STATE OF GEORGIA

BEFORE THE PUBLIC SERVICE COMMISSION

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

GEORGIA POWER COMPANY'S RESPONSE TO CITY OF CARTERSVILLE'S APPLICATION FOR FULL COMMISSION REVIEW OF THE HEARING OFFICER'S INITIAL DECISION

I. INTRODUCTION

Georgia Power Company ("Georgia Power" or the "Company") hereby responds to the City of Cartersville's ("Cartersville") application for full review by the Georgia Public Service Commission ("Commission") of the initial decision of the Hearing Officer (the "Application"). This matter involves Georgia Power's status as the rightful supplier of electricity to the facility at 1181 Cassville White Road, Cartersville, Georgia (the "Premises") under the Georgia Territorial Service Act, O.C.G.A. § 46-3-1 *et seq.* (the "Territorial Act"). The Territorial Act preserves an electric supplier's exclusive right to serve premises it lawfully served, unless those premises "have been destroyed or dismantled" and are not "reconstructed . . . in substantial kind."[1]

After hearing the merits of the case on August 13, 2026, and reviewing briefs filed by the parties on September 4, 2026, the Hearing Officer issued his Initial Decision in this case on

[1] O.C.G.A. § 46-3-8(b).

September 11, 2026. In the Initial Decision, the Hearing Officer thoughtfully and correctly concluded that the Premises had neither been destroyed nor dismantled and therefore was not considered "new" under the Territorial Act, and thus not entitled to the large-load customer choice exception under the Territorial Act.[2] Cartersville thereafter filed the instant Application on October 7, 2026, seeking full Commission review of the Initial Decision. Cartersville claims that the Hearing Officer erred in (1) finding that the Premises was not destroyed or dismantled, (2) finding that the Premises is not entitled to the large-load customer choice exception laid out in the Territorial Act, and (3) denying Cartersville's petition.[3]

The Application should be denied. Cartersville fails to identify any error by the Hearing Officer for this Commission to review and wholesale copies and pastes arguments already briefed by the parties and decided by the Hearing Officer. To the limited extent Cartersville raises new arguments attacking the actual substance of the Hearing Officer's Initial Decision, those issues were correctly decided by the Hearing Officer. Accordingly, Commission review of the Initial Decision is unwarranted and unnecessary, and the Commission should reject Cartersville's attempt to relitigate its case before a different audience. Even if the Commission determines that review is warranted, it should uphold the Hearing Officer's properly decided and well-reasoned Initial Decision.

[2] Initial Decision of the Hearing Officer, Docket No. 55973 (Sep. 11, 2026) (hereinafter "Initial Decision") at 8.
[3] Application of City of Cartersville for Full Commission Review of the Hearing Officer's Initial Decision, Docket No. 55973 (Oct. 7, 2026) (hereinafter "Application") at 1.

II. ARGUMENT

The Commission should reject Cartersville's Application outright, but even if it is inclined to grant the Application, the Commission should uphold the Hearing Officer's Initial Decision. Cartersville's Application is largely a copy-paste effort in all but one section, identifying no error in the Hearing Officer's decision and demonstrating that it is simply attempting to relitigate issues that have already been addressed and decided by the Hearing Officer. As to the sole argument that genuinely raises new issues, it is Cartersville who misconstrues the governing law, not the Hearing Officer. The Hearing Officer correctly applied all the relevant governing law—not just the single case that Cartersville considers helpful—when he concluded that the Premises in this case was not "new" under the Territorial Act. As demonstrated below, Commission review is therefore unnecessary, and the Hearing Officer's Initial Decision should be upheld.

A. Cartersville attempts to relitigate issues that have already been decided by the Hearing Officer and any identifiable error belongs to Cartersville.

