BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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

POST-HEARING BRIEF
OF
GEORGIA POWER COMPANY

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Georgia Power Company ("Georgia Power" or the "Company") respectfully submits this Post-Hearing Brief following the hearing held August 13, 2026, by the Hearing Officer of the Georgia Public Service Commission ("Commission").

I. INTRODUCTION

This dispute between Georgia Power and the City of Cartersville ("Cartersville" or the "City") (collectively, the "Parties") arises under the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 46-3-15 ("Territorial Act"). The dispute centers around Georgia Power's status as the rightful supplier of electricity to a facility located within Georgia Power's exclusive service territory at 1181 Cassville White Road, Cartersville, Georgia (the "Premises"). The initial owner of the Premises, Hines Busch LLC ("Hines"), sought permanent electric service through an application for permanent service submitted to Georgia Power on October 18, 2021. To facilitate that request, Georgia Power installed permanent facilities—an underground loop with pad-mounted transformers along with permanent metering equipment—and began serving the Premises with permanent power on February 20, 2022. On that date, upon energization of the Premises, Georgia Power became the rightful supplier of electricity to the Premises under the Territorial Act and was vested with grandfather rights to serve the Premises, rights that are statutorily protected by the Territorial Act's grandfather rule, O.C.G.A. § 46-3-8(b). The Company's authorized service to the Premises has continued uninterrupted since that date.

Despite Georgia Power's continuous service and its clear statutory rights under longstanding Georgia law, Cartersville attempted to subvert the permanent electric service that Georgia Power was already supplying, by running conduit to the Premises and installing its own, separate pad-mounted transformer adjacent to the Premises. Cartersville sought to trespass on Georgia Power's service based on a legally flawed premise: that a new tenant who plans to use

more electricity at the Premises than the current permanent service allows somehow manufactures a right to choose a new, different electric supplier under the Territorial Act.

No such right was ever created, nor should it be under these circumstances. By its plain terms, the narrow customer-choice exception of the Territorial Act is subject to Georgia Power's grandfather rights and requires, among other things, that the premises be "new," as that term is applied by the Territorial Act. Cartersville cannot show the Premises in this case have satisfied this significant requirement.

Accordingly, Cartersville's actions violate the Territorial Act by unlawfully interfering with Georgia Power's exclusive right to serve the Premises. Georgia Power respectfully submits that the Hearing Officer should confirm Georgia Power's exclusive right to serve the Premises and order that the City of Cartersville cease and desist from any further interference with Georgia Power's lawful service.

II. STATEMENT OF FACTS

The Premises are made up of a large industrial warehouse of approximately 525,000 square feet, located at 1181 Cassville White Road in unincorporated Bartow County, Georgia. Evidentiary Hearing Transcript at 67, 288.[1] The property lies squarely within Georgia Power's assigned service territory under the Territorial Act and outside the corporate limits of the City of Cartersville. Tr. 12, 67, 288.

Around October of 2019, Georgia Power first learned of the opportunity to serve the Premises, and around September of 2020, Georgia Power received an inquiry about serving the Premises, then known as the "Busch Logistics Park." Tr. 251; *see also* Exhibit ("Ex.") MWL-1. On November 16, 2020, Georgia Power received a site plan and a "Will Serve" letter from Hines.

[1] Citations to the final transcript of the evidentiary hearing held on August 13, 2026, are cited hereinafter as "Tr. XX."

Tr. 251. Two days later, on November 18, 2020, Georgia Power issued a Letter of Availability (1) confirming that the Premises were in Georgia Power's service territory and (2) that electrical utilities were available along Cassville White Road. Tr. 251, 258.

Construction of the Premises began in approximately December 2020. Tr. 251. Georgia Power provided temporary construction service to the Premises during the construction period. Tr. 252. Construction was completed in 2021, and Bartow County issued a certificate of completion on April 21, 2022. Tr. 178–79, 252; *see also* Ex. P23.

On October 18, 2021, while construction was ongoing, Georgia Power received a New Service Request from Hines seeking permanent connected service at the Premises. Tr. 253; *see also* Ex. GPC-2. To fulfill this service request, Georgia Power installed permanent service infrastructure that included an underground electrical loop and permanent meters, as well as pad-mounted transformers. Tr. 116, 209, 266–67. On February 20, 2022, Georgia Power energized these permanent facilities and began what has become continuous, uninterrupted permanent service to this day. Tr. 181, 252, 267, 289.

The initial information from Hines reflected a total connected load for the Premises that was well below 900 kilowatts ("kW"). Tr. 254. When Georgia Power began serving the Premises with permanent power, the Premises were served by a 300 kilovolt-amperes ("kVA") transformer, which was sensible given that the Premises' peak usage under Hines never exceeded 300 kW at any point since permanent service began in February 2022, as confirmed by Georgia Power's billing records. *Id.*; *see also* Ex. GWD-3.

