BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

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

APPLICATION OF CITY OF CARTERSVILLE FOR FULL COMMISSION REVIEW OF THE HEARING OFFICER'S INITIAL DECISION

Pursuant to O.C.G.A. § 50-13-17, Petitioner City of Cartersville ("Cartersville") submits this application for full Commission review of the initial decision of the Hearing Officer, Chris Collado, dated September 11, 2026, in the above-styled matter. Respectfully, the Hearing Officer erred: (i) in finding that (a) "the Premises[1] was not destroyed or dismantled" and (b) "the Premises is not entitled to the large-load customer choice exception allowing [the customer] to choose Cartersville as its electric supplier;" and (ii) in denying the Petition of City of Cartersville in this matter.

I. INTRODUCTION

Just last year, the Georgia Supreme Court held that – if a "premises" is "destroyed or dismantled" and not "reconstructed . . . in substantial kind," as those terms are used in the Georgia Territorial Electric Service Act of 1973 (the "Territorial Act") – the premises is "treated as 'new'" under the Territorial Act. *Walton Electric Membership Corp. v. Georgia Power Co.*, 320 Ga. 740, 748, 911 S.E.2d 559, 567 (2025). Accordingly, if that same premises has "singled-

[1] Capitalized terms have the same meaning as used in the September 11, 2026 Initial Decision of the Hearing Officer.

metered service and a connected load which, at the time of initial full operation of the premises, is 900 kilowatts or greater" (O.C.G.A. § 46-3-8(a)), then the customer may choose its electric service provider.

In the instant action, the property at issue is located at 1181 Cassville White Road NE, White, Georgia 30184 (the "Premises"). The Premises was initially developed in 2021-22 as a speculative office-warehouse-distribution facility to be served by a 300 kVa transformer, but before it was ever put to such use, the Premises was converted to a manufacturing facility for the benefit of a new electric power costumer – at the cost of more than $6 million – that required a 1500 kVa transformer. This new customer made the election to use Cartersville as its electric service provider. Respondent Georgia Power Company ("GPC") objected to that choice, and these proceedings ensued.

Throughout these proceedings, GPC advanced three arguments as to why the Premises does not qualify for customer choice under the Territorial Act, to wit: (i) the Premises is not new (*see, e.g.*, GPC's Motion for Summary Judgment (hereinafter "GPC's Motion"), p. 7); (ii) the connected load at initial full operation of the Premises was less than 900 kW (*see, e.g.*, GPC's Motion, pp. 8-10); and (iii) the Premises does not receive single-metered service (*see, e.g.*, GPC's Motion, p. 8). GPC appears to have abandoned the third argument, as represented to the Hearing Officer by GPC's counsel during the August 13, 2026 hearing.[2] *See* Transcript of

[2] The Hearing Officer seems to have recognized this as well. *See* Initial Decision of Hearing Officer, p. 6 of 8 ("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.") and p. 6 of 8 n. 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.").

Proceedings, pp. 379-80.[3] Thus, only the first two arguments remain for the Commission's consideration.[4]

II. FACTUAL BACKGROUND.

The parties stipulated to the following facts:[5]

1. The Georgia Public Service Commission ("Commission") has jurisdiction to hear this dispute between the parties pursuant to the Territorial Act.

2. Cartersville and GPC are "electric suppliers" as defined in the Territorial Act, O.C.G.A. § 46-3-3(3), and, for purposes of this proceeding, are subject to the jurisdiction of the Commission pursuant to the Territorial Act.

3. This dispute concerns a premises located at 1181 Cassville White Road, Cartersville, Georgia, (the "Premises") upon which is situated a building previously developed for office and warehouse use (the "Building").

4. The Premises is within GPC's designated service area under the Territorial Act.

5. On February 24, 2022, GPC began serving the Property with a 300kVa transformer.

6. More recently, a proposal was made to convert the Building into a manufacturing facility (hereinafter the "Project") for Allied Tube & Conduit Corp. ("Atkore"), which manufactures electrical conduit and fittings, cable and cable management systems, infrastructure products, and safety and security products.

7. During or about June 2023, Atkore approached GPC about supplying electrical power for the Project.

8. The estimated electrical load for the Project was approximately 1.5MW, which would require a 1500kVa transformer.

9. On or about June 20, 2023, GPC reported that it had ordered the transformer for the new project but that it would take 12-18 months to obtain the transformer.