Cartersville's Application presents virtually no new grounds for review, but instead repeats arguments already raised and addressed in its Response to Georgia Power's Motion for Summary Judgment and its Post-Hearing Brief. In fact, four of the five subsections—or eight of the ten total pages in the Legal Argument section—are taken *verbatim* from Cartersville's Post-Hearing Brief, amounting to no more than a literal re-argument of issues already addressed by counsel at length both in written argument and oral advocacy. To the extent these issues warrant any argument by Georgia Power, the Company stands by its Post-Hearing Brief as presented to the Hearing Officer.

Critically, none of Cartersville's copied sections even attempt to identify any error in the Hearing Officer's Initial Decision, particularly because the sections Cartersville copies come from briefs and pleadings that were filed before the Hearing Officer ever rendered a decision. This is

clear evidence that Cartersville simply attempts to fight its case anew, this time before the entire Commission. Cartersville identifies no legitimate reason, no procedural flaw, and no legal error such that the Commission must stray from the Hearing Officer's well-reasoned Initial Decision, at least with respect to those portions Cartersville rehashes.

On the other hand, Cartersville's Application should be disregarded as it contains a material and fundamental misstatement of Georgia Power's position that is clearly belied by both the record and the briefing. On page 7 of its Application, Cartersville restates arguments made in its Post-Hearing Brief:

> 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 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. However, that is plainly not the case under Georgia law, as articulated in Walton EMC.[4]

Georgia Power has never raised such an argument, and Cartersville's claims in its Post-Hearing Brief and Application that the Company has done so are either a misstatement of Georgia Power's position at best or a fundamental misunderstanding of this case at worst. Through witness testimony and argument by counsel, Georgia Power fully acknowledged at the evidentiary hearing the exact opposite position that Cartersville claims: that the destruction or dismantlement and the reconstruction not in substantial kind of a premises *can* result in such premises becoming "new," and therefore subject to customer choice.[5] Georgia Power confirmed the same in its Post-Hearing

[4] Application at 7 (citations omitted, emphasis supplied, brackets in original); *see also* Petitioner's Post-Hearing Brief, Docket No. 55973 (Sep. 3, 2026) at 8.

[5] *See* Transcript, August 13, 2026, Evidentiary Hearing (hereinafter "Tr.") at 326, lines 14–18 ("I mean, there are circumstances in the Territorial Act, if they destroy or dismantle and reconstruct in approximately the same site and something other than substantial kind, then that case becomes a new premises."); Tr. 372, lines 2–6 ("So it is Georgia

Brief.[6] This position is therefore in full agreement with Cartersville's position on the governing standard[7]—Georgia Power and Cartersville merely disagree on whether that standard was met in this case. Cartersville copies and pastes arguments verbatim, identifies no error in the Hearing Officer's Initial Decision, and misrepresents the Company's position on the law. For these reasons, Cartersville's Application as to these issues should be disregarded and the Initial Decision should be upheld.

B. Cartersville, not the Hearing Officer, misconstrues the governing law.

1. The Hearing Officer did not misconstrue the governing law.

Out of its entire Application, Cartersville dedicates a single subsection to identifying and attacking a potential issue with the Hearing Officer's Initial Decision, but this argument fails as well. Initially, Cartersville states that the Hearing Officer correctly relied on *Walton Elec. Membership. Corp. v. Ga. Power Co.*, 320 Ga. 740 (2025) ("*Walton*"). Cartersville then argues that the Hearing Officer misconstrued or misapplied *Walton* when the Hearing Officer "distinguishe[d] between 'destructive' changes to the Premises and 'constructive' changes to the Premises" and "exclude[d] from his consideration 'constructive' or 'additive' changes to the Premises."[8] This distinction, Cartersville argues, "is simply not recognized in *Walton*" because the Supreme Court of Georgia cited Commission findings of fact that included constructive or additive

Power's exclusive right to serve the Premises, **unless the Premises becomes new under the Territorial Act, by virtue of it being destroyed or dismantled and not reconstructed in substantial kind."**).