In March of 2023, Allied Tube & Conduit Corporation ("Atkore") discovered the Premises through a broker search. Tr. 196. Atkore manufactures aluminum cable tray and intended to use

the Premises for its operations. Tr. 195. Atkore and Hines negotiated a lease for the Premises, and in September 2023, Atkore signed that lease and became a tenant of Hines. Tr. 195.

On May 31, 2023, a load study was completed by TL Engineering, and the load information was forwarded to Georgia Power. Tr. 239–40; *see also* Ex. P24. In June 2023—more than a year after Georgia Power began providing permanent service—Hines contacted Georgia Power regarding proposed changes to the building's electrical infrastructure to power additional shipping and manufacturing equipment. Tr. 289, 321–22. Load sheets demonstrated an expected demand of approximately 1,100 kVA. Tr. 289. Georgia Power promptly ordered a 1500 kVA transformer to upgrade the existing 300 kVA transformer and meet the increased service needs. Tr. 289; *see also* Ex. P27 (indicating order for transformer was placed in the same month as Hines' contact regarding changes). Georgia Power informed Hines that, due to industry-wide supply chain constraints, obtaining the transformer could take approximately 12 to 18 months. Tr. 289; *see also* Ex. P27.

Unhappy with this timing, and working under a time crunch created by its own lease terms, Hines proposed that Atkore switch electric providers to the City of Cartersville. Tr. 211–12. Rather than waiting for Georgia Power to fulfill its pending transformer order, and under guidance from Hines, Atkore signed a "Request for Electric Service" on November 1, 2023, attempting to improperly switch electric providers from Georgia Power to Cartersville. Tr. 198, 212; *see also* Ex. P15.

In December 2023, Atkore began receiving goods at the facility. Tr. 195. On December 13, 2023, Electric Cities of Georgia ("ECG"), acting on behalf of Cartersville, contacted Georgia Power seeking to negotiate the purchase of Georgia Power's equipment at the Premises and asserting Atkore's purported selection of Cartersville as its electric provider. Tr. 289–90; *see also* Ex. GWD-1. The email erroneously characterized the Premises as qualifying for customer choice

and as having only temporary service, even though the equipment ECG was seeking to negotiate for was designed and installed for permanent use. Tr. 290, 322. Specifically, the email described the Premises as "a new spec warehouse" with "a small, [300 kVA] pad installed feeding the building," and claimed that the Premises would "qualify with a connected load well above 900 kW." Ex. GWD-1. Both characterizations were wrong.

Glenn Dyke, Georgia Power's Customer Pricing Manager, responded to ECG's request on December 18, 2023, unequivocally stating that Georgia Power had been serving the Premises with permanent service since February 2022 and that the Premises were not eligible for customer choice. Tr. 291. Mr. Dyke explained that the temporary construction service had been removed, the building was being served with permanent service, and the service was no longer temporary in nature. Tr. 291, 322. Accordingly, there was no longer any customer choice to be had. Tr. 291, 322. Despite this communication, Atkore, Hines, and Cartersville were working to extend electric service to the Premises no later than January 23, 2024, and began work to renovate the interior of the Premises no later than February of that year. *See* Ex. P33 (outlining work to extend electric service as in progress as of January 23, 2024); Ex. P11 (showing contracting work dated as early as February 8, 2024).

In March of 2024, Georgia Power received information that Cartersville was planning to cut off Georgia Power's service to the Premises. Tr. 291. Accordingly, on March 14, 2024, Mr. Dyke sent a follow-up email to ECG reiterating Georgia Power's exclusive right to serve the Premises and requesting that ECG and Cartersville not take any action that would interfere with Georgia Power's facilities or the provision of service. Tr. 291, Ex. GWD-1. Mr. Dyke received no response from ECG. Tr. 291.

Also on March 14, 2024, Mark Lees, a business development project manager for Georgia Power, visited the Premises following the allegations that Cartersville intended to interfere with Georgia Power's provision of service. Tr. 256. Mr. Lees discovered that Cartersville had already run conduit to the site of Georgia Power's installed transformer and had installed a separate pad-mounted transformer in another location next to the building. Tr. 256–57. These actions occurred without any formal notice to Georgia Power and without Georgia Power's consent. Tr. 188. The City had physically intruded upon the Premises and installed competing and duplicative infrastructure directly adjacent to Georgia Power's existing facilities.

On March 21, 2024, Mr. Dyke contacted Freddy Morgan, the Assistant City Manager for Cartersville, to discuss and reiterate Georgia Power's exclusive right to serve the Premises. Tr. 291. The following day, Mr. Dyke sent a formal demand letter to Mr. Morgan asserting Georgia Power's exclusive right to serve the Premises under the Territorial Act, warning that interference with Georgia Power's facilities would constitute trespass, and cautioning against interference with Georgia Power's business relations with and service to its customer. Tr. 291–92; *see also* Ex. GWD-2.

After receiving the demand letter, Mr. Morgan sought to have Atkore confirm its flawed request for service to Cartersville. Tr. 54. Together with Hines, Cartersville drafted a letter for Atkore to sign to "reaffirm" Atkore's improper election to have Cartersville supply electric power to the property. Tr. 154–55, 199; *see also* Ex. P18, P19. On April 3, 2024, Atkore sent the letter to Cartersville. *See* Ex. P18, P20.

