STATE OF GEORGIA

BEFORE THE PUBLIC SERVICE COMMISSION

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

GEORGIA POWER COMPANY'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

COMES NOW, Respondent Georgia Power Company ("Georgia Power" or the "Company") and hereby files this Reply in Support of its Motion for Summary Judgment ("Reply").

I. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56. Georgia Power agrees with Petitioner City of Cartersville ("Petitioner") that a key issue in this case is 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 that *Walton Electric Membership Corp. v. Georgia Power Co.*, controls the outcome of this matter. (Petitioner's Brief at 1.) In determining the appropriate standard for review in *Walton*, the Supreme Court of Georgia explained that

> while the issue of the meaning of 'destroyed or dismantled' and reconstructed 'in substantial kind' under OCGA § 46-3-8 (b) is a subsidiary question of law, and the issue of what renovations and modifications Nestle made to the premises is an evidentiary question of fact, the 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.

Walton Elec. Membership Corp. v. Georgia Power Co., 320 Ga. 740, 746 (2025). Because Georgia Power accepts all facts alleged by the Petitioner regarding changes to the Premises, the only remaining issue is a question of law. Thus, where the dispositive issue is purely a question of law, summary judgment is appropriate.

Petitioner argues that because there is a dispute regarding whether the Premises was "destroyed or dismantled" and not "reconstructed … in substantial kind," summary judgment is improper. But Petitioner has failed to submit evidence sufficient even to make a colorable argument that the Premises was "destroyed or dismantled" within the meaning of O.C.G.A. § 46-3-8(b). That lack of evidence is fatal to the Petition. Even viewing the record in the light most favorable to Petitioner, giving Petitioner all benefit of the doubt, the Petition cannot survive the lack of evidentiary support for its claims and summary judgment should be granted.

II. MATERIAL FACTS

The record contains no disputed fact relevant to this Motion. Of the nine facts in the Petition to which Georgia Power objected, none address modifications to the Premises. In fact, the Petition makes no allegation even suggesting destruction or dismantlement of the Premises, claiming instead, without evidence, that "Atkore's new use of the Property constitutes a 'reconstruction' of the premises." (Petition at 21.) Georgia Power does not dispute the facts discussed in Petitioner's direct testimony. Georgia Power's objections to Petitioner's rebuttal testimony are limited only to the legal conclusions offered by Witness Boucher, neither of which discuss the destruction or dismantlement of the Premises. The disputed facts identified in Petitioner's Brief in Opposition to Respondent's Motion for Summary Judgment are similarly immaterial because none discuss the

destruction or dismantlement of the Premises. For the purposes of this Motion, Georgia Power admits the seventeen newly alleged facts in Petitioner's Brief.

III. ARGUMENT

The recent decision in *Walton EMC v. Georgia Power Co.* has clearly emboldened Petitioner, who appears to believe that *any* change to a premises can be declared "destruction" or "dismantlement." However, that reading of *Walton* is a fundamental misunderstanding of the Supreme Court of Georgia's decision and a misapplication of the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 (the "Territorial Act").

A. The Record Contains No Evidence of Destruction or Dismantlement of the Premises.

Petitioner's case collapses under the weight of its own evidentiary void. While determinations of whether a premises is "destroyed or dismantled" under the Territorial Act are indeed evidence-driven, the record in this case contains no such evidence. Accordingly, the Petition must fail.

Walton highlights the insurmountable gap in Petitioner's evidence. Before defining 'destroyed' as "the complete ruination or tearing down or breaking down of the premises" and 'dismantled' as "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," the *Walton* decision notes the Hearing Officer's description of the significant changes Nestle made to the

premises.[1] It was because of "the factual findings about the *substantial* modifications to the premises" that the Supreme Court of Georgia had "no difficulty determining that the Commission did not abuse its discretion in concluding that Nestle's premises were 'destroyed or dismantled.'"[2]

By contrast, the undisputed record in this matter is silent on any substantial modifications to the Premises that would qualify as dismantlement. Petitioner shows no stripping away of the structural components, furniture, equipment, or other significant contents; no removal of foundations; no demolition of load-bearing walls; no gutting of core systems. Petitioner's own language confirms only *additive* changes to the Premises, describing the efforts with verbs like "acquire," "build," "install," "upgrade," "coordinate," and "design" – descriptions that denote enhancement, not dismantlement. (Petitioner's Brief at 17-18.) Georgia Power does not disagree that dismantlement may occur short of complete destruction. But the law demands proof that the facility was stripped of structural components or rendered unusable in its former state. Petitioner offers no such proof.

Instead, Petitioner devotes much of its testimony and brief to describing the substantial work *Petitioner* undertook to provide electric service to the Premises prior to establishing any legal right to do so, then points to its unauthorized infrastructure investment as proof of entitlement to

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[1] The significant changes include:

> that Nestle 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.

Walton EMC at 742.

