BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

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

PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Petitioner City of Cartersville (hereinafter "Cartersville") disagrees that "[t]he threshold issue in this case is whether the Premises [at issue] qualifies for customer choice under the large load exception to the Territorial Act in O.C.G.A. 46-3-8**(a)**." Respondent's Motion for Summary Judgment (hereinafter "Respondent's Motion"), p. 5 (emphasis added). Rather, as the Georgia Supreme Court clarified just eight months ago, O.C.G.A. § 46-3-8**(a)** "is explicitly made 'subject to' subsection **(b)**." *Walton Electric Membership Corp. v. Georgia Power Co.*, 320 Ga. 740, 748, 911 S.E.2d 559, 567 (2025)(emphasis added). Thus, this case turns on whether the Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind" as those terms are used in O.C.G.A. § 46-3-8**(b)**. If it was, then the question becomes whether the destroyed or dismantled and reconstructed Premises has a "connected load, which at the time of initial operation of the premises, is 900 kilowatts or greater." O.C.G.A. § 46-3-8(a). "And because this type of mixed question requires a nuanced, case-by-case characterization, assessment, or judgment of whether the given historical facts are properly characterized

as meeting the legal standard of 'destroyed or dismantled' and 'reconstructed ... in substantial kind,'"[1] summary adjudication is inappropriate.

Focusing on O.C.G.A. § 46-3-8**(a)**, Respondent Georgia Power Company (hereinafter "GPC") argues that the Premises[2] is not "new." But as expressly addressed in *Walton, EMC*, it does not have to be. GPC argues that a prior owner of the Premises did not have a "connected load, which at the time of initial operation of the premises, is 900 kilowatts or greater." Again, it did not have to. So long as the Premises has been "destroyed or dismantled" and not "reconstructed ... in substantial kind," it is "deemed 'new' under O.C.G.A. § 46-3-8(a) and (b)." 320 Ga. at 748; 911 S.E.2d at 567. And so long as the destroyed or dismantled and reconstructed Premises has a "connected load, which at the time of initial operation of the premises, is 900 kilowatts or greater," it qualifies for customer choice under the large load exception to the Territorial Act.

I. RESPONSE TO GPC'S STATEMENT OF UNDIPUTED MATERIAL FACTS

Cartersville responds to GPC's statement of undisputed material facts as follows:

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Undisputed.
6. Undisputed.

[1] 320 Ga. at 747; 911 S.E.2d at 566.
[2] Capitalized terms have the same meaning herein as in Respondent's Motion.

7. Disputed as stated. Cartersville does not dispute the Hines was the initial customer at the Premises, which was developed as an office/warehouse/distribution facility. However, before the Premises was used as such, it was "destroyed or dismantled" and "reconstructed" as a manufacturing facility, as those terms are used in the Territorial Act.

8. Disputed as stated. Cartersville does not dispute the Hines was the initial customer at the Premises, which was developed as an office/warehouse/distribution facility. However, before the Premises was used as such, it was "destroyed or dismantled" and "reconstructed" as a manufacturing facility, as those terms are used in the Territorial Act.

9. Disputed as stated. Cartersville does not dispute the Hines was the initial customer at the Premises, which was developed as an office/warehouse/distribution facility. However, before the Premises was used as such, it was "destroyed or dismantled" and "reconstructed" as a manufacturing facility, as those terms are used in the Territorial Act.

10. Disputed as stated. Cartersville does not dispute the Hines was the initial customer at the Premises, which was developed as an office/warehouse/distribution facility. However, before the Premises was used as such, it was "destroyed or dismantled" and "reconstructed" as a manufacturing facility, as those terms are used in the Territorial Act.

11. Disputed as stated. Cartersville does not dispute the Hines was the initial customer at the Premises, which was developed as an office/warehouse/distribution facility. However, before the Premises was used as

such, it was "destroyed or dismantled" and "reconstructed" as a manufacturing facility, as those terms are used in the Territorial Act.

12. Undisputed.

13. Undisputed.

14. Undisputed.

15. Undisputed.

16. Undisputed.

17. Undisputed.

18. Undisputed.

19. Undisputed.

20. Undisputed.

In addition, Cartersville sets forth the following as additional material facts in this matter:

1. The Premises was constructed as a speculative office/warehouse/distribution facility in 2021-22. Prefiled Direct Testimony of Satya Madivala, pp. 2-3; Prefiled Direct Testimony of Steve London, p. 3.