On April 12, 2024, Dan Porta, City Manager for Cartersville, called Mr. Dyke after seeing Georgia Power's demand letter, seeking to understand Georgia Power's position. Tr. 292. Mr. Dyke explained that Georgia Power had permanently served the Premises for more than two years

prior to Atkore's tenancy, establishing an exclusive right to continue serving the Premises. *Id.* Mr. Dyke further explained that a customer's dissatisfaction with the lead time for acquiring a new transformer does not create a new opportunity for customer choice under the Territorial Act. *Id.*

On May 23, 2024, Georgia Power installed a 1500 kVA transformer at the Premises, fulfilling its commitment to upgrade the electrical infrastructure to meet Atkore's increased load requirements. Tr. 292. Meanwhile, Cartersville spent approximately $600,000 to extend its own competing and duplicative electric infrastructure to the Premises—premises it had no legal right to serve—and Hines and Atkore spent $4.5 million and $2 million, respectively, on renovations to the Premises. Tr. 365.

Mr. Dyke last visited the Premises on November 18, 2024, and did not observe any structural changes to the building. Tr. 292. The Premises remain the same physical building that Georgia Power has continuously and lawfully served since February 2022. There have been no changes to the structure that would warrant treating the Premises as "new" under the Territorial Act and usurping Georgia Power's grandfather rights under O.C.G.A. § 46-3-8(b).

III. ARGUMENT

A. Georgia Power is the rightful supplier of electricity to the Premises.

The record in this proceeding conclusively establishes that Georgia Power is the rightful and exclusive supplier of electricity to the Premises for three reasons. First, the Premises are situated squarely within Georgia Power's assigned service territory. Second, Georgia Power has continuously furnished permanent electric service to the Premises since February 20, 2022, and continues to serve the Premises to this day. And third, as the initial permanent electric supplier to the Premises, Georgia Power is vested with grandfather rights under the Territorial Act that have not been terminated.

1. The Premises are within Georgia Power's service territory.

First, the Premises fall within Georgia Power's designated service territory, and no party disputes this fact. Tr. 288; Petition of City of Cartersville, par. 8; Georgia Power Motion for Summary Judgment at 6. Moreover, Georgia Power confirmed its status as the territorial service provider for the Premises when the Premises were first constructed, well before the current dispute ever arose. On November 18, 2020, Georgia Power issued its Letter of Availability confirming not only that the Premises were located within its service territory, but that Georgia Power had existing electrical utilities located along the road where the Premises are located. *See* Ex. MWL-1; *see also* Tr. 251. Moreover, Atkore was also aware that Georgia Power was already serving the Premises with permanent power when it discovered the property. Tr. 209.

Under the Territorial Act, an electric supplier has the exclusive right to serve premises within its designated territory. O.C.G.A. § 46-3-8(b). Thus, because the Premises are undisputedly within Georgia Power's service territory, the Territorial Act grants Georgia Power the presumptive right to serve the Premises unless the Premises qualify for the statutory customer choice exception.

2. Georgia Power has served the Premises with permanent facilities since February 2022.

Georgia Power's continuous provision of permanent electric service to the Premises is similarly undisputed. The record evidence demonstrates a clear and orderly progression from initial engagement with the Company, to provision of temporary construction service, and ultimately, to the establishment of permanent electric facilities that remain in place to this day.

Georgia Power established temporary construction service to the Premises around December 2020 through a temporary pole-mounted transformer and pole-mounted meter to power construction of the Premises. Tr. 252, 286–87, 320. As Company witness Dyke explained, and several Cartersville witnesses agreed, temporary service is different from permanent service. Tr. 50, 116, 209, 286–87, 321.

On October 18, 2021, Georgia Power received a New Service Request from Satya Madivala, on behalf of Hines, requesting permanent connected service. Tr. 253; *see also* Ex. MWL-2. Under Georgia Power's Rules and Regulations, the Company's acceptance of a conforming request for service creates a contract that is operative and effective on the day the customer is permanently connected to the system. Tr. 320–21; *see also* Georgia Power Company Rules and Regulations for Electric Service, General Rules A1, Page Number 1.10. Hines' decision to establish permanent service to the Premises in a way that did not trigger the customer choice provisions of the Territorial Act—that is, with an initial connected load under 900kW—foreclosed the Premises from customer choice unless and until the Premises became new. Tr. 182. Said differently, Georgia Power's status as permanent electric supplier was cemented once the Premises were energized on February 20, 2022. Tr. 181, 252, 289, 324, 334. Importantly, Cartersville, Hines, and Atkore were all well aware of Georgia Power's status as permanent electric supplier, even after Cartersville initiated its own unauthorized work to extend its own electrical service to the Premises. Tr. 48–49, 181, 196, 209.

