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IN RE: CITY OF CARTERSVILLE, Petitioner, v. GEORGIA POWER COMPANY, Respondent.

Docket No. 55973

INITIAL DECISION OF THE HEARING OFFICER

I. STATEMENT OF PROCEEDINGS

This proceeding was initiated on October 11, 2024, with the initial filing of the Petition by the City of Cartersville (hereinafter "Cartersville" or "Petitioner"), pursuant to O.C.G.A §§ 46-3-1 through 46-3-15 ("Territorial Act"), seeking that the Georgia Public Service Commission (the "Commission") determine that Cartersville is the only electric supplier authorized to serve the premises located at 1181 Cassville White Road, Cartersville, Georgia (the "Premises") and order Georgia Power Company ("GPC" or "Respondent") to cease its efforts to serve the Premises, disconnect any service already established, and transfer such service to Cartersville. Cartersville asserts that the consumer of the Premises was allowed to make an election of an electric supplier other than GPC under the statutory exceptions to the Territorial Act under O.C.G.A. § 46-3-8.

GPC filed its Response and Answer on November 12, 2024, arguing that GPC is the only lawful electric service provider of the Premises. In its Answer, GPC claimed that the consumer of the Premises was not entitled to elect Cartersville as its electric service provider under the statutory exceptions to the Territorial Act under O.C.G.A. § 46-3-8. Namely, GPC claimed that the Premises did not meet the large load exception under O.C.G.A. § 46-3-8(a), and even if it did, GPC would have the continued right to serve the Premises under the grandfather clause of O.C.G.A. § 46-3-8(b).

On December 18, 2024, the matter was assigned to a Hearing Officer. A Notice of Hearing and Procedural Scheduling Order was issued on February 10, 2025, initially setting the hearing date for August 4, 2025.

On May 12, 2025, Petitioner identified its direct witness and set forth eleven (11) numbered facts as proposed stipulations (the "May 12th Stipulations"). Petitioner pre-filed the testimony of Mr. Steve London, Mr. Satya B. Madivala, Mr. Freddy L. Morgan, and Mr. Chad Prater as direct testimony witnesses on May 23, 2025. Petitioner pre-filed the rebuttal testimony of Mr. Stephen Mullen, Mr. Ben Boucher, and Mr. Madivala on June 20, 2025.

GPC identified its direct witnesses on May 12, 2025, and filed its agreement to all of the proposed May 12th Stipulations with the exception of number nine.[1] On May 23, 2025 GPC pre-filed the direct testimony of witnesses Mr. Glenn W. Dyke and Mr. Mark W. Lees. GPC did not file rebuttal testimony.

On July 11, 2025, GPC filed its Objections to Certain Portions of the Pre-Filed Testimony of Cartersville and Motion for Summary Judgment. In its Objection, GPC moved to strike portions of the pre-filed testimony of Witness Boucher containing legal conclusions as to the requirement of single metered service under the Territorial Act. Cartersville filed its Brief in Opposition to Respondent's Motion for Summary Judgment on August 11, 2025, and GPC filed a Reply Brief on August 26, 2025. The Hearing Officer amended the Notice of Scheduling Order to include Oral Arguments on GPC's Motion for Summary Judgment, GPC's Objection to Portions of Pre-filed Testimony of the City of Cartersville, and City of Cartersville's Motion for Leave to File Supplemental Pre-filed Direct Testimony. Oral Arguments were heard on October 17, 2025, where the Hearing Officer denied the Motion for Summary Judgment to allow each side to present facts for the Hearing Officer's consideration on the matter.

On February 27, 2026, the Commission issued its Order Substituting Chris Collado as the Hearing Officer of this proceeding. The Hearing Officer again amended the Hearing and Scheduling Order to hold the proceeding on August 13, 2026. Ahead of the hearing, the Parties agreed to stipulate to facts related to the pre-filed testimony of Witness Rupert in place of his presence at the hearing and availability for cross examination (the "Rupert Stipulation").[2] The

[1] *See GPC's May 12, 2025 filing Georgia Power's Identification of Potential Witnesses in the City of Cartersville vs. Georgia Power Territorial Act Dispute* ("Georgia Power does not agree that the Property has single metered service, and Atkore has a connected load which is 900 kilowatts or greater.")

