Electric Membership Company v. Georgia Power Company*, Docket No. 3692-U, (Initial Decision, May 9, 1988); *MBLW*, at *8; *Colquitt EMC v. Georgia Power Company*, Docket No. 12528 (Initial Decision, January 16, 2002); and, *Diverse Power*. Georgia Power's Application simply ignores the long line of decisions the Hearing Officer cited in the Initial Decision.

Georgia Power contends the Hearing Officer erroneously based the Initial Decision on *MBLW* and not *Jackson EMC*; however, Georgia Power cannot cite to a Commission decision

stating *MBLW* and its progeny have been overruled or should not be considered. (GPC Application, at 5.) In addition to *MBLW*, the Initial Decision directly cites to and quotes *Southwire*. (Initial Decision, at 10 (quoting *Southwire*: "As a comparison between [the exhibits] and as the photographs of the interior show, the Old Sony Plant has been taken apart and stripped of its furnishings and equipment, much of the floor broken up, walls and partitions removed, openings made – all actions that satisfy the plain meaning of 'dismantled.'").) The Initial Decision also cites to *Diverse Power, Inc. v. City of LaGrange*, Docket No. 40642, (Initial Decision, March 23, 2018), in support of its reliance on *MBLW* and *Southwire*. (Initial Decision, at 11-12.) Therefore, Georgia Power's contention the initial Decision erred in relying on *MBLW* is incorrect and the Initial Decision correctly applies Commission precedent.

While Georgia Power urges the Commission to rely exclusively on the analysis in *Jackson EMC*, Georgia Power refuses to acknowledge the *Jackson EMC* decision rests on a set of facts bearing no similarity to Walton EMC's and Nestlé Purina's circumstances in this case. Material to the decision in *Jackson EMC*, the Commission recognized there was very little difference in fundamental use of the old Premises as compared to the use of the new Premises. *Jackson EMC*, at 6. The proposed use of the new Premises was a wood pellet manufacturing operation, compared with the existing Premises' use as a wood manufacturing operation. *Id.* (noting that the old Premises and the new Premises "would use the same primary raw material (wood), store the wood, debark the wood, reduce the size of the wood, dry the wood, press and re-form the wood into a final product, and then ship the wood product by rail or truck."). Additionally, "[t]he processes are so similar that AWP plans to use some of the very equipment used in LP's operations, including in-feed chutes; debarking equipment; four of five dryers; regenerative thermal oxidizers ("RTOs"); and bark conveyors." *Id.* The facts and circumstances

resulted in a simple analysis for the Commission: There were no functional or infrastructure changes that would be similar to *MBLW*, *Southwire*, and the present case. The fundamental differences in the newly constructed Hartwell Pet Food Facility and the prior Premises are readily apparent – the Hartwell Pet Food Facility is not suitable for the previous use of textile manufacturing. As a result, the Initial Decision's Ordering paragraphs correctly find the old Premises was destroyed and dismantled, "that a new Premises exists and there has been no reconstruction in kind so as to afford Georgia Power any grandfather rights at the Premises." (Initial Decision, at 12.)

Georgia Power further argues a facility cannot be both "existing" and "new" at the same time. (GPC Application, at 10.) Georgia Power is mistaken. Merriam-Webster defines "new" – in addition to "having recently come into existence" – as "being other than the former or old." *See* Merriam-webster.com, http://www.merriamwebster.com/dictionary/new. Therefore, as is the case here and as detailed in the Initial Decision, under the plain language of "new," if a premises is under construction to create a "new premises" the facility can be both "existing" and "new." By arguing a facility cannot be both "existing" and "new" at the same time, Georgia Power is not only trying to create a new legal standard, it is also asking the Commission to overrule longstanding Commission precedent.[1]

Moreover, just like any prior Commission decision, the Initial Decision highlights and emphasizes certain Commission decisions based on the unique material facts present here. (*See* Initial Decision, at *9 ("The Commission has applied the plain meaning of 'destroy' and 'dismantle' differently based upon the specific factual situations presented in each case.").) The

[1] Georgia Power's position effectively asks the Commission to overrule *Habersham*, *Southwire*, *MBLW*, *Diverse Power*, *City of Calhoun v. North Georgia EMC*, Docket No. 5090-U (Initial decision, July 17, 1995), and *Diverse Power, Inc. v. City of LaGrange*, Docket No. 40642, (Initial Decision, March 23, 2018).