The nature of the facilities that Georgia Power installed underscores the significance of this transition. To fulfill the Request for Service that Hines sent to Georgia Power, the Company installed an underground loop with pad-mounted transformers along with permanent metering equipment. Tr. 252. This kind of permanent equipment is typical for a facility like the Premises. Tr. 288. In other words, this equipment is not temporary, designed for short-term use, or intended to be removed at some later point; it is designed for long-term operation.

By the time Atkore took occupancy of the Premises in late 2023, Georgia Power was already serving the Premises with permanent facilities and continued to do so under Atkore's tenure. Tr. 196, 209–10. The customer account with Georgia Power for the Premises was

transferred to Atkore's name on March 5, 2024, and neither Hines nor Atkore ever sent Georgia Power a request to terminate its service. Tr. 181, 210, 256. Accordingly, Georgia Power has been serving the Premises continuously since the Premises was energized with permanent facilities on February 20, 2022.

3. Georgia Power is vested with grandfather rights under the Territorial Act because Georgia Power is the initial provider of permanent electric service to the Premises.

The Territorial Act provides, in relevant part:

> [E]very 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.

O.C.G.A. § 46-3-8(b) (emphasis supplied). The plain language of this provision is unambiguous: once an electric supplier lawfully serves a premises pursuant to the Territorial Act, it acquires the "exclusive right to continue serving" that premises. Georgia Power lawfully began providing permanent electric service to the Premises in February 2022, in response to Hines' request for permanent service. Tr. 267. At that point, Georgia Power's grandfather rights vested, and those rights have never been extinguished.

In sum, the record conclusively establishes that Georgia Power is the rightful supplier of electricity to the Premises. The Premises lie within Georgia Power's service territory; Georgia Power has served the Premises with permanent facilities continuously since February 2022; and Georgia Power's grandfather rights under O.C.G.A. § 46-3-8(b) have never been terminated. Accordingly, Georgia Power became the rightful supplier of permanent electric service under the Territorial Act on February 20, 2022, and it has continued to serve as the rightful supplier pursuant to its grandfather rights.

B. Georgia Power has the exclusive right to serve the Premises unless and until the Premises become "new."

The Territorial Act's grandfather clause exists precisely to provide the certainty and stability that Georgia Power—and the customers it serves—are entitled to. However, as relevant here, the Territorial Act provides a narrow exception to the grandfather rights for customer choice in O.C.G.A. § 46-3-8(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 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.

(Emphasis supplied.)

This subsection permits a customer to select any electric supplier upon meeting multiple conditions, including the condition that the premises are "new." *Walton Elec. Memb. Corp. v. Ga. Power Co.*, 320 Ga. 740, 748 (2025) ("*Walton*"). However, the significance of Georgia Power's grandfather rights in relation to this narrow exception cannot be overstated. The Territorial Act's customer choice provision is expressly made "subject to" the grandfather rights in subsection (b). *See Walton*¸ 340 Ga. at 748 ("However, subsection (a) is explicitly made 'subject to' subsection (b)."). The statutory structure makes clear that even if premises satisfied the criteria for customer choice—which the Premises here do not—the grandfather rights of the incumbent electric supplier can be terminated only if a statutory exception is established.

Of the four recognized exceptions, Cartersville argues only that one applies: "where a premises has been destroyed or dismantled and not reconstructed in substantial kind." *Excelsior Elec. Memb. Corp. v. Ga. Pub. Serv. Comm'n*, 322 Ga. App. 687, 692 (2013) ("*Excelsior*"). The

record does not support Cartersville's proffer that the Premises is "new" by operation of law because it has been "destroyed or dismantled and not reconstructed in substantial kind." *Id.*

C. Cartersville has failed to show that the Premises became new.

Cartersville's entire case depends on the flawed assertion that the Premises somehow became "new" again after Georgia Power had already been lawfully serving it with permanent facilities for more than two years. The record flatly refutes that claim. The Premises were new when they were originally constructed; Georgia Power's grandfather rights vested on February 20, 2022, when Georgia Power began providing permanent electric service; and nothing that has occurred since then rises to the level of destruction or dismantlement, or reconstruction not in substantial kind, required to reset the Premises to "new" under the Territorial Act.

1. The Premises did not become new when Atkore became the customer.

The Territorial Act's provision for customer choice in O.C.G.A. § 46-3-8(a) applies to "new" premises. Premises are new at the time of original construction. Once a customer exercises the right to choose an electric supplier for new premises, that right is exhausted. Under the Territorial Act, a customer's right to choose its electric supplier is both triggered and exhausted when it makes a clear, affirmative selection. *See Jackson Elec. Memb. Corp. v. Ga. Pub. Serv. Comm'n*, 294 Ga. App. 253, 258 (2008) (holding that the execution of a Request for Service results in a binding contract that conclusively establishes the customer's choice).

