

Verification of Expenditures Pursuant to )  
Georgia Power Company’s Certificate of Public )  
Convenience and Necessity for Plant Vogtle )  
Units 3 and 4, Seventeenth Semi-Annual )  
Construction Monitory Report; Proposed Forecast )  
Cost and Schedule Revisions; and Determination )  
of Continuation or Cancellation of the Project )

Docket No. 29849

**ORDER ON THE SEVENTEENTH SEMI-ANNUAL VOGTLE CONSTRUCTION  
MONITORING REPORT FOR THE PERIOD JANUARY 1, 2017  
THROUGH JUNE 30, 2017**

**Background**

In Docket No. 27800, Georgia Power Company (“Georgia Power,” “Company,” or “GPC”) filed an Application on August 1, 2008, for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan (“Application”). In its Application, the Company sought Georgia Public Service Commission (“Commission”) approval of its addition of Units 3 and 4 at Plant Vogtle (“Vogtle Units 3 and 4”). In its Amended Certification Order issued March 30, 2009, the Commission approved the Company’s Application for the Certification of Vogtle Units 3 and 4 at an in-service cost of \$6.447 billion<sup>1</sup> as modified by a Stipulation entered into between the Commission Public Interest Advocacy Staff (“PIA Staff”) and the Company (“Stipulation”).

Paragraph 2(c) of the Stipulation requires the Company to file Semi-annual Monitoring Reports with the Commission as provided by O.C.G.A. § 46-3A-7(b). The Stipulation requires the Semi-annual Monitoring Reports to include any proposed revisions in the cost estimates,

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<sup>1</sup> The assumption at certification was that financing costs were capitalized during construction and recovered after the Units were placed in service.

construction schedule, or project configuration, as well as a report of actual costs incurred in the period covered by the report.

Prior to the first Vogtle Construction Monitoring (“VCM”) filing, in an agreement with the Company, PIA Staff established a separate monitoring process by opening Docket No. 29849. The Commission Order from the First VCM adopted a Stipulation between PIA Staff and the Company, which in part, revised the certificated project cost downward to reflect Construction Work-In-Progress (“CWIP”). The Certificated amount for the project as reflected in paragraph 4 of the Agreement was revised to \$6.113 billion dollars.<sup>2</sup>

During the Commission’s August 15, 2017 Administrative Session, a motion was introduced that if adopted would require Georgia Power, in conjunction with the Company’s 17<sup>th</sup> VCM Report, to file with the Commission its intention of whether to proceed with construction on one or both units at Plant Vogtle. The motion also provided, *inter alia*, that the Company’s filing shall address whether the Commission should approve revisions to the cost and schedule.

Subsequently, an amendment to the motion was offered and accepted to provide that if Georgia Power's recommendation is to abandon the Project for whatever reason, whether due to co-owners lack of desire to go forward, the overall economic impact of the Project, or risk to stakeholders, the Commission will have the ability to rescind or revise this or any future Commission order accordingly.

The Commission adopted the motion, as amended and, on August 23, 2017, issued an Order to Require Georgia Power Company To File Certain Information (“Order to File Information”) in conjunction with the 17<sup>th</sup> VCM Report.

The Commission noted that nothing in the proceeding subsequent to the Order To File Information, modified the Supplemental Information Report (“SIR”) agreed to by the Company and PIA Staff and approved by this Commission on January 3, 2017. The Commission emphasized that “nothing in the 17<sup>th</sup> Semi-Annual Construction monitoring proceeding was deemed to determine or prejudice the prudence of any costs. The prudence review will still be held when the plant goes into Commercial Operation. At that time, the Company will continue to retain the burden of proof on the prudence of costs above \$5.680 billion. Further, the Company will continue to have the burden of proof in this proceeding on the reasonableness of proposed costs above \$5.680 billion.” (Order to File Information, p. 2)

### **Jurisdiction**

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<sup>2</sup> A change in Georgia law allowing the Company to collect financing costs as incurred during construction resulted in a decrease in financing cost and certified cost.

The Commission has general regulatory authority over electrical utilities in the state pursuant to O.C.G.A. § 46-2-20, 46-2-21 and 46-2-23. In addition, the Commission administers the Integrated Resource Planning Act. O.C.G.A. § 46-3A-1 through 11.

### **Applicable Statutes**

O.C.G.A. Section 46-3A-7(b) provides:

In addition to the review of the continuing need for an electric plant under construction prescribed in Code Section 46-3A-6, the Commission, upon its own motion, may conduct or the utility may request that the Commission conduct an ongoing review of such construction as it proceeds. Every one to three years, or at such lesser intervals upon the direction of the Commission or request of the utility, the applicant shall file a progress report and any proposed revisions in the cost estimates, construction schedule, or project configuration. Within 180 days of such filing, the Commission shall verify and approve or disapprove expenditures made pursuant to the Certificate and shall approve, disapprove, or modify any proposed revisions. If the Commission fails to so act within 180 days after such filing, the previous expenditures and any proposed revisions shall be deemed approved by operation of law.

### **Issues Involved**

The Commission established in its Amended Certification Order, issued March 30, 2009, that Semi-annual Progress Reports are to be filed every six months by Georgia Power. On August 31, 2017, Georgia Power filed its Seventeenth Semi-annual Construction Monitoring Report for Vogtle Units 3 and 4. The 2017 August Construction Monitoring Report included expenditures, which Georgia Power stated, were made pursuant to the Certificate.