Initial Decision does not "read out" the Territorial Act's requirement of a "new premises," instead it highlights the factual variations of applicable prior Commission precedent and how those variations relate to the record evidence. The Initial Decision correctly finds the Hartwell Pet Food Facility to be a "new premises" as interpreted by Commission precedent.

b. *The Initial Decision Correctly Applies the Destroyed or Dismantled Standard.*

Georgia Power asserts the Initial Decision "fails to follow the Commission's construction of 'destroyed or dismantled' to require taking something to pieces or destroying it in an orderly way." (GPC Application, at 13.) Georgia Power attempts to create a new standard, found nowhere in Commission precedent, by stating "[t]he principle of *in pari materia* and the grammar of the sentence require . . . that a building must be taken apart and destroyed before it may be considered 'dismantled.'" (GPC Application, at 14.) As noted in the Initial Decision, this is not the standard the Commission has applied:

> Because the Territorial Act does not define "destroy" or "dismantle," the Commission has previously turned to the word's plain meaning derived from dictionary definitions:
>
> > [T]he term "destroyed" is, of course, the past tense of the verb "destroy" which means "to ruin completely; spoil; 2. To tear down or break up; demolish . . . ."; and
> >
> > [T]he word "dismantled" is the past tense of the verb "dismantle" which means "a. To take apart; disassemble, b. to put an end to in a gradual, systematic way, 2. To strip of furnishings or equipment.

(Initial Decision, at 9 (emphasis added) (citing *Habersham*, at *22).)

When it applies this standard, the Commission has used the plain meaning of "destroy" and "dismantle." The Initial Decision similarly applies the plain meaning of those terms: "The Hearing Officer finds Walton and [Nestlé Purina's] argument compelling. The Commission's

previous rulings and the facts of this case clearly point to a conclusion that the Premises have been destroyed or dismantled." (Initial Decision, at 10.)

c. *The Initial Decision Correctly Finds the Hartwell Pet Food Facility was Reconstructed Not in Substantial Kind to the Old Premises.*

Georgia Power attempts to argue that the Hearing Officer wrongly concluded the Hartwell Pet Food Facility was not reconstructed "in substantial kind" to the old Premises. In doing so, Georgia Power states "the undisputed evidence showed that the existing building is now and always has been classified for building code purposes as manufacturing and storage (warehouse)." (GPC Application, at 17.) Georgia Power does not, however, cite to any record evidence in support of this contention, nor does it cite to any Commission decision finding the "building code" designation as dispositive (or even relevant) to whether a new premises is reconstructed "in substantial kind" to the old premises. The Initial Decision properly analyzes Commission precedent, which establishes that the term reconstructed "in substantial kind" means a facility is largely, but not wholly, of the same fundamental nature or quality as the previous facility. (Initial Decision, at 11.) Furthermore, the Initial Decision explains "it is not simply of measure of physical structure but includes 'change[] or that the use of such Disputed Premises change, but the size, configuration, appearance, and value of such Disputed Premises has changed substantially in quality and nature.'" (Initial Decision, at 11 (citing *MBLW,* at 9).) The Initial Decision correctly applies this standard to the record evidence.

II. <u>The Facts Relied Upon by the Hearing Officer in the Initial Decision are Supported by the Record Evidence.</u>

Georgia Power's Application includes an argument that the Initial Decision reached improper conclusions because it fails to properly consider the record evidence. For example, Georgia Power claims the "sweeping statement" [in the Conclusions of Law Initial Decision] that there are "countless differences" [between the old premises and the new premises] makes no

assessment of their significance relative to the "building, structure or facility" as required by the Territorial Act." (GPC Application, at 17.) The Initial Decision specifically states:

> There are countless differences between the Springs Industries and Nestle in terms of both physical appearance and structure, and primary purpose and function. Taken as a whole, the facts of this case demonstrate, without question, that the Premises are not "largely of the same fundamental nature or quality, and they do not share substantive "common traits", as required by the MBLW decision and its progenies. *Diverse Power, Inc. v. City of LaGrange,* Dkt. No. 40642.