[6] *See* Post-Hearing Brief of Georgia Power Company, Docket No. 55973 (Sep. 4, 2026) at 14 ("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.'").

[7] *See* Tr. 364, lines 10–14 ("In other words, what the Supreme Court said, and it is the law in this state, that if a premises is destroyed or dismantled and not reconstructed in substantial kind, then it is treated as new under the Territorial Act.").

[8] Application at 12.

changes to the pet food manufacturing facility at issue in *Walton*.[9] Cartersville argues that many similar facts are present in this case and that "it was error for the Hearing Officer not to consider them."[10]

While Cartersville relies heavily on *Walton* for its arguments, it is Cartersville that misconstrues this case, not the Hearing Officer. The Hearing Officer clearly acknowledged that his decision to distinguish between destructive and constructive changes comes from the statutory text of the Territorial Act, not just *Walton*.[11] In short, the Hearing Officer applied a plain and faithful reading of the statute, not just the case law interpreting the statute, in establishing a difference between destructive and constructive changes—precisely the type of statutory analysis that the Supreme Court of Georgia performed.[12] While Cartersville may focus solely on *Walton*, there is more than just case law at play in this case, and the Hearing Officer correctly looked to the governing statutory authority when making his ruling.

Further, while Cartersville argues the Hearing Officer failed to consider constructive changes,[13] it is apparent that he instead placed them in the proper analytical light. The Hearing Officer acknowledged that these constructive changes were simply not "evidence of destruction or dismantlement."[14] This distinction is key because a premises must be destroyed or dismantled *and* reconstructed in something other than substantial kind to be considered new and to qualify for

[9] Application at 13.
[10] *Id*.
[11] *See* Initial Decision at 6 ("Additionally, [the terms 'destroyed' and 'dismantled'] 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." (Emphasis in original)).
[12] *See Walton Elec. Membership Corp. v. Ga. Power Co.*, 320 Ga. 740, 747 (2025) ("We therefore look to the text of the statute, give the language its plain and ordinary meaning, view it in the context in which it appears, and read it in its most natural and reasonable way, as an ordinary speaker of the English language would.").
[13] Application at 13.
[14] Initial Decision at 6 ("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*." (Emphasis supplied)).

customer choice.[15] Therefore, the Hearing Officer was disregarding Cartersville's proffered changes as they related to the first question as to whether the Premises in this case was destroyed or dismantled. Any additive changes from *Walton* that Cartersville points to as helpful for the instant case—such as the adding of exterior walls; construction of new buildings; replacement of wastewater treatment, drainage systems, electrical systems, electrical infrastructure, and air-handling systems; and various other additions including the "installation of new machinery and equipment"[16]—is only relevant to the second, separate analysis of reconstruction. Put simply, consideration of constructive changes may be relevant to answer whether premises are "reconstructed in substantial kind" but are irrelevant to the question of whether premises are destroyed or dismantled.

Based on the record, the Hearing Officer found that the Premises was neither destroyed nor dismantled,[17] so the Premises could not have been considered "new." Thus, any reconstruction analysis—and any consideration of constructive changes—was not necessary and, indeed, would have been improper.[18] Even *Walton*, the case Cartersville heavily relies on, performs this two-part analysis. In deciding *Walton*, the Supreme Court of Georgia first addressed the destruction and dismantlement issue[19] and then turned to the phrase "reconstructed . . . in substantial kind."[20] Accordingly, the Hearing Officer committed no error and did not misconstrue the governing law by disregarding constructive changes when considering whether the Premises was destroyed or dismantled. In reality, the Hearing Officer mirrored the approach taken in *Walton*, and Cartersville,

[15] *See Walton*, 320 Ga. at 752.
[16] Application at 13 (citing *Walton*, 320 Ga. at 752–53; Initial Decision at 6).
[17] Initial Decision at 8.
[18] *Id.*
[19] *Walton*, 320 Ga. at 748–51 (2)(a) ("Turning to the phrase 'destroyed or dismantled,' . . . ").
[20] *Id.* at 751–52 (2)(b) ("Turning now to the phrase 'reconstructed . . . in substantial kind' . . . .").