The Commission's Procedural and Scheduling Order of September 21, 2017, sets out two issues that must be decided during this 17<sup>th</sup> VCM proceeding. The first, whether the Commission should verify and approve or disapprove the expenditures as made pursuant to the certificate issued by the Commission. And secondly, whether the Commission should approve, disapprove, or modify the Company's proposed revisions in the cost estimates, construction schedule, or project configuration and whether the proposed costs are reasonable.

Within 180 days of the filing of a progress report, "the Commission shall verify and approve or disapprove expenditures made pursuant to the Certificate. If the Commission fails to so act within 180 days after such filing, the previous expenditures shall be deemed approved by operation of law." O.C.G.A. § 46-3A-7(b).

If the Commission verifies expenditures as made pursuant to a certificated capacity resource, that verification forecloses subsequent exclusion of those costs from the utility's rate

base, absent fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct. O.C.G.A. § 46-3A-7(c).

### **Preliminary Procedural Issues**

I. On April 18, 2017, Nuclear Watch South (“NWS”) filed a Request for Emergency Public Hearing requesting that the Commission schedule a hearing to consider certain issues including the complete construction schedule for Units 3 and 4 and the cost to complete or cancel the Units. Subsequently, NWS filed a Motion to Compel Response to Request for Emergency Public Hearing and a Mandamus Motion.

The September 21, 2017, Procedural and Scheduling Order provided that the Company was required to provide the information requested by NWS in its various filings. As such, the Commission determined that NWS’ Requests and Motions filed on April 18, 2017, May 19, 2017 and June 21, 2017 were rendered moot and were denied.

II. NWS submitted a Prehearing Request on October 19, 2017, asking for the Commission to order Georgia Power to produce several underlying analyses supporting certain statements contained in the Company’s direct testimony.

The PIA Staff filed, on October 20, 2017, a Motion to Strike certain statements contained in Georgia Power’s testimony and a Brief in Support Thereof. Specifically, PIA Staff opposed declarations that purport to state the opinions and thought processes of the Co-Owners. PIA Staff claimed that the Co-Owners had not filed testimony, Georgia Power had not sponsored any Co-Owner witnesses, and the statements contained in the Report and incorporated into the testimony were inadmissible hearsay and should be stricken. Admission of the statements, the PIA Staff argued, would unfairly prejudice PIA Staff’s case because PIA Staff would be denied the ability to conduct a full and sifting cross-examination under oath. PIA Staff urged the Commission to strike the statements identified as inadmissible hearsay.

On November 1, 2017, Georgia Power filed its Response in Opposition to PIA Staff’s Motion To Strike. The Company argued that the statements identified by PIA Staff in its Motion to Strike are not hearsay. And, the Company claimed that even if they were hearsay, they would not be inadmissible hearsay because each statement would fall within one or more exceptions to the hearsay rule. Regardless, the Company contended, this Commission is not bound to a strict interpretation of the rules of evidence and, therefore, this relevant evidence that has been solicited by the Commission on many occasions should be admitted.

On October 24, 2017, North America’s Building Trades Unions (“NABTU”) and its chartered subordinate bodies, the Georgia State Building and Construction Trades Council, and the Augusta Building and Construction Trades Council submitted an Application for Late

Intervention and a Motion for *Pro Hac Vice*, requesting that certain named out-of-state attorneys be granted permission to participate in this proceeding.

Prior to the start of the hearing on Georgia Power's direct case, on November 6, 2017, the Chairman granted NABTU, et al. late intervention and admission of out-of-state of counsel and denied NWS' Prehearing Request and PIA Staff's Motion to Strike.

III. On November 6, 2017, Georgia Interfaith Power & Light and Partnership for Southern Equity ("GIPL/PSE") filed a Petition for Declaratory Ruling and a Brief in Support of the Petition For Declaratory Ruling. In the Petition, GIPL/PSE requested that: 1. The Commission issue a declaratory ruling stating that pursuant to the VCM 8 Stipulation and Order, any consideration or approval of the Company's request to increase costs above the certified amount must await completion of Vogtle Unit 3; 2. that the Commission issue a declaratory ruling stating that pursuant to O.C.G.A. § 46-3A-7(a), the Company has a single, indivisible and retrospective burden to show that costs in excess of the amount approved by the Commission were "reasonable and prudent;" and that the Commission issue a declaratory ruling stating that pursuant to the VCM 8 Stipulation and Order and O.C.G.A. § 46-3A-7(a) the timing of the Company's burden is reserved until completion of Vogtle Unit 3.

Georgia Watch supported the Petition for Declaratory Ruling of GIPL/PSE's Introduction, Statement of Facts, and Parts I and II of the Argument and moved to partially dismiss the 17<sup>th</sup> VCM proceeding as to the issue of "reasonableness" of GPC's expenditures; or in the alternative, sought a declaratory ruling as to the scope of the Commission's intended inquiry, and in particular, as to the effects of controlling Georgia statutes and prior Stipulations. Georgia Watch insisted that Georgia Power may not split its lawful burden by proving only "reasonableness" in this proceeding. And argued reasonableness and prudence are twinned for purposes of this Commission's regulatory inquiry, but a separate finding of reasonableness is impossible.