[2] *See August 2, 2026 email of Attorney's Steven Hewitson and Charles Conerly* ("…as long as we stipulate that (i) Mr. Rupert performed his study on July 10, 2025 and (ii) that the purpose of his study was to calculate the connected load at the Atkore facility when Atkore commenced operations in 2023, then his testimony will come in without his presence at the hearing and without the need for his cross-examination.")

Parties further stipulated facts related to the pre-filed testimony of Witness Mullen in place of his presence at the hearing and availability for cross-examination (the "Mullen Stipulation").[3]

At the August 13, 2026 hearing, Cartersville presented the testimony of Mr. Morgan, Mr. Prater, Mr. Madivala, and Mr. London. GPC presented the testimony of Mr. Lees and Mr. Dyke. Following the examination and cross-examination of witnesses, both parties presented closing statements summarizing their respective arguments and consented to a briefing schedule. The testimony, hearing exhibits, and arguments raised by the parties were considered by the Hearing Officer in arriving at this Initial Decision.

II. CONTENTION OF THE PARTIES

Cartersville argues that the Commission should find and determine that Cartersville is the only electric supplier authorized to serve the Premises under the Territorial Act because the Premises meets the elements of the "large load" customer-choice exception of O.C.G.A. § 46-3-8(a), being that it is "new," utilized by one consumer, has single-metered service, has a connected load of 900kW or greater at the time of its initial full operation, and was affirmatively chosen by the consumer. Cartersville further asserts that the Premises does *not* meet the "grandfather clause" of § 46-3-8(b) because the Premises was destroyed or dismantled under the statute, without being reconstructed in substantial kind, causing the grandfather rights of GPC to lapse.

GPC argues that Cartersville did not meet its burden of showing that the statutory requirements of § 46-3-8(a) were met, specifically citing the requirements that the Premises is "new," has single-metered service, and has a connected load of 900kW or greater at initial full operation. GPC alternatively contends that, even if Cartersville could establish the requirements for customer-choice, GPC has the right to continue serving the Premises pursuant to the grandfather clause, as such rights given to GPC under § 46-3-8(b) have not been terminated by any statutory exception. Accordingly, GPC asserts that it has affirmatively established the grandfather rights under § 46-3-8(b) by showing that the Premises was not destroyed or dismantled, or if it was, it was rebuilt in substantial kind.

III. FINDINGS OF FACT

The evidence shows, as here pertinent, the following facts:

[3] *See August 10, 2026 email of Attorney's Steven Hewitson and Charles Conerly*.

Cartersville and GPC are "electric suppliers" as defined in the Territorial Act, and are subject to the jurisdiction of the Commission pursuant to the Territorial Act. The Premises is in unincorporated Bartow County, within GPC's designated service area under the Territorial Act. (Tr. 12, 67).

At the time of construction, the Premises was constructed as a speculative office/warehouse/distribution facility. (Transcript p. 123). In February of 2022, GPC began serving the Premises with electric service with a 300kVa transformer. (Tr. 275). Following the beginning of electric service, in early 2023, a proposal was made to convert the Premises into a manufacturing facility for Allied Tube & Conduit Corp. (herein "Atkore"). (Tr. 349).

During or about June of 2023, Hines approached GPC about supplying electrical power for Premises. Id. Subsequent load studies of the Premises in 2023 estimated a total peak load of over 1500kVa if the Premises was converted for Atkore's proposed use, requiring the use of a 1500kVa transformer. (Tr. 239; *see also* Ex. P24). In June of 2023, Hines approached GPC about changes to the electrical infrastructure needed to power the higher expected demands of the Premises. (Tr. 289). Following this communication, GPC reports that it has ordered the 1500kVa transformer, but informed the consumer of the Premises that obtaining the transformer could take approximately 12 to 18 months. Id.

In September of 2023, Atkore signed a lease for the Premises and began possession. (Tr. 183-184). On November 1, 2023, Atkore signed a Request for Electric Service with Cartersville. (Tr. 198, 212). On May 23, 2024, GPC installed a 1500kVa transformer at the Premises. (Tr. 292). At the time of the installation of the transformer, the Premises was served by four meters to the same building, all under a single bill that Atkore paid. (Tr. 278-280). GPC has served continuously since February 2022 and Atkore is its current customer of record (Tr. 349, Tr. 256).

