STATE OF GEORGIA

BEFORE THE PUBLIC SERVICE COMMISSION

CITY OF CARTERSVILLE, Petitioner, v. GEORGIA POWER COMPANY, Respondent.	)))))))))	Docket No. 55973

MOTION FOR SUMMARY JUDGMENT

COMES NOW, Respondent Georgia Power Company ("Georgia Power" or the "Company") and hereby files this Motion for Summary Judgment ("Motion") seeking summary judgment on the Petition of City of Cartersville ("Petition") filed before the Georgia Public Service Commission ("Commission") on October 11, 2024.

I. INTRODUCTION

This dispute between Georgia Power and the City of Cartersville ("Cartersville") (collectively the "Parties") concerns which party has the lawful right to provide electric service to a warehouse located at 1181 Cassville White Road, Cartersville, Georgia (the "Premises"). The undisputed facts paint a clear picture. The Premises does meet the statutory requirements to qualify for customer choice under the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 ("Territorial Act"). Cartersville has not established that the Premises is new, received single-metered electrical service, or had a connected load greater than 900 kilowatts ("kW") at initial full operation. The Premises is located in Georgia Power's territory and Georgia Power has the lawful right to serve it.

Further, even if Cartersville could establish the criteria for customer choice, Georgia Power began providing permanent electric service when the Premises reached initial full operation. As such, the Company has the right to continue serving the Premises pursuant to the grandfather clause of the Territorial Act. Cartersville has not shown that Georgia Power's grandfather rights have been terminated by any statutory exception. Based on the record in this proceeding, there exists no issue of material fact such that an evidentiary hearing is necessary. Accordingly, Georgia Power is entitled to judgment as a matter of law.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Both Cartersville and Georgia Power are electric suppliers as defined by the Territorial Act and are subject to the jurisdiction of the Commission to enforce the provisions of the Territorial Act. Petition at ¶ 6; Georgia Power Company's Response and Answer to City of Cartersville's Petition ("Response") at ¶ 6.

2. The dispute concerns the right to provide electric service to the Premises, which is located within the service territory assigned to Georgia Power. Petition at ¶ 7-8; Response at ¶ 7-8; Prefiled Direct Testimony of Chad Prater ("Prater Direct") at 2; Prefiled Direct Testimony of Freddy L. Morgan ("Morgan Direct") at 2-3; Prefiled Direct Testimony of Steve London ("London Direct") at 3; Prefiled Direct Testimony of Satya Madivala ("Madivala Direct") at 2; Prefiled Rebuttal Testimony of Robert Benjamin Boucher ("Boucher Rebuttal") at 3; Prefiled Rebuttal Testimony of Stephen Mullen ("Mullen Rebuttal") at 2.

3. The Premises was "developed for office and warehouse use." Petition at ¶ 7; Response at ¶ 7; Prater Direct at 3; Morgan Direct at 3; London Direct at 3; Madivala Direct at 3; Direct Testimony of Mark W. Lees ("Lees Direct") at 2.

4. Hines Busch Cartersville LLC ("Hines") developed the Premises and owned it from approximately February 2020 until June 2024. Prater Direct at 2, 6; Morgan Direct at 6; London Direct at 2-3; Madivala Direct at 2; Lees Direct at 2.

5. Satya Madivala was employed by Hines and served as the construction manager for the Premises. Prater Direct at 6; Morgan Direct at 6; Madivala Direct at 2.

6. Georgia Power began providing temporary construction service to the Premises when construction began in December 2020. Lees Direct at 3.

7. Georgia Power received an application for permanent service, Confirmation Number 8D5GEKNF3, from Satya Madivala on behalf of Hines on October 18, 2021. Direct Testimony of Glenn W. Dyke ("Dyke Direct") at 6; Lees Direct at 4; Exhibit MWL-2 (Request for Permanent Service submitted by Satya Madivala on October 18, 2021).

8. Hines was listed as the Georgia Power customer of record for both temporary construction service and permanent electric service at the Premises. Exhibit GWD-3 (Billing history for permanent service the four Georgia Power meters serving the Premises); Exhibit MWL-2.