2. But before it was used as such, Atkore discovered the Premises in March, 2023, through its broker, Cushman Wakefield. Prefiled Direct Testimony of Steve London, p. 3.

3. Atkore then converted the Premises to a manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2.

4. The conversion of the Premises to a manufacturing facility involved a set of construction plans consisting of 235 pages. Prefiled Direct Testimony of Steve London, Ex. P14.

5. The cost of the conversion to the then-owner (Hines) was $4,482,033.00. Prefiled Rebuttal Testimony of Satya Madivala, p. 2-3 and Ex. P37.

6. The cost to Atkore was approximately $2 million, which included "considerable investment in the electrical infrastructure inside the facility to

meet the needs of Atkore." Prefiled Direct Testimony of Steve London, pp. 7-8.

7. Among other things, Atkore had to "upgrade their switchgear and pull[ ] additional secondary wire to each transformer." Prefiled Direct Testimony of Freddy L. Morgan, p. 8.

8. From an electric power standpoint, the Premises – as initially constructed by Hines – was served by a 300kVa transformer. Prefiled Direct Testimony of Steve London, p. 3.

9. However, load tests showed that Atkore's electric power needs would be 1.5MW, requiring a 1500kVa transformer or one five times the size of that initially serving the Premises. *Id.* at 3-4.

10. In order to extend such service to the Premises, Cartersville had to "acquire a substation breaker and design and build three-phase service" to the Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 5.

11. In fact, Cartersville provided "14,500 ft (43,500 ft total) of three-phase service to the" Premises. *Id.*

12. More specifically,

> Cartersville Electric coordinated with MEAG Power to install a breaker and voltage regulators in the substation to support the increased load. Our own Cartersville Electric crew performed the overhead line work, installing approximately 3,136 feet of overhead primary wire. We also contracted crews to install around 12,390 feet of underground primary conduit and wire. Additionally, we installed a 500 kVA transformer at the rear of the property to serve Atkore's electrical needs. Prefiled Direct Testimony of Chad Prater, p. 6.

13. In total, Cartersville "spent approximately $600,000.00 to extend electric power to the" Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 9.

14. The Premises consists of one building occupied by one customer (Atkore). Prefiled Rebuttal Testimony of Stephen Mullen, pp. 2-3.

15. There are no other tenants at the Premises besides Atkore. *Id.*

16. And while there are four separate meters at the Premises, they serve the same building and the same customer (Atkore). *Id.*

17. The bill is sent to a single customer (Atkore), and a single customer (Atkore) pays the bill. *Id.*

II. LEGAL ARGUMENT AND CITATION OF AUTHORITY

A. Summary Judgment Standard.

Summary judgment cannot be awarded unless "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law…." O.C.G.A. § 9-11-56(c). "The grant of summary judgment is appropriate only after the movant has established 'that no issues of material fact remain to be tried and that the undisputed facts, viewed in the light most favorable to the nonmovant, warrant judgment as a matter of law. [Cit.]'" *Hopkins v. Virginia Highland Assocs.*, 247 Ga. App. 243, 246, 541 S.E.2d 386, 389 (2000) (*quoting Terry v. Collins*, 230 Ga. App. 646, 647, 497 S.E.2d 395, 396 (1998)). Most importantly, "[w]hen ruling on a motion for summary judgment, the party opposing the motion should be given the benefit of all reasonable doubt, and the court should construe the evidence and all inferences and conclusions therefrom most favorably toward the party opposing the motion." *White v. Norfolk S. Ry. Co.*, 247 Ga. App. 279, 279, 542 S.E.2d 511, 512 (2000).

Again, focusing on O.C.G.A. § 46-3-8(a), GPC advances three arguments in support of its motion and as to why the Premises does not qualify for customer choice under the Territorial Act, to wit: (i) the Premises is not new (Respondent's Motion, p. 7); (ii) the connected load at initial full operation of the premises was less than 900 kW (Respondent's Motion, pp. 8-10); and (iii) the Premises does not receive single-metered service (Respondent's Motion, p. 8). Cartersville will address each of these contentions below. Thereafter, Cartersville will address the real issue in this case, to wit: (i) whether

the Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind" as those terms are used in O.C.G.A. § 46-3-8(b); and if it was, (ii) whether the destroyed or dismantled and reconstructed Premises has a "connected load, which at the time of initial operation of the premises, is 900 kilowatts or greater."