10. On or about May 1, 2024, GPC set a 1500kVa transformer on the Property and "set up to bore to a kVa unit in the back."

In addition, the record supports the following findings of fact:

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[3] Citations to the Transcript of Proceedings from the August 13, 2026 hearing will hereafter be "T-__".

[4] Cartersville's position and authority on the "single-metered service" issue is set forth on pp. 12-15 of Petitioner's Brief in Opposition to Respondent's Motion for Summary Judgment.

[5] *Compare* Cartersville's May 12, 2025 letter *with* GPC's May 12, 2025 letter, both of which have been filed and are part of the record of this case.

1. The Premises was constructed as a speculative office/warehouse/distribution facility in 2021-22. Prefiled Direct Testimony of Satya Madivala, pp. 2-3 (T-131-2); Prefiled Direct Testimony of Steve London, p. 3 (T-196).

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 (T-196).

3. Atkore then converted the Premises to a manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2 (T-195).

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 (T-206).

5. The cost of the conversion to the then-owner (Hines Busch Cartersville, LLC ("Hines")) was $4,482,033.00. Prefiled Rebuttal Testimony of Satya Madivala, pp. 2-3 and Ex. P37 (T-173-4 and 175-7).

6. Among other things, while there was existing office space on the south end of the Building, it was insufficient for Atkore's needs. Thus, an additional 16,000 square feet of office space was added to the north end of the Building. (T-126-7).

7. Additional HVAC had to be installed for the new office space, which required "cutouts" on the roof. (T-187).

8. The lighting in the building had to be reconfigured. (T-127).

9. Some of the "dock doors" had to be widened, "so a flatbed truck could drive into the building and drive out on the other end," which was a "major conversion." (T-127).

10. Four exterior bay doors, constituting around 900 square feet, were removed. (T-186).

11. 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. 6-7 (T-199-200).

12. 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 (T-17).

13. Atkore added a crane, which "draws a lot of electrical." (T-127).

14. Atkore also added "welding equipment, electrical, fork trucks, all those other things." (T-212).

15. 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 (T-196).

16. 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 (T-196-7).

17. Atkore made the election to have Cartersville supply electric power to the Premises in a Request for Electric Service dated November 1, 2023, and reaffirmed that choice in a letter dated April 3, 2024. *Id.* at 5-6 and Exs. P15 and P20 (T-198-9, 202-4, and 205).

18. 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 (T-14).

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

20. 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 (T-71).

21. In total, Cartersville "spent approximately $600,000.00 to extend electric power to the" Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 9 (T-18).

22. The Premises consists of one building occupied by one customer (Atkore). Prefiled Rebuttal Testimony of Stephen Mullen, pp. 2-3 (T-220-1).

23. There are no other tenants at the Premises besides Atkore. *Id.* (T-220-1).

24. And while there are four separate meters at the Premises, they serve the same building and the same customer (Atkore). *Id.* (T-220-1).

25. The bill is sent to a single customer (Atkore), and a single customer (Atkore) pays the bill. *Id.* (T-220-1).

III. LEGAL ARGUMENT AND CITATION OF AUTHORITY

A. The parties agree that *Walton Electric Membership Corp. v. Georgia Power Co.*, 320 Ga. 740, 911 S.E.2d 559 (2025) is controlling.

Last year, 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. (GPC's Motion, p. 11). In *Walton EMC*, the issue was whether a pet food company's[6] 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 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.

Walton EMC directly addresses the first argument advanced by GPC in this case (i.e., the Premises is not new), and it necessarily resolves the second argument in Cartersville's favor (i.e., the connected load at initial full operation of the Premises was less than 900 kW). With respect to the former, and as discussed in more detail in Section III.B. 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 III.E. below –

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

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.

B. 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." (GPC's Motion, p. 7). 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.[7] However, that is plainly not the case under Georgia law, as articulated in *Walton EMC*.

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**

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

> **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." (GPC'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.

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

Again, 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.[8] *See, generally*, 320 Ga. at 746-52; 911 S.E.2d at 566-70. 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

[8] "[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.

> wholly, of the same fundamental nature or quality as 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.