9. Georgia Power supplied permanent electric service to the Premises, beginning in February 2022, and has continued to serve the Premises without interruption. Prater Direct at 3; Morgan Direct at 3; London Direct at 1; Madivala Direct at 2; Dyke Direct at 6; Lees Direct at 3.

10. Construction of the Premises was completed no later than April 21, 2022. Madivala Direct at 3; Exhibit P23 (Certificate of Completion for the Premises, dated April 21, 2022).

11. Initial electrical load of the Premises after completion of construction was below 900 kilowatts ("kW"). Lees Direct at 5; Exhibit MWL-3 (September 2020 load count for the Premises).

12. Until May 24, 2024, the Premises was served by a 300 kilovolt-amperes ("kVa") transformer. Petition at ¶ 18; Response at ¶ 18; Prater Direct at 3; Morgan Direct at 3; London Direct at 3; Lees Direct at 5.

13. A 300 kVa transformer can be sufficient to serve an office/warehouse-type use. Prater Direct at 3; Morgan Direct at 3-4; London Direct at 3.

14. The Premises is served by four separate meters. Lees Direct at 5; Exhibit GWD-3 (Billing history for permanent service the four Georgia Power meters serving the Premises); Mullen Rebuttal at 2; Exhibit P38 (Image of Fire Pump meter at the Premises); Exhibit P39 (Image of exterior meter at the Premises); Exhibit P40 (Image of other meters at the Premises).

15. In March 2023, Allied Tube & Conduit Corp. ("Atkore") first found the Premises. London Direct at 3.

16. After March 2023, a proposal was made to convert the Premises into a manufacturing facility (the "Proposal") for Allied Tube & Conduit Corp. ("Atkore"). Petition at ¶ 10; Response at ¶ 10; Dyke Direct at 6.

17. The estimated electrical load for the Proposal, as demonstrated by the May 31, 2023 and August 30, 2023 load studies, was approximately 1.5 MW, which would require a 1500 kVa transformer. Petition at ¶ 12; Response at ¶ 12; Prater Direct at 3-4; Morgan Direct at 4; London Direct at 4; Boucher Rebuttal at 5; Exhibit P14 (Construction plans for the proposed modifications to the Premises); Exhibit P24 (Load count for the Premises, dated May 31, 2023).

18. Hines contacted Georgia Power in June 2023 to request a 1500 kVa transformer. Petition at 11; Response at 11; London Direct at 4.

19. Atkore took possession of the Premises between September 2023, when it signed a lease with Hines, and December 2023, when it began receiving goods at the Premises. London Direct at 2.

20. Atkore became Georgia Power's customer of record for electric service at the Premises as of July 17, 2024 and is the current customer of record. Exhibit GWD-3.

III. ARGUMENT AND CITATIONS OF AUTHORITY

A. The Legal Standard for Summary Judgment

A motion for summary judgment will be granted if the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." O.C.G.A. §9-11-56(c). The threshold issue in this case is whether the Premises qualified for customer choice under the large load exception to the Territorial Act in O.C.G.A. 46-3-8(a). If it did not, Georgia Power is entitled to serve the Premises located in its service territory. But, even if the Premises did qualify for choice, Georgia Power is be entitled to summary judgment unless Cartersville can prove an exception to the grandfather clause in O.C.G.A. 46-3-8(b).

Although these issues present mixed questions of law and fact, there are no issues of material fact in dispute in this case bearing on these legal questions.[1] Taking all of the facts as presented in this case, the answer to both questions is a resounding no. Cartersville has failed to establish the criteria for customer choice: the Premises is not new; not single-metered; and did not have a connected load over 900 kW at initial full operation.

This action is governed by O.C.G.A. § 46-3-8(a) and (b), which state:

> (a) Notwithstanding any other provision of this part, but subject to subsections (b) and (c) of this Code section, after March 29, 1973, service to one or more new premises (but if more than one, such premises must be located on the same tract or

[1] *Walton Elec. Membership Corp. v. Georgia Power Co.*, 320 Ga. 740, 746 (2025) ("[T]he ultimate issue of whether those evidentiary facts meet or add up to that legal standard as set forth in the statute is a mixed question of law and fact.").