(Initial Decision, at 12.)

However, the "countless differences" between the old Premises and the Hartwell Pet Food Facility are enumerated in the Initial Decision's Findings of Fact:

> As the Hearing Officer found in the prior section [Findings of Fact], Nestlé removed and replaced the electrical system and infrastructure; removed and replaced 30 percent of the flooring and foundation in its food processing area; removed concrete slabs in the old weave room; changed the foundation in the old bleachery by filling the old vats with concrete and the old pits with ballast, structural steel, and concrete; removed the roof above the old bleachery, the old tank building, and some of the distribution center; demolished the old filter press' structural piers; demolished and removed the old air washing pits; and demolished the old crane system. Nestle Purina has swallowed up the old ventilation tunnels; some interior and exterior walls; and replaced the old air plenum where the new office space sits.
>
> Additionally, Nestle Purina demolished interior walls, made openings in other walls, and is enclosing some exterior walls with a new building. The Hearing Officer concludes that Nestlé Purina dismantled the Premises when it took apart and stripped away the electrical system, HVAC system, crane system, air handling system, wastewater system, storm water system, and removed various parts of the roof. At a cost of over $300 million, these substantial modifications are in keeping, if not in excess of, the plain meaning of the words "dismantle" and "destroy and an accurate reflection of previous Commission interpretations of the Territorial Act's mandate of "dismantle or destroy."

(Initial Decision, at 10 (emphasis added).)

> As the Hearing Officer found in the prior section [Findings of Fact], Nestlé has committed $220 million to prepare the Hartwell Pet Food Facility for startup in the fall of 2019, and an additional $80 million to reach initial full operation by the second quarter of 2020. (Tr. 459-505). Nestlé Purina has: (1) replaced the wastewater treatment facility, (2) changed the overall structure and design of the

> existing facility, (3) constructed approximately 120,00 square feet of additional buildings, (4) replaced the existing electrical systems, (5) replaced the air handling systems, and (6) created a food safe environment by, among other things, sealing off and otherwise protecting the interior from pests and other contaminants, and (7) added a freezer in one of the new buildings.

(Initial Decision, at 11 (emphasis added).)

The Initial Decision's Findings of Fact explain not only the changes made to the building, but also details the reason(s) for changes – to create a new and completely different food safe environment:

> The existing interior offices were stained and unusable, and thus had to be demolished. (Tr. 455).
>
> The existing facility was infiltrated with birds and pests, as well as exposed to the elements and outside air with none of the temperature control or proper air handling required for the processing and packaging of wet pet food.
>
> In addition, the existing facility lacked sufficient utility systems to power, clean, and safeguard a new wet pet food manufacturing facility, or to maintain a chilled temperature to store ingredients. Nestle Purina was also only able to preserve and use some of the external walls and portions of the roof. *(Id.)*
>
> Nestle's Project Engineering Manager, explained that the existing roof had a ballasted roof system; the mechanically fastened roofing system installed by Nestlé Purina is preferred because it is a more hygienic option than the existing ballasted system. (T-447)

(Initial Decision, at 7 (emphasis added).)

The Initial Decision does, therefore, assess the factual significance of the countless differences relative to the kind of "building, structure or facility" of the Hartwell Pet Food Facility.

Georgia Power is wrong in its assertion that "some of the 'countless differences' are unsupported by any record evidence, such as: the employee count for Springs Industries . . .; the finding that '[t]he textile mill remained vacant for the next decade while it was listed for sale' . . . and the finding that 'Nestle Purina has . . . replaced the air handling systems.'" (*See* GPC

Application, at 17.) Mr. Gopi Sandhu[2] testified to all three of these facts: "In 2006, Springs Industries ceased operations and abandoned the textile factory, removing much of its manufacturing equipment, (Sandhu Test., Tr. 335); The facility had been largely abandoned for about 12 years, (Sandhu Test., Tr. 309, 335); Portions of the existing premises had to be demolished and replaced, including the existing electrical, storm water, wastewater, HVAC and air handling systems." (Sandhu Test., Tr. 319.)