In response, Georgia Power claimed that the Petition and Motion represented another attempt by the parties to relitigate whether the Commission should consider the question of "[w]hether the Commission should approve, disapprove, or modify the Company's proposed revisions in the cost estimates, construction schedule, or project configuration and whether the proposed costs are reasonable" in the present proceeding, as set out in the Procedural and Scheduling Order. *See* Procedural and Scheduling Order, Docket No. 29849 (Sep. 21, 2017) ("PSO") at 6. The Company insisted that the GIPL/PSE's Petition and the Georgia Watch's Motion are simply out-of-time requests for reconsideration of the PSO using different nomenclature. Styling these requests as petitions for a declaratory ruling, motions to dismiss, or any other motion does not require the Commission to reconsider the issues to be decided in this proceeding after conducting hearings on Georgia Power's direct testimony and after the Staff and intervenors have filed testimony.

During the hearing on December 13, 2017, the Chairman, in order to clarify the record, noted that the issues raised in GIPL/PSE's Petition For Declaratory Ruling and Georgia Watch's support thereof and Motion to Partially dismiss had been previously dispensed with. The Commission heard from the interested parties at Energy Committee in August 2017. And since there were no new issues raised in these filings that warrant revisiting, the various submissions were denied.

### **Statement of Proceedings**

Georgia Power filed its Seventeenth Semi-Annual Construction Monitoring Report for Plant Vogtle Units 3 and 4 on August 31, 2017. The Procedural and Scheduling Order governing the process was issued on September 21, 2017. The Company's direct testimony was heard by the Commission on November 6 through 9, 2017.

Prior to the Company's presentation of direct testimony, the Commission heard from the CEOs of the other partners of Vogtle 3 and 4; Mr. Paul Bowers on behalf of Georgia Power, Mr. Michael Smith on behalf of Oglethorpe Power, Mr. James Fulee on behalf of the Municipal Electric Authority of Georgia ("MEAG") and Mr. Tom Bundros on behalf of the City of Dalton. The panel was made available for Commissioners to question and recorded for inclusion in this case, however, the remarks were not considered as evidence nor subject to cross examination. (Comments Tr. 14 – 56).

Witnesses for PIA Staff, GIPL/PSE, NABTU, Nuclear Energy Institute ("NEI"), NWS and Southern Alliance for Clean Energy ("SACE") testified before the Commission beginning on December 11 through 14, 2017. Other Intervenors included Georgia Watch, Concerned Ratepayers of Georgia's ("CRG"), Jackson Electric Authority ("JEA"), Georgia Association of Manufacturers ("GAM"), Georgia Industrial Group ("GIG"), Municipal Electric Membership Corporations ("MEAG"), and Resource Supply Management ("RSM").

At the outset of the presentation of the Staff and Intervenor's direct case the Commission Chairman, accelerated the Procedural and Scheduling Order to conclude the proceeding by the end of the year. (Order Modifying Procedural and Scheduling Order, December 11, 2017).

### **Findings of Facts and Conclusions of Law**

#### **1.**

The Company requested verification and approval of the expenditures incurred during this reporting period of \$542 million. (17<sup>th</sup> VCM Report at pp. 6 & 100).

PIA Staff recommended only \$44 million be verified and approved. PIA Staff further stated that “the liens and pre-petition amounts owed to Westinghouse Electric Corporation (“WEC”) contractors of \$498 M” should not fall upon the ratepayers. (Tr. 1562).

CRG concurred with PIA Staff Witnesses Jacobs, Roetger and Smith’s recommendation that the Commission disallow \$498 million for the liens and pre-petition amounts owed to WEC contractors. (CRG’s Brief at p. 1).

The Company asserted that the Commission should reject PIA Staff’s recommendation to verify and approve only \$44 million of the expenditures for the VCM 17 Reporting Period. The Company’s expenditures request included approval for “\$414 million in interim payments and liens incurred during the Reporting Period, which includes both pre-petition and post-petition amounts. PIA Staff has not provided an adequate quantification or consistent logic to support its recommendation that the interim payments and liens should not be verified and approved. It is illogical for PIA Staff to approve of the Company’s decision to enter the IAA, Services Agreement and Guaranty Settlement but disallow costs incurred pursuant to those agreements.” (Company’s Brief at pp. 20-21). Company Witness Williams testified that the Company’s actions in response to the Westinghouse bankruptcy were reasonable, necessary and in the best interests of customers. (Tr. 931).

The Commission finds and concludes that the \$542 million invested by Georgia Power within the 17th VCM of January 1, 2017 through June 30, 2017 reporting period were reasonable and necessary, and are hereby verified and approved. *The Commission is only confirming the expenditures made in association with the Vogtle Project during this reporting period and it does not preclude the Commission from subsequently excluding those expenditures from rate base upon a finding of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct.*

## 2.

Georgia Power recommended that construction of Vogtle Units 3 & 4 (“the Project”) be continued based on the following assumptions about the regulatory treatment of this recommendation:

1. Approve new cost and schedule forecast and find that it is a reasonable basis for going forward;
2. The January 3, 2017 Stipulation remains in full force and effect, including Company retaining burden of proving all capital costs above \$5.68 billion were prudent;
3. Recognize that the certified amount is not a cap, and all prudently incurred costs will be recoverable;
4. Failure of Toshiba to pay the Toshiba Parent Guaranty, failure of Congress to extend the Production Tax Credits (“PTCs”), or failure of the United States

Department of Energy (“DOE”) to extend the DOE Loan Guarantees will not reduce the amount of investment the Company is otherwise allowed to collect; and

5. As conditions change and assumptions are either proven or disproven, the Owners and the Commission may reconsider the decision to go forward. (17<sup>th</sup> VCM Report at pp. 6, 10 & 11).