> on contiguous tracts of land), if utilized by one consumer and having single-metered service and a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater (excluding redundant equipment), may be extended and furnished, if chosen by the consumer:... (5) By any electric supplier if the premises are located outside the limits of a municipality.[2]
>
> (b) Notwithstanding any other provision of this part, but subject to subsections (c) and (h) of this Code section, every electric supplier shall have the exclusive right to continue serving any premises lawfully served by it on March 29, 1973, or thereafter lawfully served by it pursuant to this part, including any premises last and previously served by it which before or after March 29, 1973, have become disconnected from service for any reason, and including premises which before or after March 29, 1973, have been destroyed or dismantled and which are reconstructed after March 29, 1973, in substantial kind on approximately the same site.[3]

It is undisputed that the Premises lies within Georgia Power's service territory. Thus, Georgia Power has the right to serve the Premises unless it qualifies for customer choice under the Territorial Act, which it does not. The Premises is served through four meters, separately metering the electric service to the Premises. Moreover, neither actual load nor anticipated full load at initial operation exceeded 900 kW.[4]

It is also undisputed that Georgia Power initially supplied permanent electric service to the Premises beginning in February 2022 and has continued to serve the Premises uninterrupted, establishing Georgia Power's grandfather rights to serve the Premises absent one of the statutory exceptions.[5] As there is no material evidence in the record that could establish the Premises has been "destroyed or dismantled," the undisputed facts prove that Georgia Power has a right to continue serving the Premises under the plain terms of the Territorial Act.

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[2] O.C.G.A. § 46-3-8(a).
[3] O.C.G.A. § 46-3-8(b).
[4] Georgia Power understands that Atkore intends to convert the Premises into a manufacturing center with a connected load of approximately 1.5 MW. However, as Witness London testified, Atkore was not aware of the Premises prior to March 2023. London Direct at 3. As such, reliance on any load count conducted after the fact is misplaced, as it was unknown when the exclusive right to serve the Premises vested.
[5] O.C.G.A. § 46-3-8(b). *See also Excelsior Elec. Membership Corp. v. Georgia Pub. Serv. Comm'n*, 322 Ga. App. 687, 692 (2013) (identifying the exceptions as "(1) failure to provide adequate or dependable service; (2) a requested transfer of service; (3) municipal acquisition and condemnation; and (4) where a premises has been destroyed or dismantled and not reconstructed in substantial kind.").

B. The Undisputed Facts Foreclose a Finding that the Premises was Subject to Customer Choice under the Large Load Exception.

The undisputed facts paint a clear picture that the Premises was never eligible for customer choice under the large load exception of the Territorial Act. As discussed in *City of Norcross v. Georgia Power Company*, "the 'large load' exception, being an exception to the general rule of competitive restriction, must be strictly construed."[6] When the facts do not squarely fit the statute's narrow exceptions, the Commission has no authority to carve out new grounds for customer choice.

a. The Premises is not new.

Georgia Power received a request for permanent service from Hines in October 2021 and began providing permanent service to the Premises in February 2022. Under the Territorial Act, a customer's right to choose its electric supplier both is triggered and exhausted when it makes a clear, affirmative selection. The Court of Appeals made this explicit in *Jackson Electric Membership Corporation v. Georgia Public Service Commission*, holding that the execution of a Request for Service results in a binding contract that conclusively establishes the customer's choice.[7] *Jackson EMC* sets a bright-line rule for both the Public Service Commission and the courts: the Request for Service form is the customer's choice, full stop. The Premises was new when it was originally constructed, and the selection of electric supplier was made when the request for permanent service was made. To the extent the Premises was eligible for customer choice, that choice was made on October 18, 2021, through the Request for Service from Hines, the Premises' then owner. Exhibit MWL-2. Absent a clear statutory exception, Georgia Power is the rightful electric supplier for the Premises.