But first, a more detailed discussion of Walton EMC, the Georgia Supreme Court's most recent treatment of these and related issues, is warranted.

B. Walton EMC.

Just eight months ago, the Georgia Supreme Court rendered its decision in Walton EMC, which even GPC acknowledges "serves as a practical blueprint for disputes regarding the grandfather clause" of the Territorial Act. (Respondent's Motion, p. 11). In *Walton EMC*, the issue was whether a pet food company's[3] conversion of a former textile warehouse and manufacturing facility into a pet food manufacturing facility triggered the customer choice provision for large load customers under the Territorial Act. Notably, both the hearing officer and the Georgia Public Service Commission (the "Commission") determined that Nestle qualified for customer choice. 320 Ga. at 741, 911 S.E.2d at 563. However, the Superior Court of Fulton County reversed the Commission's decision and was affirmed by the Georgia Court of Appeals. 320 Ga. at 743, 911 S.E.2d at 564. The Georgia Supreme Court then granted certiorari and ultimately reversed the Georgia Court of Appeals, finding that conversion of the former textile warehouse and manufacturing facility into a pet food manufacturing facility did trigger the customer choice provision for large load customers under the Territorial Act.

[3] The pet food company was Nestle Purina Petcare Company (hereinafter "Nestle"). 320 Ga. at 740, 911 S.E.2d at 563.

Walton EMC directly addresses the first argument advanced by GPC in Respondent's Motion, and it necessarily resolves a second argument in Cartersville's favor. With respect to the former, and as discussed in more detail in Section II.C. below, *Walton EMC* expressly held that a premises need not be "new;" rather, so long as the premises has been "destroyed or dismantled" and not "reconstructed . . . in substantial kind," it is "treated as 'new'" under the Territorial Act. With respect to the latter – and as discussed in detail in Section II.D. below – for purposes of determining whether the connected load at initial full operation was 900 kW or more, the Court looked not to the initial operation of the premises as a textile mill but rather its repurposed operation as a pet food manufacturing facility.

C. The question is not whether the premises is "new;" rather, the question is whether the Premises has been "destroyed or dismantled" and not "reconstructed . . . in substantial kind," and if it has been, it is "treated as 'new'" under the Territorial Act.

GPC contends that it "received a request for permanent service from [its former customer] Hines in October 2021 and began providing permanent service to the Premises [to its former customer] in February 2022." (Respondent's Motion, p. 7). Assuming this is true for purposes of Respondent's Motion, GPC then argues that the Premises is therefore not "new" and that a subsequent customer (like Atkore) could not avail itself of customer choice, even if the Premises was subsequently "destroyed or dismantled" and not "reconstructed . . . in substantial kind" as those terms are used in the Territorial Act.[4] However, that is plainly not the case under Georgia law, as articulated in *Walton EMC*.

[4] The question of whether the Premises was "destroyed or dismantled" as those terms are used in the Territorial Act is addressed in Section II.F. below.

As a threshold matter, GPC advanced a similar argument in *Walton EMC*. "Georgia Power . . . assert[ed] that it had the right to continue servicing the premises because they were not new premises and [the new customer] did not meet the requirements of the Territorial Act to switch electrical suppliers." 320 Ga. at 740-1, 911 S.E.2d at 563. Indeed, "Georgia Power argued that the premises had long existed as a manufacturing and warehousing facility" and did so until 2006. 320 Ga. at 741, 911 S.E.2d at 563. Yet, that was not dispositive of the case, and if it had been, the Georgia Supreme Court presumably would have said so. In fact, the Georgia Supreme Court expressly acknowledged that the premises at issue was not new:

> It is undisputed that under the rules and regulations set forth in the Territorial Act, Nestle's premises are located within electric supplier Georgia Power's assigned area and that the premises were not brand new such that Nestle had the right under OCGA § 46-3-8 (a)(5) alone to select any electric supplier. Instead, Nestle claims that the premises are deemed "new" under OCGA § 46-3-8(a) & (b).
>
> Although subsection (b) is drafted from the perspective of the electric supplier that has the exclusive right to continue serving the premises (here, Georgia Power), it must be read in conjunction with subsection (a), which permits a customer to select "any electric supplier" upon meeting several conditions including that the premises are "new." However, subsection (a) is explicitly made "subject to" subsection (b). Reading subsections (a) and (b) together, it follows that an electric supplier for an assigned area does *not* have the exclusive right to continue serving the premises if the premises have been "destroyed or dismantled" and though reconstructed, are not "reconstructed ... in substantial kind." See *Crowder v. State of Ga.*, 309 Ga. 66, 70-71 (2) (a), 844 S.E.2d 806 (2020) (reading related statutory subsections together in context). **Such premises are treated as "new premises" under subsection (a)**, permitting a large-load consumer to choose another electric supplier to service such premises pursuant to that provision. Therefore, whether Nestle may choose Walton EMC as its electric provider, as the Commission originally ruled, or whether Georgia Power is entitled to be Nestle's exclusive electric provider, as the superior court and the Court of Appeals ruled, depends on whether the subject premises were "destroyed or dismantled" and "reconstructed ... in substantial kind" under the statute.

320 Ga. at 748; 911 S.E.2d at 567 (emphasis added).

In sum, the issue was whether a *new customer* – who "overhauled the facility so that it could be used to make pet food" – qualified for customer choice. *Id.* That is precisely the issue in the instant action. In other words, if the record establishes that the new customer (Atkore) "destroyed or dismantled" the Premises and did not "reconstruct[it] . . . in substantial kind," as those terms are used in the Territorial Act, it does not matter whether the Premises is "new." It is "deemed new" under the Territorial Act.

GPC argues that "*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." (Respondent's Motion, p. 7). Whatever this may actually mean, *Jackson Electric Membership Corp. v. Georgia Public Service Comm'n*, 294 Ga. App. 253, 668 S.E.2d 867 (2008), is not dispositive of the instant action. It does not even involve the same issue. In *Jackson EMC*, the issue was whether the *same customer* (i.e., Free Chapel Worship Center) who had previously elected GPC as its electric service provider could then change its mind and choose a different electric service provider. There was no *new customer* involved and no claim that the premises at issue had been "destroyed or dismantled" and not "reconstructed . . . in substantial kind," as exists in this case. Rather, the issue in *Jackson EMC* was simply whether the customer's prior election constituted a "binding contract" with GPC. Again, that is not the issue in the instant action.

D. The issue is not whether the Premises had a connected load over 900 kW when the former owner (Hines) owned the Premises; rather, the issue is whether (i) the Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind," and (ii) if so, whether the connected load was at least 900 kW at initial operation of the reconstructed Premises.

As the Georgia Court of Appeals has recognized, "[n]either 'connected load' nor 'initial full operation' is defined in the [Territorial] Act." *City of Norcross v. Georgia Power Co.*, 197 Ga. App. 891, 894, 399 S.E.2d 725, 728 (1990); *see also Georgia Power Co. v. Jackson Electric Membership Corp.*, Docket No. 3926-U, p. 9 (Initial Decision January 14, 1991)("As noted in previous cases, the Territorial Act does not define the term 'initial full operation.'"). GPC argues that "initial full operation" means, in the instant action, when the former owner of the Premises (Hines) began operating the Premises as an office and warehouse. (Respondent's Motion, pp. 9 - 10). Respectfully, the record does not reflect that Hines ever actually operated the Premises as an office and warehouse,[5] but even if it had, GPC's argument is – once again – controlled and foreclosed by *Walton EMC*.

Under GPC's theory, the relevant inquiry in *Walton EMC* would have been the connected load when the premises at issue was operated as a textile mill, not after it had been "destroyed or dismantled" and reconstructed as pet food manufacturing facility. Yet, that was plainly not the inquiry undertaken by the Georgia Supreme Court. As with its analysis of whether the premises was "new," the Georgia Supreme Court once again construed O.C.G.A. § 46-3-8(a) with subsection (b):

> Nestle then purchased the premises for $7 million and overhauled the facility so that it could be used to make pet food. In 2019, Nestle indicated its intention to switch its service provider to Walton EMC, pursuant to an exception in the Territorial Act for premises that have a single-metered service and connected load of 900 kilowatts or greater, which have been "destroyed or

[5] In fact, the record reflects just the opposite. The Premises was constructed as a speculative office/warehouse/distribution facility in 2021-22. Prefiled Direct Testimony of Satya Madivala, pp. 2-3; Prefiled Direct Testimony of Steve London, p. 3. But before it was used as such, Atkore discovered the Premises in March, 2023, through its broker, Cushman Wakefield. Prefiled Direct Testimony of Steve London, p. 3. Atkore then converted the Premises to a manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2.