PIA Staff recommended “the Project go forward only if the Commission modifies the Company’s proposed conditions [assumptions]”. (Tr. 1787). PIA Staff recommended that the reasonable Total Project Cost be set to no more than \$9.0 billion, consisting of a Capital and Construction Cost of \$5.8 billion and Financial Cost of \$3.2 billion. (Tr. 1787). In the alternative, PIA Staff urged that “the Commission not make a reasonable determination of costs until Unit 4 achieves commercial operation.” (Tr. 1506). PIA Staff stated “if the Commission declines to adopt Staff’s going forward recommendations... that the Project be cancelled and that the Commission decline to prematurely provide assurance of recovery in this proceeding.” (Tr. 1787). PIA Staff recommended that a subsequent proceeding be established for purposes of reviewing the prudence and reasonableness of actual costs incurred and determining the recovery of those costs.

PIA Staff also requested that if construction of the Units continues, that the Company perform economic analyses of the additional 24, 36, and 48-month delay scenarios, as has been done in previous VCM filings. Staff also recommends that for each such delay scenario, the Company provide Total Project Cost and the full embedded cost revenue requirements associated with the Total Project Cost that the Company expects customers will incur both during construction and over the operating lives of the Units. (Tr. 1788).

GIPL/PSE’s Witness Cox testified that the forecast of capacity and energy needs used to justify the Vogtle units during certification was woefully inaccurate. In addition, Dr. Cox claimed that the revised forecast of capacity and energy needs is not reliable because it makes unreasonably high estimates of load growth far in the future; Dr. Cox concluded that energy efficiency, demand response, solar generation, and renewed power purchase agreements (“PPAs”) are much more cost-effective options for meeting future demand. GIPL/PSE believes that the completion of the Vogtle units puts shareholder value before the best interests of Georgia Power customers. Particularly the low income customers to whom the bill impacts are significant and burdensome. Based upon the results of Dr. Cox’ analyses and conclusions, GIPL/PSE recommended that the Commission direct the Company to suspend construction of the Project and preserve the site for possible future completion. (Tr. 2260).

Georgia Watch urged the Commission to cancel Vogtle 3 & 4 as uneconomic for ratepayers going forward unless the Commission can impose cost disallowances on the Company and a prospective cap on further increases that make the Project economic for ratepayers. Georgia Watch pointed out that the admitted risks of further cost escalation are likely to make it even less economic if the project proceeds. (Georgia Watch’s Brief at p. 14)

GIG and GAM supported the construction of Vogtle 3 and 4 and continue to do so. As stated in their brief, “Despite the increased cost and uncertainty, GIG and GAM favor completion of Units 3 and 4. It is important to remember that, while the Commission would be declaring a new cost estimate as ‘reasonable’ in making its decision, it would not be making an ultimate decision regarding prudence of the expenses incurred. The intervenors noted that a full prudence review will take place later with an opportunity for all parties to make their views known. Reserving judgment on prudence is the appropriate course of action in this case. GIG and GAM stated that they are hopeful the Commission can issue an order that will protect ratepayers while allowing construction of Vogtle 3 and 4 to be completed.” (GIG and GAM’s Brief at pp. 1-2).

NEI Witness Korsnick testified that constructing new nuclear power plants in the United States is vital for this safe, reliable, clean air electricity source to maintain its important role in our nation’s energy mix. Ms. Korsnick emphasized that nuclear energy is the only greenhouse gas emission-free source that can safely and reliably generate electricity 24/7. Further, each nuclear plant built in the United States is part of the supply chain that includes the skilled workers and technicians who design, build, and operate that plant, as well as the other individuals and businesses, small and large, that support that plant and the nuclear industry at large. NEI strongly supports deployment of new nuclear generating capacity in the United States, including the Vogtle project. Admittedly, no testimony was offered to address specific economic considerations relevant to the Commission’s verification of expenditures and decisions regarding the proposed cost forecast and schedule revisions. Rather, Ms. Korsnick provided the Commission with information demonstrating the unique benefits of nuclear as a source of electricity generation. (Tr. 2131-2132).

In its post-hearing brief, the Company asserted that “The Company evaluated the risk and uncertainties and, based upon the best information available at this time, determined that completing the Project is in the best interests of customers. The Company’s economic evaluation reflects both current circumstances and potential future developments. The Company recognized that a full evaluation of the go/no go decision required that it make reasonable assumptions to capture the impact of many unknowns in the economic evaluation.” (Company’s Brief at pp. 7-9). The Company further argued that the “updated forecast” incorporated in VCM 17 continues to show a baseload capacity need. Although “Renewables and DSM provide customers with cost-effective, clean, reliable energy, they are inadequate alternatives for a baseload resource.” (Company’s Brief at p. 10).

Based upon careful consideration of all the evidence in the record, the Commission finds as a matter of fact and concludes as a matter of law that it is appropriate to continue construction of Vogtle Units 3 & 4 under the terms set forth in this Order.

### 3.

Georgia Power also requested that the Commission approve its revised cost estimate and construction schedule pursuant to O.C.G.A. § 46-3A-7(b). (17<sup>th</sup> VCM Report at p. 6). The Company stated “The most reasonable schedule is that Unit 3 will reach its Commercial Operation Date (“COD”) in November 2021 and Unit 4 will reach COD in November 2022. That schedule represents an additional 29 months for each unit from the currently approved schedule.” Georgia Power’s share of the total capital cost of the Project is now forecasted to be \$8.77 billion. (17<sup>th</sup> VCM Report at p. 7).