[2] *Id.* at 753. (Emphasis added.)

relief. (*See, e.g.,* Direct Testimony of Chad Prater at 6 (describing Petitioner's installation of a breaker, voltage regulators, overhead primary wire, underground primary conduit and wire, and a 500 kVA transformer); Direct Testimony of Freddy Morgan at 5, Exs. 11 and 21 (quantifying the equipment and labor costs associated with the utility work Petitioner performed outside the Premises).) Rewarding Petitioner's efforts in this regard would contravene the Territorial Act's stated policy goal "to inhibit duplication of the lines of electric suppliers . . . [and] to protect and conserve lines lawfully constructed by electric suppliers." O.C.G.A. § 46-3-2. Undermining a utilities' grandfather rights to continue serving an existing customer absent proof of 'dismantlement or destruction' of the premises and reconstruction not in substantial kind would reward and incent circumvention of the Territorials Act's service mandate and this Commission's jurisdiction to enforce it.

Moreover, to the extent that Petitioner alleges any activities remotely resembling destruction or dismantlement, such changes occurred outside the Premises and are, therefore, irrelevant to this proceeding. The Territorial Act defines "Premises" as "the building, structure, or facility to which electricity is being or is to be furnished," rather than the land upon which the building sits or its use. O.C.G.A. § 46-3-3(6). The almost non-existent evidence of destruction or dismantlement to the Premises itself amounts to only 1% of the Premises' exterior walls. (Ex. P14, p. 36 (showing the single-page demolition plan for the Premises removing 896 square feet of wall and four exterior bay doors).)[3] Even taken with a view most favorable to Petitioner as nonmovant,

[3] Neither the statute nor *Walton* identifies cost as a relevant factor when considering whether a premises has been destroyed or dismantled. However, to the extent the *Walton* decision mentions that "Nestle spent $300 million (nearly 43 times the purchase price) changing the structure and design of the previous facility" bears any relevance, it dwarfs Atkore's $2 million expenditure, a mere 5% of the purchase price. *Walton EMC*, 320 Ga. at 752.

the evidence shows that the Premises' structure remains intact, was not destroyed or dismantled, and a modest amount of infrastructure was added after the fact.

For each these reasons, the complete absence of evidence demonstrating destruction or dismantlement of the Premises is dispositive. Petitioner's claim fails as a matter of law and summary judgment should be granted.

B. Petitioner's Single-Metered "Exception" Cases are Inapplicable to the Present Case.

Because Petitioner fails at the "destroyed or dismantled" threshold, the single-metered inquiry need not be reached. Even so, Petitioner's cited cases do not advance its cause: each case addresses materially different facts that do not align with this record. Petitioner leans heavily on decisions where the presence of multiple meters did not affect the applicability of the grandfather clause of the Territorial Act but fails to address the material facts warranting those outcomes. The decisions relied upon by Petitioner accentuate that, absent clear differentiating factors, a Premises with multiple meters cannot satisfy the Territorial Act's requirement of single-metered service.

In *Central Georgia EMC*, the Court of Appeals affirmed the Commission's decision that the grandfather clause protects a utility's right to serve a new building or a building expansion.[4] The hearing officer found that while the expansion was initially designed to receive single-metered service, the existence of multiple meters resulted from a change order issued during construction that was beyond the City's control.[5] Petitioner's misleading quote of the hearing officer's discussion of Commission precedent deceptively omits the first half of the sentence limiting the single-metering exception to "situations where the electric customer has chosen a different

[4] *Cent. Georgia Elec. Membership Corp. v. Pub. Serv. Comm'n*, 351 Ga. App. 69 (2019).
[5] *Id.*

electric provider for a disputed expansion, resulting in separate metering of the disputed expansion."[6]

In *Carroll EMC*, separate buildings received two voltages at a single premises, and billing was unified for all manufacturing processes.[7] A single meter cannot be used for different voltage levels. As described by the hearing officer and cited by Petitioner, "such two voltage service necessitated separate transformers and separate meters for each such voltage."[8] In deciding the case, the Commission examined the highly specific set of facts before creating an exception to the grandfather clause based on a factual situation that the General Assembly did not consider.[9]

Finally, *Sawnee* bears almost no resemblance to this case, but to the extent any similarities exist, they support a ruling for Georgia Power. In *Sawnee*, the Supreme Court of Georgia held that "the large-load customer choice exception does not apply to the complex because the 380 individual tenants, each with separate meters, do not constitute 'one consumer' with 'single metered service' as contemplated by O.C.G.A. § 46-3-8(a)."[10]

None of the factual predicates in the cases cited by Petitioner exist here. The four Georgia Power meters at issue here were installed to separately meter service to different parts of the Premises during its original construction and have remained in place. There is no additional building, built after initial construction, being served by a different electric supplier (*Central Georgia EMC*); there is no technical impossibility to serving the Premises through a single meter (*Carroll EMC*); and Petitioner's after-the-fact aggregation of usage does not transform service through multiple meters into single-metered service under the statute (*Sawnee*). In short, Petitioner

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[6] *Id.*
[7] *Georgia Power Co. v. Carroll EMC*, Docket No. 10517- U (Initial Decision, Oct. 5, 2000).
[8] *Id.* at 16-17.
[9] *Id.* at 17.
[10] *Sawnee Elec. Membership Corp. v. Georgia Pub. Serv. Comm'n*, 273 Ga. 702, 706 (2001).

has failed to establish that this set of facts warrants an exception to the single-metered service requirement of the grandfather clause.

IV. CONCLUSION

For these reasons, the Hearing Officer should grant Georgia Power's Motion for Summary Judgment, deny the Petition, and affirm Georgia Power's exclusive right to serve the Premises.

Respectfully submitted, this 26th day of August, 2025.

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