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[6] *City of Norcross v. Georgia Power Co.*, 197 Ga. App. 891, 893 (1990).
[7] *Jackson Elec. Membership Corp. v. Georgia Pub. Serv. Comm'n*, 294 Ga. App. 253, 258 (2008).

b. The Premises does not receive single-metered service.

Perhaps the most apparent flaw in the Petition is its assertion that the Premises is single metered – it is not. Rather, the Premises is served by four meters, connected at different points during the development of the facility. Though Cartersville offers testimony that such a practice is not uncommon (Boucher Rebuttal at 3), the discussion of the meaning under the Territorial Act amounts to no more than a lay assertion of a legal conclusion, to which the hearing officer should afford no weight.

When interpreting a statute, the Georgia Supreme Court instructs to "look to the text of the statute, give the language its plain and ordinary meaning, view it in the context in which it appears, and read it in its most natural and reasonable way, as an ordinary speaker of the English language would."[8] It further instructs to "avoid a construction that makes some statutory language mere surplusage."[9] The ordinary meaning of "single-metered service" means service through only one meter. It does not mean service through multiple meters to a "single" customer or consumer. If the exception had meant "single-customer service" it would have stopped after "utilized by one consumer." It does not. The statute's use of the conjunctive "and" indicates two discrete requirements. Because, as demonstrated by Cartersville Witness Mullen's exhibits, the Premises receives service through multiple meters, it cannot satisfy this prong of the large load exception. Exhibit P38; Exhibit P39; Exhibit P40. Therefore, the Petition must fail.

c. The connected load at initial full operation of the Premises was less than 900 kW.

Even if the selection of Georgia Power does not foreclose Cartersville's claim of customer choice, the Premises did not have connected load of 900 kW or greater at initial full operation. Although the statute defines neither "connected load" nor "initial full operation," extensive

[8] *Walton Elec. Membership Corp.*, 320 Ga. at 747.
[9] *Id.* at 750 (quoting *Middleton v. State*, 309 Ga. 337, 342 (3) (2020)).

Commission precedent interprets "initial full operation of the premises" to mean the load at the time the customer commences full operation of the facility as designed.[10] The primary factor used in determining initial full operation is generally the specificity and clarity of the design plans for the premises. The Commission has recognized that the calculation of connected load at initial full operation may be prospective in nature; however, the Commission requires assurance that such prospective determination is based on more than a vague hope of expansion without firm plans.[11] In addition to specific design plans and a construction timetable, the electricity consumer must also identify the electrical equipment to be installed and its associated projected load in order for the Commission to determine prospectively initial full operation.[12]

It is uncontested that Georgia Power received a request for permanent electric service to the Premises on October 18, 2021. Exhibit MWL-2. Further, the Parties agree that construction began on or around April 26, 2021, and concluded no later than April 21, 2022. Petition at ¶ 9; Exhibit P22. When Georgia Power received the request for permanent service to the Premises from Hines, the projected connected load was well below the 900-kW threshold. The load counts relied upon throughout the Petition and Cartersville's testimony had not yet been conducted, nor had Atkore even learned of the Premises. The proposed conversion of the Premises to a manufacturing facility would not be considered for more than another year. As such, any use of the Premises beyond its designed purpose as an office and warehouse would be speculative, little more than a

[10] *Douglas EMC v. Georgia Power Company*, Docket No. 3686 (Order on Remand, May 6, 1990); *Excelsior Electric Membership Corporation v. Georgia Power Company*, Docket No. 3895-U (Initial Decision June 7, 1990); *Okefenokee Rural Electric Membership Corporation v. Georgia Power Company*, Docket No. 3870-U (Initial Decision January 4, 1990); *Georgia Power Company v. Central Georgia Electric Membership Corporation*, Docket No. 3885-U (Initial Decision February 26, 1990); *Cobb Electric Membership Corporation v. Georgia Power Company*, Docket No. 3874-U (Initial Decision February 13, 1990); *Georgia Power Company v. Jackson Electric Membership Corporation,* Docket No. 3926-U (Initial Decision January 14, 1991).