PIA Staff testified that the Company is currently working to a +21-month schedule versus the requested +29-month ‘regular’ schedule. Further, PIA Staff stated that the Company considers the difference between the +21-month schedule and the +29-month to be schedule contingency. In addition, the estimated capital cost to complete the Project contains a total contingency of \$1.159 billion. Whether or not this amount of contingency is sufficient to account for the assumptions and risks identified for the Project cannot be determined at this time. (Tr. 1497). PIA Staff highlighted that the risks associated with 8 additional months of construction under the Company’s regulatory schedule contingency should remain with the Company at this time and should not be shifted to ratepayers.

Georgia Watch recommended, in its Post-Hearing Brief, that the Commission deny the Company’s request for verification and approval of a total project cost estimate of \$12.2 billion. Georgia Watch stated that if the Commission is convinced by GPC that there is no turning back, whatever the cost, then the Commission must allocate the risks to make it fair for Georgia’s ratepayers, particularly low-income ratepayers. Georgia Watch noted that it has been shown that Georgia Power profits from delay so the Commission should not determine the reasonableness of future expenses now and instead hold that determination in abeyance to be considered along with prudence when the plants are completed and operational. To do otherwise, Georgia Watch argues, violates the law and prior rulings and orders. (Georgia Watch’s Brief at p. 14)

NABTU Witness Booker testified that the Commission should approve Georgia Power’s cost and schedule forecast, and permit the completion of Units 3 and 4. (Tr. 2099).

NWS Witness Pokalsky concluded that there was a more accurate and direct cost analysis that could have been performed. He opined that Price, Waterhouse, Cooper’s (“PwC’s”) Qualitative Risk Analysis (“QRA”) which was used to create Triangle Distributions (Best Outcome, Most Likely Outcome and Worst Outcome) was based on major assumptions, undervalued the probability of the best and worst case outcomes, and is a serious concern. Mr. Pokalsky cited the lack of data and the fact that all data used was supplied by the Company. Further, he argued that a more robust cost analysis using plentiful historical and current data (e.g. a Program Evaluation and Review Technique (“PERT”)) would have yielded more information and a more accurate cost estimate. (Tr. 2399-2400). Based on his analysis, NWS Witness Pokalsky stated that it is not a sound financial decision for the Commission to allow the project to move forward. (Tr. 2408).

SACE Witness Bradford urged the Commission not to find the new cost and schedule to be a reasonable basis for going forward at this time. Mr. Bradford argued that the Company should provide an evaluation of the alternatives adequate to making such a determination. Nor should the Commission commit to allowing Georgia Power to recover its actual investment to date in Vogtle 3 and 4 since such a commitment requires a prudence review. (Tr. 1550).

The Company summarized its position on cost and schedule stating it “has provided the only cost and schedule estimates in this proceeding, and these estimates were validated by external assessments. While recognizing that risks persist, both known and unknown, the Company has worked diligently to provide the Commission with the most complete analysis possible, including providing multiple sensitivities in the Southern Nuclear Estimate Cost to Complete (“ETC”), the Kenrich ETC, the Bechtel assessment, and the PwC QRA. Based on the evidence presented in this matter, the Commission should adopt the cost and schedule proffered by the Company as reasonable.” (Company’s Brief at pp. 16-17).

The Commission approves and finds reasonable the Company’s revised schedule and cost forecast. The approved cost forecast, however shall be reduced by the actual amounts of the Toshiba Parent Guaranty applied to the project’s construction work in progress (“CWIP”) balance. This places the approved revised capital cost forecast at \$7.3 Billion.

#### 4.

The Company also requested that the Commission approve the new project management structure under which Georgia Power, along with Southern Nuclear Operating Company (“SNC” or “Southern Nuclear”) acting as the project manager, will manage the Project on behalf of the Owners pursuant to a revised Ownership Participation Agreement. Bechtel Corporation (“Bechtel”) will serve as the prime construction contractor. “The Company asked that the Commission, pursuant to its obligation under O.C.G.A. § 46-3A-7(b), approve these proposed revisions to the project management structure, schedule and cost so that the Project may be completed. (17<sup>th</sup> VCM Report at pp. 6 & 7).

PIA Staff testified that “all project related activities [that] are now controlled by SNC personnel reporting to Southern Nuclear Executive Vice President... to be [the] appropriate organization for completion of the Project.” (Tr. 1483).

NABTU Witness Booker stated that Building Trades wholeheartedly supports Southern Nuclear's decision to bring on Bechtel and Richmond County Constructors (“RCC”) to hire and manage the construction workforce. (Tr. 2101). RCC is a joint venture of Bechtel and Williams Plant Services, LLC, and is the new contractor charged with managing craft labor on the Vogtle Project. (Tr. 2087)

SACE Witness Bradford recommended that the Commission not approve the Company's request and that it not find the new management structure reasonable at this time. (Tr. 2485).

SACE claimed that the Commission should reserve its post completion prudence review before deciding the reasonableness of the revised management structure. (Tr. 2467).

The Commission approves the revised project structure whereby Southern Nuclear will construct, test, and bring to commercial operation the Units as a self-build Project.

## 5.

GIPL/PSE Witness Berhold testified that the Revised Ownership Participation Agreement (“Revised Owner Agreement”) entered into recently among Georgia Power and the Vogtle project Co-owners is a violation of Federal Antitrust law and the Georgia Constitution because it is an agreement among competitors to raise prices and lessen competition in the customer choice market. (Tr. 2375, 2389). However, Mr. Berhold appeared to concede, upon cross examination, the significance of the Revised Owner Agreement given the weight of issues at hand.