> dismantled" and not "reconstructed ... in substantial kind." OCGA § 46-3-8 (a) (5), 46-3-8 (b).

320 Ga. at 741, 911 S.E.2d at 563. Again, if a premises has been "destroyed or dismantled" and not "reconstructed ... in substantial kind," it is "deemed new," and the relevant inquiry is the connected load at initial full operation of the reconstructed premises. In the instant action, GPC does not even contest – at least for purposes of Respondent's Motion – that the connected load at initial operation of the Premises following Atkore's reconstruction of it was 900 kilowatts or greater.

The Commission decisions cited by GPC in footnotes 10-12 of Respondent's Motion are inapposite and do not demand a different result. None of those decisions dealt with a situation like the instant action where a premises had been "destroyed or dismantled" and not "reconstructed ... in substantial kind." Rather, each of those decisions involved a "prospective determination that a customer is a large load customer"[6] based on an anticipated future expansion of a premises or the introduction of additional equipment in the future at the premises.[7] That is simply not the issue in this case.

E. For purposes of determining whether a premises has "single-metered service," the number of meters is not dispositive; rather, the hearing officer must consider other factors.

As it relates to "single-metered service," GPC's argument is simply this: "[t]he Premises is served through four separate meters, separately metering the electric service

[6] *Excelsior Electric Membership Corp. v. Georgia Power Co.*, Docket No. 3895-U, p. 11 (Initial Decision June 7, 1990).

[7] Notably, "[a]ll of the 'initial full operation' cases before the Commission involved factual questions as to the load characteristics of the particular facility and its operational requirements." *Excelsior Electric Membership Corp.*, Docket No. 3895-U, p. 7. And the decisions cited by GPC represent a fairly even split where the Commission found, in some instances, that the "customer choice" exception applied and, in other instances, that it did not.

to the Premises,"[8] which according to GPC, *ipso facto* means that the single-metered service requirement is not satisfied. Yet, GPC fails to cite a single Georgia case where the courts have determined that more than one meter serving a property necessarily means that the single-metered service requirement is not satisfied. In fact, the Georgia Court of Appeals has noted just the opposite: "the Commission has consistently refused to rely on the number of meters as the single dividing factor in deciding cases under the 'grandfather clause' in the [Territorial] Act." *Central Georgia Electric Membership Corp. v. Public Service Commission*, 351 Ga. App. 69, 74, 830 S.E.2d 459, 463 (2019).

In *Central Georgia EMC*, the issue was whether a new gym – constructed on a high school campus but separately metered from the high school – was nevertheless part of the same premises as the high school. Again, the Court of Appeals rejected the idea that – just because the gym was separately metered from the high school – it was *ipso facto* not part of the same premises. Rather than focus on the mere number of meters, the Court of Appeals (and the hearing officer) examined other relevant factors, including: (i) that the gym "share[d] a common electrical system with th[e] existing buildings;" and (ii) that "power bills for both the New Gym and for the existing high school facility are sent to and paid by the Butts County Board of Education." 351 Ga. App. at 75, 830 S.E.2d at 464.

In *Georgia Power Co. v. Carroll Electric Membership Corp.*, Docket No. 10517-U (Initial Decision October 5, 2000), the hearing officer similarly determined that the presence of more than one meter did not necessitate a finding that the premises did not have "single-metered service" under the Territorial Act. In fact, *Carroll EMC* involved

[8] Respondent's Motion, p. 6.

separate meters and separate buildings, and the hearing officer still determined that they were "components of a single unified premises." *Id.* at p. 16.

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> It is the conclusion of the Hearing Officer that the evidence adduced at hearing was sufficient to establish that Building One and Building Two were and are components of a single unified premises of HL-A located on the same tract of land which is and will be utilized by a single consumer of electric service. As such, Building One and Building Two must be considered together in calculating load count for the 900 kW large load exception, if the HL-A premises has single metered service.