Importantly, *Walton EMC* instructs that the Premises does not have to be "destroyed" to qualify for customer choice; rather, it can simply be "dismantled." And "'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." 320 Ga. at 750; 911 S.E.2d at 568 (emphasis added). In other words, the Georgia Supreme Court was not providing an exhaustive list of what it means to be "dismantled," but rather an example of what it means. And arguably, the facts in the instant action are even more compelling to support a finding that the Premises was "dismantled" than those in *Walton EMC*.

Again, the Premises was constructed as a speculative office/warehouse/distribution facility in 2021-22. Prefiled Direct Testimony of Satya Madivala, pp. 2-3 (T-131-2); Prefiled Direct Testimony of Steve London, p. 3 (T-196). 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 (T-196). Atkore then converted the Premises to an actual manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2 (T-195).

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 (T-206). 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 (T-173-4 and 175-7). Among other things, while there was existing office space on the south end of the Building, it was insufficient for Atkore's needs. Thus, an additional 16,000 square feet of office space was added to the north end of the Building. (T-126-7). Additional HVAC had to be installed for the new office space, which required "cutouts" on the roof. (T-187). The lighting in the building had to be reconfigured. (T-127). Some of the "dock doors" had to be widened, "so a flatbed truck could drive into the building and drive out on the other end," which was a "major conversion." (T-127). And four exterior bay doors, constituting 900 square feet, were removed altogether. (T-186).

The cost of the conversion to Atkore was approximately $2 million, which included "considerable investment in the electrical infrastructure inside the facility to meet the needs of Atkore."[9] Prefiled Direct Testimony of Steve London, pp. 6-7 (T-199-200). 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 (T-17). Atkore added a crane, which "draws a lot of electrical." (T-127). Atkore also added "welding equipment, electrical, fork trucks, all those other things." (T-212).

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 (T-196). 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.[10] *Id.* at 3-4 (T-196-7). In order to extend such service to the Premises, Cartersville had to "acquire a

[9] Respectfully, changes to the electrical infrastructure should be given added weight, as the whole point of this exercise is to determine who should provide electric power to the Premises.

[10] Again, respectfully, the magnitude of the change in the electric power demands should be a consideration.

substation breaker and design and build three-phase service" to the Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 5 (T-14). In fact, Cartersville provided "14,500 ft (43,500 ft total) of three-phase service to the" Premises. *Id.* (T-14). 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 (T-71). In total, Cartersville "spent approximately $600,000.00 to extend electric power to the" Premises. Prefiled Direct Testimony of Freddy L. Morgan, p. 9 (T-18).

These facts plainly support the conclusions that: (i) the Premises was "dismantled" as *Walton EMC* instructs; and (ii) the reconstruction of the Premises was not "of the same fundamental nature or quality as they were previously" as *Walton EMC* also instructs.

D. Respectfully, the Hearing Officer misconstrued/misapplied *Walton EMC*.

The Hearing Officer correctly relied on *Walton EMC*. *See, generally*, Initial Decision of Hearing Officer, pp. 6 of 8 through 8 of 8. However, the Hearing Officer distinguishes between "destructive" changes to the Premises and "constructive" changes to the Premises and then excludes from his consideration "constructive" or "additive" changes to the Premises:

> [T]he 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 . . . are considered supportive of a finding of a 'new premises' under the statute. Evidence of new construction, the installation of new machinery and equipment . . . do not meet these criteria.[11]

[11] Indeed, the Hearing Officer expressly refused to consider four major changes to the Premises that he considered "additive." Initial Decision of Hearing Officer, p. 6 of 8 ("[I]tems 4-7 are additive and therefore outside *Walton's* subtractive terms.").

Id. at p. 6 of 8. This distinction is simply not recognized in *Walton EMC*. In fact, in concluding that Nestle qualified for customer choice, the Georgia Supreme Court cited favorably the findings of fact relied upon by the Commission, which included a number of "constructive" or "additive" changes to the facility at issue: "adding exterior walls," "constructing new buildings," "replacing its wastewater treatment and drainage systems," "replacing the electrical systems and infrastructure," "replacing the air-handling systems," and "making various other additions." *Walton EMC*, 320 Ga. at 752-3, 911 S.E.2d at 570. Indeed, the Georgia Supreme Court summarized its holding as follows:

> [W]e have no difficulty determining that the Commission did not abuse its discretion in concluding that Nestle's premises were "destroyed or dismantled" given the factual findings about the substantial modifications to the premises **and construction of new buildings**.

320 Ga. at 753, 911 S.E.2d at 570 (emphasis added). Many of these same (or very similar) facts are present in the instant action, and it was error for the Hearing Officer not to consider them.