[11] *See Okefenoke Rural EMC*, Docket No. 3870-U; *Cobb EMC*, Docket No. 3874-U.

[12] *Georgia Power Company v. Carroll EMC*, Docket No. 10517 (Initial Decision, October 5, 2000); *Sawnee EMC v. Georgia Power Company*, Docket No. 4252-U (Initial Decision, July 21, 1994).

vague hope for future changes with no actual plans for construction. Even assuming the latest possible consideration, when construction was finished in February 2022, the analysis reaches the same result: that initial full operation would occur when the Premises began operating according to its design, as an office and warehouse.

The Premises reached initial full operation upon the completion of construction, once it began receiving permanent service and became operable as a warehouse for a future tenant. Although Commission precedent acknowledges the potentially speculative nature of the large load exception, the Territorial Act does not delay recognition of initial full operation until a tenant or the most recent use of an existing premises is identified.[13] Accordingly, because use of the Premises as a manufacturing facility was not contemplated at the time Hines applied for permanent construction service or at the time construction of the Premises was completed, the Premises reached initial full operation when it began operating as a warehouse. No evidence exists supporting a load count above 900 kW at initial full operation.

C. The Undisputed Facts Foreclose a Finding that the Premises was Destroyed or Dismantled and Reconstructed Not in Substantial Kind as to Impact Georgia Power's Exclusive Right to Continue Serving the Premises.

Cartersville's misguided belief that it has any right to serve the Premises rests on its erroneous assertion that "Atkore's new use of the [Premises] constitutes a 'reconstruction' of the premises, which eliminates the applicability of the 'grandfather clause.'" Petition at ¶ 21 (citation omitted). The Parties agree that Georgia Power served the Premises during construction, after construction had completed, and still serves the Premises to this day. Thus, pursuant to O.C.G.A. § 46-3-8(b) and controlling precedent, Georgia Power has the exclusive right to continue serving

[13] *Sawnee EMC v. Georgia Power Company*, Docket No. 4252 at 5 (Initial Decision, July 21, 1994); *Douglas EMC v. Georgia Power Company*, Docket No. 3686 at 6 (Order on Remand, May 6, 1990).

the Premises unless Cartersville can show that the Premises was destroyed or dismantled and reconstructed not in substantial kind.

Walton EMC v. Georgia Power Company serves as a practical blueprint for disputes regarding the grandfather clause. Parties seeking to prove a premises was destroyed or dismantled must marshal concrete evidence to document the scale and permanence of changes. To establish or refute whether a premises was reconstructed in "substantial kind," the record must show whether the reconstructed facility truly carries forward the essential identity, function, and structure of the prior premises. The ruling makes clear that grandfathered rights do not survive wholesale transformation, and any party hoping to invoke or defeat those rights must build a factual record that leaves no doubt as to what stood, what was removed, and what has taken its place.

In *Walton EMC*, the Supreme Court of Georgia addressed the meaning and application of the "destroyed or dismantled" and "reconstructed in substantial kind" language in O.C.G.A. § 46-3-8(b), sharply defining the limits of a utility's grandfathered service rights.[14] The Court began by distinguishing between the terms "destroyed" and "dismantled," relying on their ordinary dictionary meanings from when the statute was enacted. "Destroyed" was interpreted as total ruin or demolition, while "dismantled" was found to mean "substantially taken apart or the premises' structural components, furniture, equipment, or other significant contents are substantially stripped away" even if not destroyed entirely.[15] The Court refused to conflate these terms, making it clear that "dismantling" could involve less than total destruction but must go well beyond routine renovations or repairs. In applying this standard, the Court focused on the scale and permanence of the changes to the premises. Evidence of "destruction" included complete demolition, removal

[14] *Walton Elec. Membership Corp.*, 320 Ga. at 747.
[15] *Id.* at 750.

of foundations, or any work rendering the premises unusable in its former state. "Dismantling," on the other hand, was proven by facts showing removal of core infrastructure, gutting of key building systems, and significant demolition of interior or structural elements. According to the Court, the record in that case left no room for doubt: the facility at issue, a former textile mill, had undergone the removal and replacement of the entire electrical system, major demolition of roofs and floors, filling in of critical infrastructure, and a capital investment many times greater than the original purchase price. The original manufacturing purpose and processes were gone, replaced wholesale.