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> The evidence of record established that HL-A received a single unified bill from Carroll EMC for all electric service provided to the Premises and would continue to do so upon completion of Building Two and the paint shop. Because HL-A used two separate voltages on the premises, such two voltage service necessitated separate transformers and separate meters for each such voltage. However, the same two transformers and meters installed at the Premises because of dual voltage will serve Building One, Building Two and the paint shop (i.e., all manufacturing processes presently contemplated by HL-A for the Premises). The Hearing Officer therefore, concludes that the unified single monthly billing by Carroll EMC to HL-A accomplishes the legislative purpose behind the statutory requirement for "single metered service" under the Territorial Act, especially in light of the technical difficulty, if not impossibility, of providing two voltage service on a single meter and in view of the very minuscule likelihood that the General Assembly contemplated dual voltage service in establishing the "single metered service" requirement. Rather, this Commission deems the "single metered service" language of [the Territorial Act], as satisfied when the electric service provider uses a single, unified bill for all electric service to a premises in the instance where the only reason for using more than one meter is the provision of dual voltage service.

11

> The conclusions of the Hearing Officer in previous paragraphs 9 and 10 above are consistent with the Territorial Act's definition of "Premises" in O.C.G.A. § 46-3-3(6), which expressly excepts from the definition of a single "Premises" separate buildings where "the permanent service is separately metered and the charges are separately calculated and billed."

Id. at pp. 16-7.

Finally, the Georgia Supreme Court has similarly determined that the mere number of meters is not dispositive. In *Sawnee Electric Membership Corp v. Georgia Public Service Comm'n*, 273 Ga. 702, 544 S.E.2d 158 (2001), the issue was whether an apartment complex – with "a master or pass through meter" – had single-metered service for purposes of the Territorial Act. The evidence showed that – while the apartment complex had a single meter "which measures the electric usage for the entire complex" and while GPC billed the complex owner "for the total usage based on the master meter reading" – the complex owner installed separate meters for each of the apartment units, had the meters read by an outside company, and billed the tenants separately "for their individual usage."[9] 273 Ga. at 703, 544 S.E.2d at 160. Under these facts, the Georgia Supreme Court determined that the apartment complex was not "one premises" and the individual tenants were not "one customer" under the Territorial Act. 273 Ga. at 704-6, 544 S.E.2d at 161.

In the instant action, it is undisputed that the Premises consists of one building occupied by one customer (Atkore). Prefiled Rebuttal Testimony of Stephen Mullen, pp. 2-3. There are no other tenants at the Premises besides Atkore. *Id.* And while there are four separate meters at the Premises, they serve the same building and the same customer (Atkore). *Id.* The bill is sent to a single customer (Atkore), and a single customer (Atkore) pays the bill. *Id.* These facts are sufficient to satisfy the single metered service requirement under the Territorial Act.

[9] Notably, the Georgia Supreme Court did not hold that the mere existence of multiple meters serving the same property disqualified that property from the "customer choice" exception, although it certainly could have used those words, if that was the Court's intent.

F. The Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind."

As mentioned above, this case turns on whether the Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind," and that was the central issue in *Walton EMC* as well.[10] *See, generally*, 320 Ga. at 746-52; 911 S.E.2d at 566-70. And again, "because this type of mixed question requires a nuanced, case-by-case characterization, assessment, or judgment of whether the given historical facts are properly characterized as meeting the legal standard of 'destroyed or dismantled' and 'reconstructed ... in substantial kind,'"[11] summary adjudication is inappropriate.

That said, with respect to the meaning of "destroyed or dismantled" and "reconstructed ... in substantial kind," *Walton EMC* provides as follows:

- " . . . [W]e conclude that 'destroyed' refers to the complete ruination or tearing down or breaking down of the premises, while 'dismantled' means something less, which may, for example, be accomplished by substantially taking apart or substantially stripping away a building's structural components, furniture, equipment, or other significant contents, without the added requirement of entire destruction. See *Middleton v. State*, 309 Ga. 337, 342 (3), 846 S.E.2d 73 (2020) ("[C]ourts generally should avoid a construction that makes some statutory language mere surplusage.")." 320 Ga. at 750; 911 S.E.2d at 568.

- "We hold therefore that the Court of Appeals erred in interpreting "destroyed or dismantled," as used in OCGA § 46-3-8 (b), to require the premises to be taken apart, disassembled, or ruined "in a wholistic rather than partial manner." 369 Ga. App. at 464, 893 S.E.2d 852." 320 Ga. at 751; 911 S.E.2d at 569.