Similarly, the Hearing Officer refused to consider "the installation of new machinery and equipment." Initial Decision of Hearing Officer, p. 6 of 8. But that too is unsupported by *Walton EMC*. Again, the Georgia Supreme Court cited favorably the following finding of fact relied upon by the Commission: "installing all new equipment." *Walton EMC*, 320 Ga. at 753, 911 S.E.2d at 570.

The Hearing Officer also did not consider the change of use of the Premises (a factor in *Walton EMC* as well). And the Hearing Officer does not appear to have given any (or at least sufficient) weight to the changes to the electrical infrastructure at the Premises or the magnitude of those changes, given the five-fold increase in electric power demand due to the conversion of the Premises to Atkore's use. There is nothing in *Walton EMC* that prohibits their consideration,

and again, they should arguably be given added weight, as the whole point of this exercise is to determine who should provide electric power to the Premises.

Finally, the Hearing Officer refused to consider "changes outside the building,"[12] and that too is unsupported by *Walton EMC*.

E. 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. (GPC's Motion, pp. 9 - 10). Respectfully, the record does not reflect that Hines ever actually operated the Premises as an office and warehouse,[13] but even if it had, GPC's argument is – once again – controlled and foreclosed by *Walton EMC*.

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[12] Initial Decision of Hearing Officer, p. 6 of 8.

[13] 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 (T-131-2); Prefiled Direct Testimony of Steve London, p. 3 (T-196). 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 (T-196). Atkore then converted the Premises to a manufacturing facility, primarily to manufacture aluminum cable tray. *Id.* at 2 (T-195).

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 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.[14]

The Commission decisions cited by GPC in footnotes 10-12 of GPC'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"[15] based on an anticipated future

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[14] Notably, GPC concedes that the connected load at initial operation of the Premises following Atkore's reconstruction of it was 900 kilowatts or greater. (T-375). This fact was similarly accepted by the Hearing Officer. See Initial Decision of Hearing Officer, p. 6 of 8 ("[T]he Hearing Officer finds that it is undisputed that Atkore's connected load on the Premises exceeded 900kW at the time of initial operation.").

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

expansion of a premises or the introduction of additional equipment in the future at the premises.[16] That is simply not the issue in this case.

IV. CONCLUSION

As set forth above, (i) the Premises has "singled-metered service," as that term is used in the Territorial Act; (ii) the Premises was "destroyed or dismantled" and not "reconstructed . . . in substantial kind," as those terms are used in the Territorial Act; (iii) accordingly, the Premises is "treated as 'new'" under the Territorial Act; (iv) the Premises had a connected load which, at the time of Atkore's initial full operation of the premises, was 900 kilowatts or greater; (v) Atkore was eligible to choose its electric service provider; and (vi) Atkore chose Cartersville as its electric service provider.

Accordingly, Cartersville respectfully requests that:

1. the full Commission review and reverse the Hearing Officer's initial decision;

2. the Commission find and determine that Cartersville is the only electric supplier authorized to serve the Premises pursuant to the "large load," customer-choice exception, or alternatively, the "reconstruction of the premises" exception to the "grandfather clause" in the Territorial Act; and

3. the Commission order GPC to cease and desist its efforts to serve the Premises, to disconnect service to the Premises, and to transfer such service to Cartersville.

[16] 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.

This 7th day of October, 2026.

SMITH CONERLY LLP

/s/ Charles S. Conerly
Charles S. Conerly
Georgia Bar No.: 180720
cconerly@smithconerly.com

ATTORNEYS FOR CITY OF CARTERSVILLE

402 Newnan Street
Carrollton, Georgia 30117
(770) 834-1160 (telephone)
(770) 834-1190 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the herein and foregoing **APPLICATION OF CITY OF CARTERSVILLE FOR FULL COMMISSION REVIEW OF THE HEARING OFFICER'S INITIAL DECISION** by e-mail as follows:

Steven J. Hewitson
Allison W. Pryor
Matthew C. Daigle
Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 3600
Atlanta, Georgia 30308-2216
(404) 885-3000
steven.hewitson@troutman.com
allison.pryor@troutman.com
matt.daigle@troutman.com

This 7th day of October, 2026.

SMITH CONERLY LLP

/s/ Charles S. Conerly
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Georgia Bar No.: 180720
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