not the Hearing Officer, has misconstrued and misapplied the analytical framework laid out in *Walton.*

2. Cartersville's arguments find no support in the law it cites.

Beyond misreading the analytical framework, Cartersville's remaining arguments find no support in the sole authority it cites. First, Cartersville points out that the Supreme Court of Georgia cited, with approval, Commission findings of fact that included additions and new construction at the facility in *Walton*.[21] But that portion of *Walton* announced no rule that additions or new construction *must* be considered when deciding whether premises were destroyed or dismantled. The Court was reviewing whether the evidence in *Walton* (and in *Walton* alone) supported the Commission's finding that destruction or dismantlement *had* occurred in that case, and it recited the record facts to demonstrate that the Commission did not abuse its discretion in making that determination.[22] Nothing in that review converts the Supreme Court of Georgia's description of the record in *Walton* into a mandatory checklist for future fact-finders.[23] The statutory text should remain the Commission's guiding light, and here, the Hearing Officer weighed the record evidence in this case in light of both statutory law and case law and found that the Premises was neither destroyed nor dismantled. This factual determination is entitled to deference and is well supported by the record in this case.

Second, when it comes to rules that *Walton* does announce, Cartersville is again misguided. For example, Cartersville oversimplifies the idea of dismantlement, asserting that a premises "can

[21] Application at 13 (citing *Walton*, 320 Ga. at 752–53).
[22] *Walton*, 320 Ga. at 752–53.
[23] In fact, *Walton* likely stands for the exact opposite. In addition to its holdings related to the Territorial Act, *Walton* also held that the appropriate standard of review in Georgia for mixed questions of law and fact—such as whether the modifications a customer makes to its premises add up to a destruction or dismantlement of those premises—"requires a nuanced, *case-by-case* characterization, assessment, or judgement . . . ." *Walton*, 320 Ga. at 746 (emphasis supplied).

simply be 'dismantled'" in order to qualify for customer choice.[24] *Walton* holds otherwise. According to *Walton*, dismantlement is not the same as "anything other than complete destruction." The statute confirms as much: it pairs "destroyed or dismantled" with "reconstructed," which presupposes that the original premises no longer functionally exists.[25] There must be enough "dismantlement" to warrant a *reconstruction* of the dismantled portions—that is, the premises must be taken apart to such a degree that "a reconstruction would be required to return the premises to 'substantial kind.'"[26]

Third, Cartersville's position would make nearly any renovation a gateway to customer choice. Cartersville cites Atkore's conversion of the Premises to a manufacturing facility and related renovations as evidence of "dismantlement."[27] But converting 16,000 square feet of existing warehouse space to office space, adding HVAC, reconfiguring lighting, widening dock doors, and removing bay doors[28] does not constitute the kind of "dismantlement" that would have required reconstruction. The *Walton* court recognized this reality by requiring dismantlement to be substantial enough to warrant reconstruction.[29] The work Atkore performed did not require reconstruction of anything, even if it had spent $2 million to perform it.[30]

Fourth, Cartersville emphasizes that the Premises' electric load increased under Atkore and that Cartersville itself spent "approximately $600,000.00" extending service to the Premises.[31] That work, regardless of the expense incurred, says nothing about whether the Premises was

[24] Application at 10.
[25] O.C.G.A. § 46-3-8(b).
[26] *Walton*, 320 Ga. at 750.
[27] *See* Application at 10-11.
[28] *Id.* at 11.
[29] *See Walton*, 320 Ga. at 750.
[30] *See* Application at 11.
[31] *See* Application at 11–12.

destroyed or dismantled. In *Walton*, the Court examined the work performed by the customer, Nestlé, on its facility; it did not consider the work the electric supplier, Walton EMC, performed to extend or furnish service to that facility.[32] Cartersville's investment was appropriately disregarded by the Hearing Officer not just because it was work performed outside the Premises,[33] but also because it was work that the electric supplier, not the customer, performed. This was work that amounted to an electric supplier's effort to improperly serve a customer that, under the Territorial Act, had already been assigned to Georgia Power. A competing supplier cannot manufacture "new" premises simply by spending its own money to undercut another supplier's territorial rights. The Hearing Officer correctly disregarded this work.