Following its taking possession of the Premises, Atkore converted the Premises to a manufacturing facility, primarily for the manufacture of aluminum cable tray. (Tr. 195). Included in the conversion were the following:

1. Removal of 900 square feet of exterior walls/doors (Tr. 186);
2. Widening of dock doors and modification of concrete slab floor to accommodate a flatbed truck to enter and exit the building (Tr. 127, P-14);
3. Removal of sections of roof for installation of HVAC components (Tr. 187);
4. Construction of 16,000 square feet of office space to the north end of the Premises (Tr. 126);
5. Alterations/reconfiguration of lighting (Tr. 127);
6. Installation of crane (Tr. 127);
7. Electrical upgrades inside of the Premises (including switchgear and additional secondary wire to each transformer) (Tr. 17);

8. Installation of a substation breaker and voltage regulator (Tr. 117, 119);
9. Installation of 3,136 feet of overhead primary wire and over 12,000 feet of underground primary conduit and wire (Tr. 118);
10. Installation of a 500kVa transformer set at the rear of the Premises (Id.).

Following the conversion, the Premises comprising the Premises is approximately 530,000 square feet. Cartersville's witness Mr. Madivala admitted that no removal of structural steel, structural or concrete piling took place during this process. (Tr. 187). The record also shows that the total cost to Hines of the conversion of the Premises was $4,481,225.23. (Tr. 128-129). Atkore separately spent approximately $2,000,000, primarily on electrical infrastructure within the Premises. (Tr. 199-200). Cartersville has spent approximately $600,000.00 to provide electric power to the Premises. (Tr. 18).

IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and the provisions of the Georgia Territorial Act as construed in past Commission cases, the Hearing Officer makes the following Conclusions of Law.

The Commission has jurisdiction over this matter pursuant to O.C.G.A. §§ 46-3-13 and 50-13-11. This matter has been assigned to the Commission's undersigned Hearing Officer for hearing and initial decision pursuant to the provisions of O.C.G.A §§ 46-2-58, 50-13-13, and 50-13-17.

Under the Georgia Territorial Electric Service Act, the Georgia Assembly established a system "whereby every geographic area within the state shall be either assigned to an electric supplier… [and] that the commission be delegated power, authority, and jurisdiction with respect to such plan…". O.C.G.A § 46-3-2. Although a customer in an assigned area will generally have only one electric supplier with the exclusive right to extend electric service, an exception exists allowing the customer to choose a different electric supplier if the customer's premises is 1) new (or deemed new under the statute), 2) utilized by one customer, 3) has single-metered service, and 4) has a connected load of 900kW or greater at the time of its initial full operation. O.C.G.A. § 46-3-8(a). In this proceeding, Cartersville, being the petitioner and the party invoking this "large-load customer choice exception", bears the burden to prove that the elements of the exception are met with the facts of the case.

Notwithstanding the aforementioned exception, an "electric supplier shall have the exclusive right to continue serving any premises lawfully served by it…including premises which …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). In this proceeding, GPC, invokes this "grandfather clause" as an affirmative defense to Cartersville's Petition, and argues

that, if there is a finding of destruction or dismantlement of the Premises, the Premises was then rebuilt "in substantial kind" and remains under GPC's exclusive right to serve.

The Hearing Officer finds that facts support a finding that the Premises was being utilized by one customer at the time of Atkore taking possession in September of 2023 and served by four meters serving one customer.[4] Further, the Hearing Officer finds that it is undisputed that Atkore's connected load on the Premises exceeded 900 kW at the time of initial operation.[5]

Therefore, whether Cartersville or GPC may lawfully serve the Premises will be determined by whether the Premises is "new" under O.C.G.A. § 46-3-8(a) and not "reconstructed in substantial kind" under § 46-3-8(b). This issue was recently examined by the Georgia Supreme Court in *Walton Electric Membership Corp. v. Georgia Power Co.*, from which the Hearing Officer takes guidance here. 320 Ga. 740. The Supreme Court in *Walton* found that both of the relevant subsections could be read together, stating that a premises is a "new premises" under subsection (a) if "the premises [has] been 'destroyed or dismantled' and though reconstructed, [is] not 'reconstructed…in substantial kind'." *Walton*, 320 Ga. at 748.

In *Walton*, the Supreme Court notes that "the issue of whether the premises were 'destroyed or dismantled' and 'reconstructed…in substantial kind,'…turns on the meaning of the relevant terms as used in O.C.G.A. § 46-3-8…" *Walton*, 320 Ga. at 748. The Court concluded that the term "destroyed" would be defined as a complete ruination or breaking down of the premises, while "dismantled" could encapsulate a premises that has been taken apart, disassembled, or ruined in a partial (rather than wholistic) manner. *Walton*, 320 Ga. at 751. Additionally, both terms in the statute refer to *destructive*, rather than *constructive*, changes and both terms apply only to changes of the "premises," as it is defined in § 46-3-3(6), meaning changes to the building, structure, or facility to which electricity is being furnished.