In its post hearing brief, the Company stated “The Commission need not be concerned with Witness Berhold’s dire warnings. The Commission is not being asked to approve the Revised Ownership Participation Agreement. (Tr. 164). Accordingly, Commission action on the Company’s recommendation presents no opportunity for a state constitutional challenge, even if the provisions in question were an agreement in restraint of trade, which they are not. Second, again with respect to his worries on behalf of the Commission, Witness Berhold overlooks the seminal decision of *Parker v. Brown*, 317 U.S. 3431 (1943), holding that the federal antitrust laws do not apply to state regulatory agencies or their commissioners acting in their official capacities. Third, no ‘injunctions’ (Tr. 2350) may be brought against the Commission since anyone aggrieved by its decision has an adequate remedy through timely judicial review. Moreover, even if someone brings an antitrust action, only federal courts have jurisdiction to enforce the antitrust laws, 15 U.S.C. § 4...” (Company’s Brief at pp. 35-36).

The Commission finds and concludes that no action is necessary with respect to this issue. Therefore, the Commission neither approves nor disapproves the revised Joint Owners Agreement.

## 6.

Georgia Power additionally requested that while this Commission will make no prudence finding in the VCM 17 proceeding, nor will the certified amount be amended consistent with the Stipulation, the Commission should recognize that the certified amount is not a cap, and all costs that are approved and presumed or shown to be prudently incurred will be recoverable by Georgia Power.

PIA Staff recommended that the Commission not approve the Company’s request. PIA Staff reasoned that if this request is an attempt to paraphrase or interpret the January 3, 2017

Stipulation then it is unnecessary, the Stipulation was well understood by parties at the time it was signed, and does not need any further interpretation now. PIA Staff testified, that if, on the other hand, it is another attempt to establish the proposed Total Project Cost as reasonable, the Company has already requested that (above), which again makes this duplicative. (Tr. 1833)

SACE Witness Bradford contended that the Commission must immediately undertake a Request For Proposal proceeding to ascertain cost of and developing a cap for reasonable expenditures for completion of Vogtle 3 and 4. Mr. Bradford recommended that the Company seek buyers for some of its ownership in Vogtle. From SACE's perspective, the Company is very unlikely to need the full amount of Vogtle power to which it is entitled, so such a sale would spread the substantial Vogtle construction risk over a wider group of customers. The results of such an offer, SACE argued, would also provide useful information as to what the real value of completing the Vogtle reactors is likely to be. (Tr. 1551).

RSM, from its letter brief filed December 19, 2017, stated "Plant Vogtle is best resolved by following the advice of SACE Witness Peter Bradford." "Bradford recommends a 'market test' to determine the value of the facility to Georgia Power customers." RSM concluded that the Commission should rule that the proper ratepayer responsibility shall be set by the market test. (RSM's Brief at p. 1).

The Commission finds as a matter of fact and concludes as a matter of law that no directives or findings in any part of this Order suggest that there is a cost cap or that the Commission has approved or disapproved the recovery of any costs from customers. All decisions regarding cost recovery from customers will be made later in a manner consistent with Georgia law and the Stipulation approved by the Commission on January 3, 2017 and this decision. The Commission further finds that any costs spent up to the revised cost forecast will be deemed reasonable, but will be subject to the findings and presumptions as defined in the Stipulation approved on January 3, 2017. This includes the Company retaining the burden of proof on prudence on all capital costs above \$5.680 billion.

## 7.

As an added inducement to have the Company bring the Units on line, the Commission finds that the Company's return on equity ("ROE") used to determine the NCCR beginning January 1, 2020 will be reduced from 10% to 8.3%. This lower ROE will first be used when adjusting the NCCR rate effective January 1, 2020. The Company's ROE used to determine the NCCR beginning January 1, 2021 will be reduced further from 8.3% to 5.3% or the Company's average cost of long term debt, whichever is higher. This lower ROE will first be used when adjusting the NCCR rate effective January 1, 2021. The ROE used to calculate Allowance for Funds Used During Construction ("AFUDC") for the Project beginning in 2018 will be the Company's average cost of long term debt.

## 8.

To further incent the Company to complete the Units as safely and quickly as possible, the Commission also finds that upon reaching Commercial Operation of Unit 3, which is expected to be in November 2021, retail base rates will be adjusted to include the costs related to Unit 3 and common facilities deemed prudent in the January 3, 2017 Stipulation. This rate adjustment will be effective the first month after Unit 3 is in commercial operation.

**9.**

The Commission further finds that if Vogtle Unit 3 is not Commercially Operational by June 1, 2021, the Company's ROE used to determine the NCCR related to Unit 3 capital costs will be further reduced 10 basis points each month, but not lower than the long-term cost of debt, until Unit 3 reaches Commercial Operation. If Vogtle Unit 4 is not Commercially Operational by June 1, 2022, the Company's ROE used to determine the NCCR related to Unit 4 capital costs will be further reduced 10 basis points each month, but not lower than the long-term cost of debt, until Unit 4 reaches Commercial Operation.

**10.**

The Commission finds and concludes that upon reaching fuel load of Unit 4, the Company may make a filing with the Commission to determine the adjustment to retail base rates necessary to include the remaining amounts of Units 3 and 4 into retail base rates. During this review, the Commission will determine the remaining issues pertaining to prudence of Unit 3 and 4 costs. Such rate adjustment will be effective the first month after Unit 4 is Commercially Operational.