Fifth, Cartersville argues that nothing in *Walton* prohibits consideration of electrical infrastructure additions to support a finding that the underlying use of the Premises changed.[34] Yet nothing in *Walton* requires their consideration either, and Cartersville cites no support for such requirement. Notably, Cartersville claims that these facts "should arguably be given added weight, as the whole point of this exercise is to determine who should provide electric power to the Premises"[35] yet cites no authority for the added weight it seeks. Absent any such mandate, the Hearing Officer acted well within his authorized discretion in giving those additions the weight he deemed appropriate in assessing whether the Premises was destroyed or dismantled.

Finally, Cartersville contends that the Hearing Officer's refusal to consider "changes outside the building" is unsupported by *Walton*.[36] As part of this bare, single-sentence assertion,

[32] *See Walton*, 320 Ga. at 752–53 (finding that Nestlé, not Walton EMC, "spent $300 million (nearly 43 times the purchase price)" on changes to the premises).
[33] *See* Initial Decision at 6–7.
[34] *See* Application at 13–14.
[35] *Id.*
[36] *See* Application at 14.

Cartersville cites nothing in *Walton* that requires such consideration. To be clear, the Hearing Officer did not need *Walton*'s support—his approach instead rested appropriately on the text of the Territorial Act, which defines "premises" by reference to the building or facility being served.[37] The Hearing Officer therefore properly confined his analysis to changes to the Premises *as the statute defines it*. Cartersville ignores this statutory text and faults the Hearing Officer for not applying *Walton*, when the real error is in Cartersville's failure to apply the statute. Because none of Cartersville's arguments find support in *Walton* or the Territorial Act, the Commission should deny the Application and uphold the Initial Decision.

C. The Hearing Officer correctly concluded that the Premises was not new.

While Cartersville attempts to attack the Initial Decision as unsupported, the Commission's own review of the Initial Decision will demonstrate that the Hearing Officer properly analyzed the facts and concluded that the Premises in this case was not new. As stated above, the Hearing Officer correctly grounded his analysis in the text of the Territorial Act and used *Walton* to guide his decision that additive changes to the building are not evidence of "destruction or dismantlement." With this proper analytical framework in mind, the Hearing Officer then applied those principles to the ten changes listed in his Findings of Fact and sorted the record methodically: items 1 through 3 (removal of exterior walls and doors, widening of dock doors, and roof removal for HVAC) were destructive changes within the Premises; items 4 through 7 (converted office space, lighting reconfiguration, addition of a crane, and interior electrical upgrades) were additive; and items 8 through 10 (Cartersville's installation of a substation breaker and voltage regulator,

[37] O.C.G.A. § 46-3-3(6).

pulling of overhead and underground primary wire, and addition of a transformer set at the rear of the Premises) occurred outside the Premises entirely.[38]

The Hearing Officer then applied *Walton* by comparing this record directly against the facts the Supreme Court of Georgia found sufficient in that case. The only relevant destructive changes here totaled roughly 900 square feet of exterior wall on a building of approximately 530,000 square feet—less than one percent of the structure—along with roof penetrations incidental to HVAC installation.[39] Cartersville's own witness, Mr. Madivala, admitted that no structural steel, structural or concrete piling, or roofing was removed.[40] By contrast, the customer in *Walton* "removed and replaced the entire electrical system and infrastructure; removed and replaced 30 percent of the flooring and foundation; removed concrete slabs . . . ; 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."[41] Weighing the two records side by side, the Hearing Officer found "the differences in both the scope of the renovation to the property in *Walton* as well as the destructive characteristics of that renovation" persuasive,[42] and concluded that Atkore's changes did not "substantially t[ake] apart" the Premises or "substantially strip[] away" its structural components.[43] Because the Premises was neither destroyed nor dismantled, the inquiry ended and no