The Initial Decision's holding rests on sound reason and findings of fact supported by the record evidence. The Initial Decision includes the following Findings of Fact:

> Nestle testified that the existing buildings and systems were dilapidated. [Tr. 506.]
>
> Nestle witness Sandhu stated that it was clear once Nestle acquired the old Premises that portions of it would have to be demolished. [Tr. 319.]
>
> The existing systems, electrical, stormwater, wastewater, HVAC, and, among others, would all have to be removed and replaced, and substantial portions of the roofing and flooring completely replaced. [Tr. 319.]
>
> The wastewater pre-treatment system was designed for textile operations, and was in disrepair. A new wastewater treatment system with different unit operations would be required to accommodate a food processing operation. [Tr. 72, 318, 465.]

(Initial Decision, at 6-7.)

> The existing interior offices were stained and unusable, and thus had to be demolished. (Tr. 455).
>
> The existing facility was infiltrated with birds and pests, as well as exposed to the elements and outside air with none of the temperature control or proper air handling required for the processing and packaging of wet pet food. [Tr. 455.]
>
> In addition, the existing facility lacked sufficient utility systems to power, clean, and safeguard a new wet pet food manufacturing facility, or to maintain a chilled temperature to store ingredients. [Tr. 455.]
>
> Nestle Purina was also only able to preserve and use some of the external walls and portions of the roof. *(Id.)* Specifically, the areas of the roof over the bleachery had water penetration issues and were replaced immediately, with the rest of the

[2] Gopi Sandhu, Director of Engineering Sustainable Operations for Nestlé Purina. (Tr. 306.)

roof needing to be replaced in segments over the next several years. [Tr. 455.]

Nestle Project Engineering Manager, explained that the existing roof had a ballasted roof system; the mechanically fastened roofing system installed by Nestle Purina is preferred because it is a more hygienic option than the existing ballasted system. (T-447)

(Initial Decision, at 7.)

The Hearing Officer finds that Nestlé removed and replaced the electrical system and infrastructure [Tr. 377]; removed and replaced 30 percent of the flooring and foundation in its food processing area [Tr. 267-68, 457]; removed concrete slabs in the old weave room [Tr. 457]; changed the foundation in the old bleachery by filling the old vats with concrete and the old pits with ballast, structural steel, and concrete [Tr. 79, 456-57]; removed the roof above the old bleachery, the old tank building, and some of the distribution center [Tr. 455]; demolished the old filter press' structural piers [Tr. 465]; demolished and removed the old air washing pits; and demolished the old crane system. [Tr. 447-48.]

Nestle Purina has swallowed up the old ventilation tunnels [Tr. 448-49]; some interior and exterior walls [Tr. 455, 457, 471]; and replaced the old air plenum where the new office space sits. [Tr. 455.]

Additionally, Nestle Purina demolished interior walls, made openings in other walls, and is enclosing some exterior walls with a new building. (Tr. 447-453, 488-492, 537 and 552-556).

(Initial Decision, at 8.)

The Hearing Officer further finds that Nestle has committed $220 million to prepare the Hartwell Pet Food Facility for startup in the fall of 2019, and an additional $80 million to reach initial full operation by the second quarter of 2020. (Tr. 459-505).

Nestlé Purina has: (1) replaced the wastewater treatment facility, (2) changed the overall structure and design of the existing facility, (3) constructed approximately 120,00 square feet of additional buildings, (4) replaced the existing electrical systems, (5) replaced the air handling systems, and (6) created a food safe environment by, among other things, sealing off and otherwise protecting the interior from pests and other contaminants, and (7) added a freezer in one of the new buildings. (DeMartino, Exh.-4; Miller, Exh.-4).

(Initial Decision, at 8.)

The above facts are all clearly supported by the record evidence. Georgia Power is wrong to suggest that the Hearing Officer relied upon facts not supported by the record evidence.