**11.**

As for the Toshiba Parent Guaranty payment, the issue is now moot given that the payment in full was received by the Company on December 14, 2017. To give the immediate benefit of the Toshiba Parent Guaranty to the customers who are, and have been paying the NCCR, the Commission finds that the Company will take a portion of the amounts received from the Toshiba Parent Guaranty and credit each customer with three \$25 monthly credits to be received no later than the 3<sup>rd</sup> quarter of 2018. A line item on bills reading "Vogtle Settlement Refund" will appear beside each refund. The balance of the proceeds received from Toshiba, net of the Company's costs to obtain that payment and net of the costs of providing those customer credits, will be applied to the CWIP balance. This will have the effect of reducing the level of the NCCR and the Company's earnings on the NCCR until the CWIP balance is built back up with actual investments to the original certified amount of \$4.418 billion. Before January 31, 2018, the Company will file a revised NCCR tariff based on the actual amount of the monetization proceeds.

**12.**

The Company recommended that the Commission continue the Project based on the condition that failure of Congress to extend the PTCs will not reduce the amount of investment the Company is otherwise allowed to collect.

PIA Staff recommended the Commission decline to adopt the Company's proposed condition related to PTCs, and that failure to receive this benefit should be considered in a future post-construction prudence and reasonableness review. (Tr. 1833).

Georgia Watch agreed with PIA Staff that the ratepayers cannot be the guarantors as to the availability of Production Tax Credits or other future tax consequences. Georgia Watch stated that Georgia Power has said the production tax credit extension is one of three things it needs to complete two reactors at Plant Vogtle, along with the Toshiba guarantee and the federal loan guarantee. The nuclear production tax credit, as it stood at the time of Georgia Watch's brief, required new reactors to be in service by the end of 2020. Georgia Power now expects the Vogtle reactors to be completed after that date. Georgia Watch stated that ratepayers should not be responsible for any future increased tax consequences to GPC caused by its delay in completing the Project. (Georgia Watch's Brief at p. 12).

The Commission finds and concludes that it is unknown at this time if Congress will extend the production tax credits. While these tax credits do not affect the Project's capital costs under consideration in this proceeding, they do impact the overall operating costs. The Commission's decision to go forward is based on the assumption that these PTCs will, in fact, be extended. But, if they are not, or if other conditions change and assumptions upon which the Company's VCM 17 are based are either proven or disproven, the Commission may reconsider the decision to go forward.

### 13.

Georgia Power requested that the January 3, 2017 Stipulation remain in full force and effect, including the Company retaining the burden of proving all capital costs above \$5.680 billion were prudent. PIA Staff also recommended affirmation of the January 3, 2017 Stipulation.

In its brief, CRG stated "The primary justification for the stipulation no longer exists. The EPC agreement that was supposed to protect Customers has been terminated by the Westinghouse bankruptcy. Hence, the stipulation should also be terminated." (CRG's Brief at p. 4).

The Commission finds that except as otherwise clarified or modified in this Order, the Stipulation approved by the Commission on January 3, 2017 remains in full force and effect.

### 14.

The Commission finds that it will continue to conduct semi-annual VCM reviews and, as appropriate, verify and approve all expenditures on a semi-annual basis regardless of whether they exceed the original certified amount. During these VCM reviews, the Commission will not determine prudence, nor will it assure cost recovery to the Company. All Commission decisions regarding cost recovery will be made after a prudence review at the end of construction of Units 3 and 4.

## 15.

In its VCM 17 Report, the Company requested that “[i]f the Commission disagrees with any of the assumptions [conditions] at any time, including either now, during the VCM 17 proceedings, or in its final order, the Company recommended that the Commission cancel the Project and allow the Company to fully recover its prudently incurred investments in the partially completed Facility, along with the cost of carrying the unamortized balance of that investment.” (17<sup>th</sup> VCM Report at p. 11). The Company, in its brief, restated its position that if the Commission disapproves of the Company’s proposed revisions and the Company cancel the Project, the Commission should establish a docket to review the Company’s actual investment in Vogtle 3 & 4 and determine the recovery period in accordance with O.C.G.A. § 46-3A-7(d). (Company’s Brief at p. 4).

PIA Staff recommended that the Project proceed, but not under the terms proposed by the Company. PIA Staff recommended that if the Project is cancelled, that the Commission review the prudence and reasonableness of the actual costs incurred and determine the recovery of those actual costs in a subsequent proceeding established for that purpose. Such a proceeding would consider what portion of the costs that have been incurred and that wouldn’t have to be incurred to terminate construction and demobilize and secure the site should be recovered from ratepayers.” (Tr. 1787).

In its brief, CRG stated “Given Vogtle’s \$6 billion cost escalation and 4+ year schedule delay, partially caused by GPC’s inability to effectively manage their primary contractors-- Westinghouse, CB&I, Shaw, and Stone & Webster, CRG maintains the project should be immediately cancelled.” (CRG’s Brief at p. 2).

During a Special Administrative Session on December 21, 2017 to consider this matter, the Company was provided a copy of motion that formed the basis of this Order. The Company stated that it would accept the decision of this Commission, the conditions that the Commission imposed on the Company as a basis for going forward, and it will do all that it can to complete this project as it has forecasted it will do. (Corrected December 21, 2017 Special Administrative Session Tr. 31).

## 16.

The Commission further finds as a matter of fact and concludes as a matter of law that due to the Project changing from an EPC contract that was fixed and firm to a time-and-materials Company self-build configuration, the annual allowance for Commission monitoring expenses will be increased by \$500,000 per annum.