Here, the Premises were new only once—when it was originally constructed as a speculative office/warehouse/distribution facility in 2021–2022. When Hines submitted its Request for Service on October 18, 2021, any customer choice was foreclosed based on the load needs that Hines provided—no other tenant or customer was identified that could have provided different information. The load information provided by Hines did not demonstrate that the Premises qualified for customer choice, nor did Hines ever indicate that it had a prospective tenant

who might seek to later increase the electric load at the Premises. Tr. 254. Instead, Hines requested permanent service and Georgia Power accepted that request—resulting in a binding contract with Hines that established Georgia Power as the exclusive electric supplier to the Premises and foreclosed the possibility of customer choice. In other words, the Premises' status as "new" was exhausted, and Georgia Power's grandfather rights vested upon energization of the Premises.

Nothing changed when Atkore discovered the Premises in March of 2023—more than a year after Georgia Power had already established permanent service—because the existing Premises were no longer new. Tr. 355. Customer choice, if any, was already exhausted. *See* Tr. 196. The arrival of a different tenant—even if their electric needs are larger—does not render the premises "new" under the Territorial Act. Not only is this novel interpretation unsupported by the text of the statute or relevant case law, *see Excelsior*, 322 Ga. App. at 692, but it completely undermines the purpose of the Territorial Act, which is to prevent duplication of lines and service facilities. Accepting Petitioner's interpretation would mean that a utility serving a premises for decades could have its grandfather rights terminated simply because a new tenant or owner occupies the premises and has electricity needs over 900 kW, and hundreds (if not thousands) of premises in Georgia would become new on a regular basis. The Territorial Act does not allow for such an absurd result—it grants grandfather rights to those electric suppliers who rightfully provide permanent electric service in the first instance because those initial suppliers expend the time, resources, and effort to build new and long-term permanent facilities to serve the customer. Allowing the Premises to become "new" simply because ownership changes hands is not supported by the plain language of the statute and undermines the entire purpose of the Territorial Act.

2. Atkore did not destroy or dismantle the Premises, and did not reconstruct the Premises such that they became new.

Although premises can become "new" again for purposes of the statute in very limited, specific circumstances, the threshold standard to meet those circumstances is high. Cartersville has failed to demonstrate the Premises were "destroyed or dismantled" and not "reconstructed in substantial kind." O.C.G.A. § 46-3-8(b); *see also Walton*, 320 Ga. at 748. In fact, Cartersville fails each step of this analysis.

A. The Premises have not been destroyed.

In *Walton*, the Supreme Court of Georgia held that "destroyed" means "the complete ruination or tearing down or breaking down of the premises." 320 Ga. at 750. This particular component of the standard is absolute—it requires total destruction, demolition, or rendering the premises wholly unusable in their former state.

No party has argued, nor could any party credibly argue, that the Premises were destroyed. The building—an approximately 525,000-square-foot industrial warehouse—stands today as it stood when it was first constructed and when Georgia Power first energized it with permanent service in February 2022. Mr. Dyke and Mr. Lees each testified that they visited the Premises and observed no structural changes, let alone "complete ruination." Tr. 256, 292. From the outside, the building looks substantially the same as it did when Hines completed construction in April 2022. Accordingly, there is no record evidence of "complete ruination or tearing down or breaking down" of the Premises. The Premises have not been destroyed.

B. The Premises have not been dismantled.

The *Walton* Court defined "dismantled" as "something less [than destroyed], 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." 320 Ga. at 750 (emphasis supplied). Critically, while dismantlement is something less than total destruction, dismantlement must still "at least be to a degree substantial enough that a reconstruction would be required to return the premises to 'substantial kind.'" *Id.*

The Territorial Act defines "premises" as "the building, structure, or facility to which electricity is being or is to be furnished." O.C.G.A. § 46-3-3(6). It is not the land upon which the building sits, nor is it the land surrounding the Premises. Yet the vast majority of the work Cartersville cites—installing overhead primary wire, underground conduit, substation equipment, and a 500 kVA transformer—was work performed outside the Premises. Cartersville witness Prater admitted that the work undertaken by the City of Cartersville to provide electric service to the Premises was accomplished *outside* of the Premises. Tr. 117–19. Moreover, this work was undertaken by Cartersville (the utility), not Atkore (the tenant or customer), which further underscores that these activities relate to extending utility service to the Premises, not dismantling the Premises. *Id.*

Counsel for Cartersville admitted that this work *outside the Premises* did not amount to changes *to the Premises*, but argues that the Hearing Officer should nevertheless consider these changes outside the Premises to determine whether the customer choice provision is met. *See* Tr. 366–67 ("No, I think by definition things that were not on the premises are not change to the premises, but I still think it is a factor that can be considered by you and by the courts or should be considered by you and the courts in determining whether, you know, customer choice is triggered."). That suggestion runs counter to the very definition of "premises" within the Territorial Act and would inject a factor that is not supported by any textual aspect of the Territorial Act.

Unable to rely on any work undertaken outside the Premises, Cartersville then points to 235 pages of construction plans for the Premises as evidence that any dismantlement performed on the Premises was substantial enough to make the Premises new. *See* Petitioner's Brief in Opposition to Respondent's Motion for Summary Judgment at 17; Tr. 364–65. As an initial matter, these are construction plans, not as-built drawings, meaning they indicate potential work to be done, but can be changed, and their existence does not prove the work was done. Tr. 186.