Having found the premises in *Walton EMC* dismantled, the Court turned to whether the facility had been "reconstructed in substantial kind." Here, "substantial kind" was held to require more than just a building occupying the same site; the new facility must be, in its fundamental nature and quality, largely the same as the old. The Court looked to factors such as whether the new use mirrored the original purpose, whether the basic building footprint, layout, and utility demands matched, and whether the essential operational character persisted. The Court found that the new plant served a different industry, utilized new sanitary and process systems, expanded the footprint, and bore no meaningful resemblance to the textile operation that had stood before. On these facts, the Court concluded the premises was not reconstructed in substantial kind, and thus became a "new" premises for purposes of the Territorial Act.

Cartersville has provided no evidence of the destruction or dismantlement of the Premises. The "demolition plans" seen in Exhibit P14 show nothing more than slight modification to the building's exterior. The plans call for changing the doors at two points, altering only 3.5% of the outer perimeter.[16] Nor can it be said that the changes have "substantially taken apart" or "substantially stripped away" the Premises' structural components, furniture, equipment, or other

[16] Exhibit P14 shows the building 1120' long x 470 feet wide, a total perimeter of 3,180 feet. Demolishing 56 feet of wall at two points, or 112 feet, totals 3.5% of the outer structure.

significant contents. Cartersville's documentation of work performed around the facility is irrelevant to this proceeding, as the exception requires changes to the Premises itself, rather than the surrounding area.[17]

Cartersville has also failed to provide evidence that the Premises was reconstructed not in substantial kind. The notable lack of destruction or dismantlement limits any possible reconstruction. For this reason, the Petition relies on the flawed assumption that a new *use* of the Property constitutes a "*reconstruction*" of the Premises.[18] This assertion is unsupported by Commission precedent and wholly disregards the *Walton EMC* test that reconstruction in substantial kind means a premises "constructed again largely, but not wholly, of the same fundamental nature or quality as they were previously."[19] Admittedly, the Proposal adds infrastructure and equipment to the Premises; however, such changes do nothing to impact the fundamental nature of the building, as it was intentionally designed as a warehouse capable of adjustments to meet future tenant needs. The Petition cannot flout the statute's clear requirement of significant structural changes to the Premises by merely installing equipment. Because Cartersville has provided no evidence to support the claim that the Premises has been dismantled or destroyed or reconstructed not in substantial kind, Georgia Power's grandfather rights stand, and the Petition must fail.

IV. CONCLUSION

This dispute is appropriate for summary judgment because there is no genuine issue as to any material fact. *See* O.C.G.A. §9-11-56(c). The Premises does not qualify for customer choice under the large load exception to the Territorial Act and, even if it does, Georgia Power is the

[17] O.C.G.A. § 46-3-3 defines "Premises" as "the **building**, **structure**, or **facility** to which electricity is being or is to be furnished." (emphasis added).
[18] Petition at ¶ 21.
[19] *Walton Elec. Membership Corp.*, 320 Ga. at 752.

rightful supplier of electricity to the Premises pursuant to the grandfather clause in O.C.G.A. § 46-3-8(b). Under the plain terms of the Territorial Act, Atkore simply does not have the option to change electric service providers unless the criteria of the strictly construed statutory exceptions apply.

For the reasons set forth herein, Georgia Power requests that this Commission grant its Motion for Summary Judgment and:

(1) Deny the Petition;

(2) Find and determine that Georgia Power is the only electric supplier authorized to serve the Premises pursuant to the Territorial Act;

(3) Order Cartersville to cease and desist its efforts to serve the Premises;

(4) Grant such other and further relief as the Hearing Officer shall deem just and proper.

Respectfully submitted, this 11th day of July, 2025.

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