### **Ordering Paragraphs**

**WHEREFORE IT IS ORDERED**, that the Commission verifies and approves the expenditures made by Georgia Power pursuant to the Certificate of Public Convenience and Necessity and O.C.G.A Section 46-3A-7(b) for Plant Vogtle Units 3 and 4 for the period beginning January 1, 2017 through June 30, 2017 in the amount of \$542 million.

**ORDERED FURTHER**, that Georgia Power shall move forward to complete construction of Vogtle Units 3 and 4.

**ORDERED FURTHER**, that the Commission approves and finds reasonable the Company's revised schedule and cost forecast.

**ORDERED FURTHER**, that the approved cost forecast will be reduced by the actual amounts of the Toshiba Parent Guaranty applied to the Project's construction work in progress ("CWIP") balance.

**ORDERED FURTHER**, that the approved revised capital cost forecast is \$7.3 billion.

**ORDERED FURTHER**, that the Commission approves the revised project structure whereby Southern Nuclear will construct, test and bring to commercial operation Vogtle Units 3 and 4 as a self-build project.

**ORDERED FURTHER**, that the Commission neither approves nor disapproves the revised Joint Owners Agreement.

**ORDERED FURTHER**, that no directives or findings in any part of this Order suggest that there is a cost cap or that the Commission has approved or disapproved the recovery of any costs from customers.

**ORDERED FURTHER**, that all decisions regarding cost recovery from customers will be made later in a manner consistent with Georgia law and the Stipulation approved by the Commission on January 3, 2017, and this Order.

**ORDERED FURTHER**, that the Commission finds that any costs spent up to the revised cost forecast are deemed reasonable, but are subject to the findings and presumptions as defined in the Stipulation approved on January 3, 2017.

**ORDERED FURTHER**, that the Company retains the burden of proof on prudence on all capital costs above \$5.680 billion.

**ORDERED FURTHER**, that Georgia Power's ROE used to determine the NCCR beginning January 1, 2020 shall be reduced from 10% to 8.3%. This lower ROE shall first be used when adjusting the NCCR rate effective January 1, 2020. The Company's ROE used to determine the NCCR beginning January 1, 2021 shall be reduced further from 8.3% to 5.3% or the Company's average cost of long term debt, whichever is higher. This lower ROE shall first be used when adjusting the NCCR rate effective January 1, 2021. The ROE used to calculate AFUDC for the Project beginning in 2018 shall be the Company's average cost of long-term debt.

**ORDERED FURTHER**, that effective the first month after Unit 3 is in Commercial Operation, which is expected to be in November 2021, retail base rates shall be adjusted to include the costs related to Unit 3 and common facilities deemed prudent in the January 3, 2017 Stipulation. This rate adjustment will be effective the first month after Unit 3 is in commercial operation.

**ORDERED FURTHER**, that in the event that Vogtle Unit 3 is not Commercially Operational by June 1, 2021, the Company's ROE used to determine the NCCR related to Unit 3 capital costs shall be further reduced 10 basis points each month, but not lower than the long-term cost of debt, until Unit 3 reaches Commercial Operation. If Vogtle Unit 4 is not Commercially Operational by June 1, 2022, the Company's ROE used to determine the NCCR related to Unit 4 capital costs shall be further reduced 10 basis points each month, but not lower than the long-term cost of debt, until Unit 4 reaches Commercial Operation.

**ORDERED FURTHER**, that once the fuel load of Unit 4 is reached, the Company may make a filing with the Commission to determine the adjustment to retail base rates necessary to include the remaining amounts of Units 3 and 4 into retail base rates. During this review, the Commission will determine the remaining issues pertaining to prudence of Unit 3 and 4 costs. Such rate adjustment will be effective the first month after Unit 4 is Commercially Operational.

**ORDERED FURTHER**, that the Company is hereby ordered to take a portion of the amounts received from the Toshiba Parent Guaranty and credit each customer with three \$25 monthly credits to be received no later than the 3<sup>rd</sup> quarter of 2018. A line item on bills reading "Vogtle Settlement Refund" shall appear beside each refund. The balance of the proceeds received from Toshiba, net of the Company's costs to obtain that payment and net of the costs of providing those customer credits, will be applied to the CWIP balance, thus reducing the level of the NCCR and the Company's earnings on the NCCR until the CWIP balance is built back up with actual investments to the original certified amount of \$4.418 billion. Before January 31, 2018, the Company shall file a revised NCCR tariff based on the actual amount of the monetization proceeds.

**ORDERED FURTHER**, that the Commission's decision to go forward is based on the assumption that the PTCs will be extended, but if they are not, or if other conditions change and assumptions upon which the Company's VCM 17 are based are either proven or disproven, the Commission may reconsider the decision to go forward.

**ORDERED FURTHER**, that except as otherwise clarified or modified in this Order, the Stipulation approved by the Commission on January 3, 2017 remains in full force and effect.

**ORDERED FURTHER**, that the Commission will continue to conduct semi-annual VCM reviews and, as appropriate, verify and approve all expenditures on a semi-annual basis regardless of whether the expenditures exceed the original certified amount. During these VCM reviews, the Commission will not determine prudence, nor will it assure cost recovery to the Company. All Commission decisions regarding cost recovery will be made after a prudence review at the end of construction of Units 3 and 4.

**ORDERED FURTHER**, that the annual allowance for Commission monitoring expenses shall be increased by \$500,000.

**ORDERED FURTHER**, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and Orders of this Commission.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in its Special Administrative Session on the 21st day of December, 2017.

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Reece McAlister  
Executive Secretary

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Stan Wise  
Chairman

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Date

Date