Ultimately, however, the quantity of pages has no bearing on this case; what those pages show should inform the Hearing Officer's determination. And what those pages show is a far cry from the destruction or dismantlement required to terminate Georgia Power's grandfather rights. The plans show redesign of bathrooms, changing of hardware on doors, addition of railings on ramps in loading docks, redesign of existing office space, and the addition of new office space—none of which amounts to physical destruction or dismantlement. Tr. 376. Further, the only evidence of physical demolition to the Premises in the plans is a single page showing the removal of 900 square feet of wall and four exterior bay doors, apparently to widen existing dock doors to allow a flatbed truck to enter the building. Tr. 186–87. This particular "dismantlement" of existing doors is in reality a conversion of existing infrastructure, but by Georgia Power's calculation, even assuming this is a dismantlement, it amounts to less than 1 percent of the Premises' total square footage.[2]

Cartersville points to these construction plans as evidence of wholesale dismantlement enough to warrant treating the Premises as entirely new. Even under the most generous definition of "dismantle," removing less than one percent of a building's exterior walls and adding or

[2] Cartersville witness Madivala admits that the conversion of bay doors amounts to less than 10% of the entirety of the building's walls. Tr. 186–87. To put an even finer point on this comparison, the true math works out to be closer to two-tenths of a percent, or 0.17% (900 square feet of wall space out of 525,000 total square feet).

renovating other aspects of the Premises' interior cannot be characterized as "substantially taking apart" or "substantially stripping away" the building's structural components. Moreover, this dismantlement is nowhere near the degree substantial enough such that a reconstruction would be required to return the premises to substantial kind, as required by *Walton*.

Cartersville's own language confirms what the record makes plain: the majority of changes to the Premises, if any, are additive, not subtractive. Cartersville's language in briefing describes the work performed using verbs like "acquire," "build," "install," "upgrade," "coordinate," and "design"—descriptions that denote enhancement, addition, and renovation of an existing facility, not dismantlement. *See* Petitioner's Brief in Opposition to Respondent's Motion for Summary Judgment at 17–18. Cartersville's witnesses also admit that this work was, if anything, adding something to the Premises. Tr. 118–19, 185. Put simply, adding equipment and infrastructure to premises is the opposite of taking them apart. Further, adding this equipment does not result in a dismantlement that is significant enough to warrant "reconstruction," as this equipment can simply be replaced without any kind of reconstruction to the Premises themselves. For all these reasons, the Premises have not been dismantled.

C. *The Premises have not been reconstructed, but if so, they have been reconstructed in substantial kind.*

Even if Cartersville has somehow met the high burden of proving that the Premises were destroyed or dismantled, it must *also* show that the Premises have not been reconstructed in substantial kind. Cartersville fails to meet this additional burden because reconstruction of the Premises, if any, has been in substantial kind.

The Supreme Court in *Walton* held that "substantial kind" requires the facility to be "constructed again largely, but not wholly, of the same fundamental nature or quality as they were previously." 320 Ga. at 752. Regarding the use of the Premises, the building's design as a *flexible*

speculative warehouse shell remains unchanged. Admittedly, the construction plans tendered by Cartersville propose the addition of infrastructure and equipment to the Premises; however, such changes do nothing to impact the fundamental nature of the building as a speculative warehouse. The Premises were intentionally designed as a warehouse capable of adjustment to meet future tenant needs. The dynamic nature of the Premises is part of the Premises' *original* design under Hines, and Cartersville cannot tout the mere installation of equipment or addition of infrastructure—all of which would be anticipated in the use of a speculative warehouse space—to meet the statute's clear requirement of significant structural changes to the Premises.

Moreover, the other physical aspects of the Premises also remain fundamentally unchanged. The approximately 525,000-square-foot industrial warehouse structure is intact, and the building's footprint has not changed. Tr. 292. Its exterior appearance is substantially the same. *Id.* No roofing has been removed or replaced; no structural components have been removed; no foundations have been altered. Tr. 187. In short, the structure is substantially the same as it was before Atkore moved in.

D. *Walton* is distinguishable from this case.

Counsel for Cartersville suggested that the only issue before the Hearing Officer is whether this case is "close enough to the facts in *Walton* to trigger the customer [choice] threshold." Tr. 370. Cartersville attempts to point to construction plans, dollars spent, and specific additive or duplicative tasks as evidence that the work done to the Premises is significant enough to convert the Premises to "new." Tr. 364–65. Counsel relies heavily on *Walton*, comparing the activities in this case as meeting or exceeding the extent and scope of work done in *Walton*, as though it compels a finding that the Premises here were destroyed and dismantled enough to be deemed "new." Tr. 364.

But a careful comparison of the facts in *Walton* with the record in this proceeding reveals that the two cases occupy entirely different universes and are far from "identical" as argued by Cartersville's counsel. *See* Tr. 364. The scale, permanence, and nature of the changes in *Walton* bear no resemblance whatsoever to the renovations and additions made to the Premises in this case. If anything, *Walton* confirms that Georgia Power is vested with grandfather rights, and those rights are secure. While the premises in *Walton* were ultimately considered new due to the "substantial modifications" made to a textile factory, the work done in that case far exceeds the additions and renovations in this case.