- "We have no trouble concluding, nor do the parties disagree, that 'reconstructed ... in substantial kind' means reconstructed premises that are largely, but not wholly, of the same fundamental nature or quality as

[10] "[W]hether Nestle may choose Walton EMC as its electric provider, as the Commission originally ruled, or whether Georgia Power is entitled to be Nestle's exclusive electric provider, as the superior court and the Court of Appeals ruled, depends on whether the subject premises were 'destroyed or dismantled' and 'reconstructed ... in substantial kind' under the statute." 320 Ga. at 748; 911 S.E.2d at 567.
[11] 320 Ga. at 747; 911 S.E.2d at 566.

> they were previously. Accordingly, taken together, we construe the phrase 'destroyed or dismantled and which are reconstructed ... in substantial kind' in OCGA § 46-3-8(b) as extending an electric supplier's exclusive right to continue serving premises if, among other things: (a) the premises are completely ruined or torn or broken down, *or* (b) short of entire destruction, the premises are substantially taken apart or the premises' structural components, furniture, equipment, or other significant contents are substantially stripped away; *and* (c) the premises are constructed again largely, but not wholly, of the same fundamental nature or quality as they were previously." 320 Ga. at 752; 911 S.E.2d at 569-70.

Again, the Premises was constructed as a speculative office/warehouse/distribution facility in 2021-22. Prefiled Direct Testimony of Satya Madivala, pp. 2-3; Prefiled Direct Testimony of Steve London, p. 3. But before it was used as such, Atkore discovered the Premises in March, 2023, through its broker, Cushman Wakefield. Prefiled Direct Testimony of Steve London, p. 3. Atkore then converted the Premises to a manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2.

The conversion of the Premises to a manufacturing facility involved a set of construction plans consisting of 235 pages. Prefiled Direct Testimony of Steve London, Ex. P14. The cost of the conversion to the then-owner (Hines) was $4,482,033.00. Prefiled Rebuttal Testimony of Satya Madivala, p. 2-3 and Ex. P37. The cost to Atkore was approximately $2 million, which included "considerable investment in the electrical infrastructure inside the facility to meet the needs of Atkore." Prefiled Direct Testimony of Steve London, pp. 7-8. Among other things, Atkore had to "upgrade their switchgear and pull[ ] additional secondary wire to each transformer." Prefiled Direct Testimony of Freddy L. Morgan, p. 8.

From an electric power standpoint, the Premises – as initially constructed by Hines – was served by a 300kVa transformer. Prefiled Direct Testimony of Steve London, p. 3. However, load tests showed that Atkore's electric power needs would be 1.5MW, requiring a 1500kVa transformer or one five times the size of that initially serving the Premises. *Id.* at 3-4. In order to extend such service to the Premises, Cartersville had to "acquire a substation breaker and design and build three-phase service" to the Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 5. In fact, Cartersville provided "14,500 ft (43,500 ft total) of three-phase service to the" Premises. *Id.* More specifically,

> Cartersville Electric coordinated with MEAG Power to install a breaker and voltage regulators in the substation to support the increased load. Our own Cartersville Electric crew performed the overhead line work, installing approximately 3,136 feet of overhead primary wire. We also contracted crews to install around 12,390 feet of underground primary conduit and wire. Additionally, we installed a 500 kVA transformer at the rear of the property to serve Atkore's electrical needs.

Prefiled Direct Testimony of Chad Prater, p. 6. In total, Cartersville "spent approximately $600,000.00 to extend electric power to the" Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 9.

From these facts alone, the hearing officer could conclude that the Premises was "substantially taken apart" and that "the [P]remises' structural components, furniture, equipment, or other significant contents [we]re substantially stripped away," such that the Premises was "dismantled" as *Walton EMC* instructs. Similarly, the hearing officer could conclude that the reconstruction of the Premises was not "of the same fundamental nature or quality as they were previously" as *Walton EMC* also instructs.

At a minimum, summary adjudication is not appropriate as to these issues.

III. CONCLUSION

For all of the foregoing reasons, GPC's motion for summary judgment should be denied.

This 11th day of August, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the herein and foregoing **PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** by e-mail as follows:

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This 11th day of August, 2025.

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