[38] Initial Decision at 4–5, 6–7.
[39] *Id.* at 7.
[40] *Id.* at 5 (citing Tr. 187).
[41] *Id.*at 7.
[42] *Id.*
[43] *Id.* (quoting *Walton*, 320 Ga. at 750).

reconstruction analysis was necessary. The Hearing Officer properly held that the Premises was not "new."

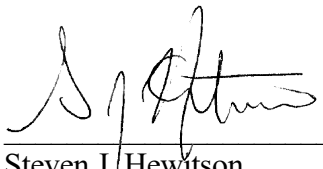
Cartersville engages with none of this. It looks only to *Walton*, ignores the statutory text the Hearing Officer applied, and offers conclusory assertions—stripped of the correct analytical context that guided the Initial Decision—that the Hearing Officer misconstrued and misapplied that case. On the contrary, the Hearing Officer's Initial Decision shows a reasoned and intentional approach, consideration of multiple relevant authorities, and a careful application of the law and facts. Cartersville never explains in its Application how less than one percent of a building's exterior walls, with no structural steel, pilings, or roofing removed, could amount to the same scale and scope of wholesale dismantlement present in *Walton*. The Hearing Officer applied the correct law to the record before him, and his conclusion should accordingly be upheld.

III. CONCLUSION

Cartersville's Application is merely an attempt to relitigate issues the Hearing Officer resolved against Cartersville. While Cartersville may disagree with the Hearing Officer's Initial Decision, Cartersville fails to identify any legal error, procedural defect, or other substantive issue warranting review of the Initial Decision by the full Commission. In fact, after accounting for arguments already raised and rejected by the Hearing Officer, Cartersville's Application boils down to a single claim that the Hearing Officer "misconstrued" or "misapplied" a single case. On the contrary, the Hearing Officer looked to the statutory text of the Territorial Act, used case law to inform his reading of the statute, and appropriately compared and applied the law to the facts of this case. Cartersville's mere displeasure with the outcome should not be converted to a review by the full Commission. The Commission should reject Cartersville's Application outright, but even

if the Commission determines that review is warranted, it should uphold the Hearing Officer's Initial Decision as a well-reasoned and faithful application of the law to the facts of this case.

Respectfully submitted, this 6th day of November, 2026.



Steven J. Hewitson
Allison W. Pryor
Michael G. Foo

Attorneys for Georgia Power Company

TROUTMAN PEPPER LOCKE LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 3600
Atlanta, Georgia 30308-2216
(404) 885-3000

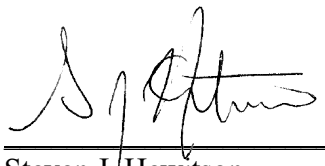
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the herein and foregoing **GEORGIA POWER COMPANY'S RESPONSE TO CITY OF CARTERSVILLE'S APPLICATION FOR FULL COMMISSION REVIEW** by email as follows:

Charles S. Conerly
Smith Conerly LLP
402 Newnan Street
Carrollton, Georgia 30117
(770) 834-1160
cconerly@smithconerly.com

I have also filed a copy of the foregoing with the Commission via the Commission's Alternative Filing Procedures.

This 6th day of November, 2026.



Steven J. Hewitson
Allison W. Pryor
Michael G. Foo

Attorneys for Georgia Power Company

TROUTMAN PEPPER LOCKE LLP
Bank of America Plaza
600 Peachtree Street, N.E., Suite 3600
Atlanta, Georgia 30308-2216
(404) 885-3000