To place the evidentiary record in proper context, it is instructive to consider the scale of changes that were sufficient to constitute destruction and dismantlement in *Walton*. The factual findings in *Walton* were extraordinary, and the Supreme Court of Georgia found that it had "no difficulty determining that the Commission did not abuse its discretion in concluding that Nestle's premises were destroyed or dismantled." 320 Ga. at 753 (punctuation omitted). There, the Commission's hearing officer detailed that Nestle: removed and replaced the entire electrical system and infrastructure; removed and replaced 30 percent of the flooring and foundation; removed concrete slabs in the old weave room; changed the foundation by filling old vats with concrete and old pits with ballast, structural steel, and concrete; removed the roof in several areas of the premises; demolished structural piers, old infrastructure, and a crane system; demolished interior walls, made openings in other walls, and enclosed some exterior walls with new buildings. *Walton*, 320 Ga. at 742. Thereafter, in its review for abuse of discretion, the Court found that certain of these significant facts supported a determination that the premises were new. 320 Ga. at 752 ("As for the Commission's findings of fact, we conclude that they were supported by the evidence."). Those facts included that Nestle spent $300 million, or 43 times the purchase price of

the facility, to change the structure and design of the previous facility. *Id.* The relevant changes included the addition of exterior walls, removal of interior walls, removal of roofing, demolition of infrastructure and systems, removing buildings in part or in whole, constructing entirely new buildings, replacing wastewater treatment and drainage systems with systems that were specific to Nestle's operations, replacing the electrical systems and infrastructure, replacing the air-handling systems with systems specialized for Nestle's operations, removing and replacing flooring and foundation, and sealing off and filling in horizontal branch and vertical ducting systems with rebar and concrete. *See* 320 Ga. at 752–53. These were not mere renovations—they were wholesale changes to the structure, foundation, and nature of the building that warranted a determination that the Premises were new. These significant changes were on top of certain *additions* highlighted by the *Walton* court, namely, "various other additions specific for operating a wet-food processing center and creating a food-safe environment, [and] installing all new equipment." 320 Ga. at 753. These facts, taken altogether, added up to conclusion that the premises in *Walton* were new and subject to the customer's choice as a matter of law.

Put plainly, although the *Walton* premises were not destroyed wholesale, the premises were gutted from the inside out and entire new buildings were constructed to reinvent what was once a textile mill to a pet food manufacturing facility. Core structural systems—such as roofing, foundations, flooring, electrical infrastructure, cranes, ventilation, and walls—were ripped out and replaced wholesale. 320 Ga. at 752–53. The original textile manufacturing purpose and processes were eliminated entirely and replaced with a sanitary pet food manufacturing operation. The customer's $300 million investment eclipsed the original purchase price more than forty times, demonstrating an investment in more than just mere renovations but transformative gutting, reconstruction, and capital improvements.

The facts of this case are in stark contrast to *Walton*. While Nestle (the customer) spent $300 million changing the structure and design of the previous facility, here, the most liberal estimates show that only $6.5 million was spent on renovations. Tr. 365.[3] While $300 million and $6.5 million can mean different things to different customers, it is *what* those dollars are spent on that matters. Money spent on destruction or dismantlement should carry the day in this case, not money spent on renovations. For example, the *Walton* case involved the addition, modification, or demolition of structural piers and structural steel. 320 Ga. at 742. But as admitted by Cartersville witness Madivala, there was no removal of any structural steel, structural pilings, or concrete pilings. Tr. 187. *Walton* involved the wholesale removal of roofing above several areas of the premises, *see Walton*, 320 at 742 (noting removal of the roof above the old bleachery, the old tank building, and some of the distribution center), but as admitted by witness Madivala, there was no wholesale removal of the roof in this case. Tr. 187.

Walton set a high bar for factual findings necessary to find a destruction or dismantling that would convert premises to "new" for the purposes of the customer choice provisions of the Territorial Act. This is by design, as the customer choice provisions are a statutory exception that are expressly made "subject to" the grandfather rights vested by the statute. *See* O.C.G.A. § 46-3-8(a) and (b); *see also Walton*, 320 Ga. at 748. In other words, to divest an electric supplier of its statutorily prescribed grandfather rights, the facts must be significant enough to find that the Premises were intended to be, and in fact became, new. *Walton*'s facts met and established this

[3] It's worth noting that this $6.5 million amount represents a *combination* of amounts spent by Cartersville, the purported electric supplier, and Hines, the building owner, to extend electric service to the Premises along with amounts spent by Atkore, the customer, to renovate the Premises. Tr. 365. In truth, Atkore spent even less: only $2 million, so a true apples-to-apples comparison between *Walton* and this case should only consider the amounts spent by the customer in each case. That amount is $300 million spent by Nestle in *Walton* and $2 million spent by Atkore in this case. *See id.*, *see also* Tr. 199–200. Georgia Power submits that even under the most generous assumption of $6.5 million invested, this joint amount pales in comparison to the amounts spent in *Walton.*

high bar. Cartersville's case comes nowhere close. Accordingly, the Commission should find that the Premises in this case were not new because they were not destroyed or dismantled and not reconstructed in substantial kind.