III. Georgia Power's Application Does Not Accurately Convey The Record Evidence.

Finally, Georgia Power's Application fails to accurately portray the factual findings set forth in the Initial Decision. Most specifically, Georgia Power fails to accurately convey the facts related to the prior Premises and Nestlé Purina's construction of the Hartwell Pet Food Facility *not* in substantial kind to that Premises. Georgia Power asserts the Hearing Officer "correctly found continuous service to an existing premises," citing to the following:

> When Dundee Mills built the existing facility in 1991, it consisted of a 190,000 square foot warehouse and a 137,000 square foot manufacturing facility used to manufacture consumer goods, specifically towels. (Tr. 172-173). In 1999, Springs Industries ("Springs") added a weaving facility to the existing Premises, expanding the manufacturing space to 313,000 square feet. (*Id.*)
>
> The Premises is located in an unincorporated area of Hart County, in Georgia Power's assigned service area with a connected load upon initial full operation in excess of 900 kilowatts. The Premises began production in 1991. Georgia Power has served the Premises, including its expansions, ever since . . . .
>
> In 2017, Nestle Purina purchased the existing Premises for $7 million dollars. (Tr. 318). . . .
>
> In February 2018, Nestle informed Georgia Power it did not want to use the location originally designated for a substation needed to serve Nestlé 's anticipated future load growth, and instead, intended to continue to take service from existing distribution lines until it had installed its full load. . . .
>
> To support operations, Nestle proceeded to implement its plan for a self-owned switchyard using its own transformers. It then requested Georgia Power to serve the switchyard from Georgia Power's primary distribution line while maintaining its original service point as well. . . .

(Initial Decision, Findings of Fact, at 4-5.)

Georgia Power concludes by arguing that the Hartwell Pet Food Facility is not a "new premises" because it "is now and always has been a warehousing and manufacturing facility." (GPC Application, at 4.) Georgia Power misinterprets the Initial Decision's language. The word "existing" refers to the fact the Premises was not a greenfield lot. (*See* Initial Decision, at 9, "In the context of the existing Premises, *rather than greenfield lots* . . . .") (emphasis added). The

record evidence established that the Hartwell Pet Food Facility received continuous construction service, as acknowledged by the Initial Decision: "Nestle contended that it and GPC understood that Nestle would need temporary service until it finished its construction project . . ." (Initial Decision, at 5.) The facts cited by Georgia Power do not support its contention that the Hartwell Pet Food Facility is not a "new premises." The facts cited by Georgia Power simply demonstrate that (1) Georgia Power served the premises prior to Nestlé Purina; and, (2) temporarily provided construction service, nothing more.

Georgia Power's final statement that "[t]he Initial Decision's reliance upon speculative future additions to the building to conclude that the Premises had been destroyed or dismantled underscores how far the Initial Decision strays from the legislative intent and plain meaning of the Territorial Act" carelessly misstates the record evidence. (Application, at 16.) Nestlé Purina has *committed* over $300 million dollars of investment in the Hartwell Pet Food Facility. (Tr. 492.) As of the date of the Hearing, Nestlé Purina had already spent $220 million constructing the Hartwell Pet Food Facility and *committed* another $80 million for work that will be completed as part of the initial full start-up. (*Id.*) The Initial Decision does not rely on any "speculative future additions." The Initial Decision relies on the significant construction performed by Nestlé Purina to create a new premises with a completely different use and function than the prior premises, an idled textile mill. Construction endeavors of the size and nature of the Hartwell Pet Food Facility take time to complete, and while Nestlé Purina has yet to finish its construction efforts, the Hartwell Pet Food Facility does not have "speculative future additions," and more importantly, the Initial Decision does not rely on the same.

CONCLUSION

For the reasons set forth above, Walton EMC and Nestlé Purina respectfully request the Commission adopt, in full, the Initial Decision.[3]

Respectfully submitted this 17th day of March, 2020.

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[3] Walton EMC and Nestlé Purina do not believe, and in light of Georgia Power's failure to request oral argument, that the presentation of additional evidence or argument will assist the Commission in its decision and hereby respectfully request that the Commission rule on the Parties' papers.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **THE WALTON ELECTRIC MEMBERSHIP CORPORATION'S AND NESTLÉ PURINA PETCARE COMPANY'S RESPONSE IN OPPOSITION TO GEORGIA POWER COMPANY'S APPLICATION FOR REVIEW OF INITIAL DECISION** in the above-referenced docket was filed with the Commission's Executive Secretary, an electronic copy of same was served upon all parties and persons listed below via electronic mail, or unless otherwise indicated, as follows:

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So certified, this 17th day of March, 2020.

/s/ Curtis J. Romig
Curtis J. Romig