It is for these reasons that the Hearing Officer is disregarding certain changes to the Premises proffered by Cartersville as evidence of destruction or dismantlement. When evaluating the scale of the renovations to the Premises, only those that are structurally destructive, as opposed to constructive or additive, and within the Premises, as opposed to outside the Premises, are considered supportive of a finding of a "new premises" under the statute. Evidence of new construction, the installation of new machinery and equipment, and changes outside of the building do not meet these criteria. In fact, of the ten listed changes described in the Findings of Fact, only 1-3 meet these criteria; items 4-7 are additive and therefore outside *Walton's* subtractive terms,

[4] Both parties have acknowledged that the presence of multiple meters serving a single customer in a single building is not, by itself, dispositive of the large-load customer choice exception. *See Central Georgia Electric Membership Corp. v. Public Service Commission, 351 Ga. App. 69, 74, 830 S.E.2d 459, 463 (2019)*.

[5] The parties dispute whether 'initial full operation' occurred when GPC rendered permanent service to Hines in February 2022, or when Atkore commenced manufacturing operations in 2023. That dispute is derivative of the dismantlement question: under *Walton*, the post-conversion operation becomes the measuring point only where the premises has been destroyed or dismantled and not reconstructed in substantial kind.

and, items 8–10 occurred outside the Premises and are excluded under § 46-3-3(6). Items 1–3 are the only relevant changes, totaling approximately 900 sq ft of exterior wall against a building of approximately 530,000 sq ft, with roof penetrations incidental to HVAC installation, and with no removal of structural steel, pilings, or roofing per Cartersville's own witness, Mr. Madivala.

An analysis must then be made to determine if the *relevant* changes Atkore made to the Premises resulted in the Premises being "substantially taken apart or the [P]remises' structural components, furniture, equipment, or other significant contents are substantially stripped away." *Walton* 320 Ga. at 750. On this point, the Hearing Officer finds GPC's arguments regarding the scope of the dismantlement compelling. In its Post-Hearing Brief, GPC argues why Cartersville's identification of construction plans fail to prove destruction or dismantlement[6]:

> 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 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*. Post-Hearing Brief of Georgia Power Company, 16-17.

GPC goes on to compare the instant facts with the facts before the hearing officer in *Walton*, where the consumer of the premises, 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." *Id* at 19, *citing Walton* 320 Ga. at 742. The Hearing Officer agrees that the differences in both the scope of the renovation to the property in *Walton* as well as the destructive characteristics of that renovation, are persuasive here.

Further, the Hearing Officer does not agree with Cartersville's assertion that whether the consumer of the facility is a new *customer* is instructive of whether or not it is a new *premises* under the statute. Petitioner's Post-Hearing Brief, 9-10. Nor does the Hearing Officer find the change in the Premises' operational character (from a "speculative office/warehouse/distribution facility" to a manufacturing facility) to be dispositive under a plain reading of the statute. Id. at 12.

[6] Although the construction plans were presented by Cartersville as evidence of substantive changes to the Premises, Cartersville admits that these were just plans and "don't necessarily show exactly what was done." (Tr. 186).

The Hearing Officer concludes that Atkore has not destroyed or dismantled the Premises in keeping with the Georgia Territorial Act and Commission precedent. Consequently, the Premises is not deemed "new" under O.C.G.A. § 46-3-8(a), the connected load element need not be reached, and no examination of whether the Premises was reconstructed in substantial kind is necessary.

V. ORDERING PARAGRAPHS

WHEREFORE, the Petition of City of Cartersville claiming Georgia Power Company is in violation of the Georgia Territorial Act is DENIED as the Hearing Officer finds that the Premises was not destroyed or dismantled, and the Premises is not entitled to the large-load customer choice exception allowing them to choose Cartersville as its electric supplier.

ORDERED FURTHER, pursuant to the provisions of O.C.G.A. § 50-13-17(a), in the absence of an Application for Review made within 30 days from the date of this Initial Decision, or an Order by the Commission for review on its own motion, this Initial Decision shall, without further proceedings, become the Final Decision of the Commission.

SO ORDERED this 11th day of September, 2026.



Chris Collado
Hearing Officer
Georgia Public Service Commission