E. A ruling in Cartersville's favor would violate the stated purposes of the Territorial Act.

Georgia Power submits that Cartersville has failed to make any case, much less a compelling one, that the changes to the Premises have made the Premises "new" under the Territorial Act, especially when considering how this case stands in stark contrast to a case like *Walton*. However, even if this were a close case compared to *Walton*, policy reasons weigh in favor of ruling for the Company because the Territorial Act's stated policy purposes foreclose Cartersville's theory of this case. O.C.G.A. § 46-3-1 outlines the legislative findings and declaration of policy for the Territorial Act, declaring that the Act is intended, as relevant here, to (1) "assure the most efficient, economical, and orderly rendering of retail electric service," (2) "inhibit duplication of the lines of electric suppliers," and (3) "protect and conserve lines lawfully constructed by electric suppliers." These three legislated purposes would be frustrated by a ruling that permits Cartersville to displace Georgia Power's lawfully constructed permanent electric service, without any notice to Georgia Power, merely because a new tenant moved into the Premises and required more electricity than was being provided previously.

First, a ruling for Cartersville would endorse the unnecessary duplication of lines that the Territorial Act was designed to prevent. Georgia Power lawfully installed permanent infrastructure to serve the building and has continuously served the Premises since initial energization. Nevertheless, Cartersville attempted to build competing facilities by running conduit and installing overhead lines and a transformer adjacent to the building. Tr. 71, 116, 256–57, 267; *see also* Ex.

P34. Cartersville did not bring electric service to unserved premises; it duplicated already existing electric supply infrastructure at the same site.

The same conduct violates the Territorial Act's separate but equally important purpose of protecting and conserving Georgia Power's lawfully constructed lines. Cartersville's efforts to physically displace Georgia Power's equipment and Cartersville's intention to cut off Georgia Power's service to allow for its own service is the antithesis of protecting and conserving lawfully constructed lines. This statutory protection would be meaningless if a supplier could be displaced whenever another supplier purported to offer faster upgrades to a new owner. The Territorial Act protects the stability of lawful service, not just for the benefit of the suppliers but for individual customers as well.

A ruling for Cartersville would also undermine the Territorial Act's stated policy of orderly service. Once Hines and Atkore learned that the lead time for Georgia Power's transformer was longer than they anticipated, the record reflects no effort by Hines, Atkore, or Cartersville to further coordinate that timing with Georgia Power, explore alternatives, or even advise Georgia Power of its dissatisfaction before Atkore attempted to switch providers to Cartersville in November of 2023. Georgia Power's first notice of any dissatisfaction was in December of 2023, when ECG sought to negotiate on Cartersville's behalf for the purchase of Georgia Power's permanently installed equipment. *See* Tr. 322; *see also* Ex. GWD-1. If every customer could abandon its incumbent supplier, without notice or attempted coordination, the orderly rendering of electric service would become impossibly unstable. Existing facilities would be stranded, duplicative facilities would proliferate, and service territories would become subject to unilateral disruption instead of orderly administration.

Georgia Power, on the other hand, acted responsibly throughout this dispute. After receiving updated load information for Atkore, the Company promptly ordered the 1500 kVa transformer while also promptly notifying Hines of the industry-wide supply chain constraints. *See* Ex. P27. Georgia Power ultimately installed that transformer on May 23, 2024—less than a year later and in advance of the quoted 12-18 month window—thereby fulfilling its commitment to upgrade Atkore's existing service to meet its increased requirements. Tr. 213, 292. Atkore and Hines' decision to engage with Cartersville and then initiate renovation should not, and indeed, cannot create a statutory customer choice where none exists. Permitting that result would penalize Georgia Power for lawfully serving the Premises, reward Cartersville for duplicating facilities, and convert a narrow statutory exception into a broad tool for customers and competing suppliers that undermines the purpose of the statute. Accordingly, the Commission should reject Cartersville's claim in this case, confirm Georgia Power's exclusive statutory right to serve the Premises, and preserve the orderly, economical, and non-duplicative system established by the Territorial Act.

IV. CONCLUSION

The record demonstrates that Georgia Power was vested with the exclusive right to serve the Premises since February 20, 2022, and Georgia Power has lawfully and continuously served the Premises with permanent electric service to this day. Further, the Premises do not satisfy the high statutory burden of becoming "new" again because Cartersville has failed to show that the Premises were destroyed or dismantled and not reconstructed in substantial kind. Finally, a ruling in Cartersville's favor in this case would frustrate nearly every stated policy purpose of the Territorial Act.

For the reasons set forth herein, Georgia Power requests that the Hearing Officer and Commission:

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

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

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

Respectfully submitted, this 4th day of September, 2026.

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