Fulton County Superior Court
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General Civil and Domestic Relations Case Filing Information Form

☑ Superior or ☐ State Court of Fulton County

For Clerk Use Only

Date Filed 3/8/2018 (MM-DD-YYYY) **Case Number** 2018CV302152

Plaintiff(s)					Defendant(s)				
Georgia Watch					Georgia Public Service Commission				
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix	Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney John F. Salter / Roy E. Barnes **Bar Number** 623325 / 039000 **Self-Represented** ☐

Check One Case Type in One Box

General Civil Cases
- ☐ Automobile Tort
- ☐ Civil Appeal
- ☐ Contract
- ☐ Garnishment
- ☐ General Tort
- ☐ Habeas Corpus
- ☐ Injunction/Mandamus/Other Writ
- ☐ Landlord/Tenant
- ☐ Medical Malpractice Tort
- ☐ Product Liability Tort
- ☐ Real Property
- ☐ Restraining Petition
- ☑ Other General Civil -Judicial Review

Domestic Relations Cases
- ☐ Adoption
- ☐ Dissolution/Divorce/Separate Maintenance
- ☐ Family Violence Petition
- ☐ Paternity/Legitimation
- ☐ Support – IV-D
- ☐ Support – Private (non-IV-D)
- ☐ Other Domestic Relations

Post-Judgment – Check One Case Type
- ☐ Contempt
  - ☐ Non-payment of child support, medical support, or alimony
- ☐ Modification
- ☐ Other/Administrative

☑ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

2018CV301128 (Case Number) _____ (Case Number)

☑ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

☐ Is an interpreter needed in this case? If so, provide the language(s) required. _____ (Language(s) Required)

☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

_____

_____

Fulton County Superior Court
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IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303

SUMMONS

Georgia Watch

Plaintiff,

vs.

Georgia Public Service Commission

Defendant

Case No.: 2018CV302152

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file electronically with the Clerk of said Court at https://efilega.tylerhost.net/ofsweb and serve upon plaintiff's attorney, whose name and address is:

John F. Salter — 31 Atlanta Street
Roy E. Barnes — Marietta, Georgia 30060

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service; unless proof of service of this complaint is not filed within five (5) business days of such service. Then time to answer shall not commence until such proof of service has been filed. **IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

This 3/8/2018 day of _____, 20 _____

Honorable Cathelene "Tina" Robinson
Clerk of Superior Court
By Tracey Vaughn
Deputy Clerk

To defendant upon whom this petition is served:
This copy of complaint and summons was served upon you _____, 20_____

_____
Deputy Sherriff

Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum is used

Fulton County Superior Court
EFILEDTV
Date: 3/8/2018 12:19 PM
Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA WATCH,

Civil Action No. 2018CV302152

Petitioner,

v.

GEORGIA PUBLIC SERVICE COMMISSION,

Respondent.

PETITION FOR JUDICIAL REVIEW

Petitioner Georgia Watch respectfully requests judicial review of a final decision entered on January 11, 2018 by the Georgia Public Service Commission ("PSC" or "Commission"), pursuant to O.C.G.A. § 50-13-19. A copy of the Final Decision is attached hereto as Exhibit A.

INTRODUCTION

1. Petitioner appeals the Commission's decision to approve, in violation of Georgia law and the Commission's own rules, the continuation of the nuclear expansion project at Plant Vogtle despite a near doubling of the original project budget and a five-year delay in the date of commercial operation. The decision awards Georgia Power Company billions in additional profit while saddling ratepayers with billions in additional expense and unforetold risk of more.

2. In rendering the Final Decision the Commission violated Georgia law and its own governing rules, making the Final Decision illegal, ultra vires, and void.

3. The Commission's decision places the interests of Georgia Power shareholders ahead of the interests of ratepayers, especially low-income customers, who will be particularly burdened by continuation of the Vogtle project at the sharply revised cost.

JURISDICTION AND VENUE

4. The Court has jurisdiction over appeals from final decisions of the Commission pursuant to O.C.G.A. § 50-13-19(a).

5. Venue is proper in Fulton County under O.C.G.A. § 50-13-19(b).

6. Following the final decision by the Commission on January 11, 2018, Georgia Watch requested rehearing and reconsideration. Although the Commission orally denied Georgia Watch's petition for rehearing on February 1, the written order effectuating that denial was not entered and published until February 28. *See* Ga. Comp. R. and Regs. 515-2-1-.03 (Commission orders effective "from the date such actions are reduced to writing and are signed"). This petition for judicial review is therefore timely filed within 30 days after the Commission's decision on Georgia Watch's request for rehearing. O.C.G.A. § 50-13-19(b).

FACTUAL AND PROCEDURAL BACKGROUND

7. Almost ten years ago Georgia Power Company filed an application with the Commission seeking approval to build two new nuclear units—Units 3 and 4—at its existing Plant Vogtle site near Waynesboro, Georgia. The process

for securing regulatory approval to build new electricity generation units is known as "certification."

8. In 2009 the Commission issued an order granting Georgia Power approval to construct the two units at a total capital cost of $4.418 billion and with projected operation dates of 2016 and 2017, respectively. Including financing costs, the total certified amount was and remains $6.1 billion.

9. The certification order required Georgia Power to file semi-annual monitoring reports with the Commission. The monitoring reports are filed each August 31st and February 28th and cover (subject to certain restrictions as to amount) any proposed revisions in the cost estimates, construction schedule, or project configuration and actual costs incurred during the preceding six months. Over the past ten years there have been multiple Vogtle Construction Monitoring ("VCM") proceedings.

10. In March 2017, the lead contractor for the Plant Vogtle expansion declared bankruptcy. As a result, Georgia Power lost the security of its fixed-price construction contract. The contractor no longer bears the risk of cost overruns. The risk now lies with Georgia Power, its customers, or both.

11. On August 31, 2017 Georgia Power filed its Seventeenth Semi-Annual Construction Monitoring Report for Plant Vogtle Units 3 and 4 (called the "17th VCM"). The filing initiated a proceeding to determine whether the Commission should verify and approve expenditures by Georgia Power toward construction

of the Vogtle units over the six-month period preceding the filing.

12. Over Petitioners' objection, the Commission issued a Procedural and Scheduling Order ("PSO")[1] outlining a second issue for determination ("Issue 2"): Whether the Commission should approve, disapprove, or modify Georgia Power's proposed revisions in the cost estimates, construction schedule, or project configuration, and whether the proposed costs are reasonable.

13. Georgia Power's filing proposed for approval a revised total cost of $12.17 billion for its share[2] of the project, representing a near doubling of the original approved project cost of $6.1 billion.

14. Georgia Power's filing also proposed for approval a revised schedule that forecast completion of Units 3 and 4 in November 2021 and November 2022, respectively, five and a half years beyond their original in-service dates.

15. Georgia Power's filing asked the Commission to determine whether the project should continue in light of the dramatic changes to the project cost and schedule.

16. Petitioners objected to inclusion of Issue 2 in the PSO in part because under Georgia law and the Commission's rules the VCM proceeding was

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[1] A Procedural and Scheduling Order, which the Commission issues at the outset of a proceeding, defines its scope and establishes a schedule for hearing dates and other deadlines.

[2] Georgia Power owns a 45.7 percent share of the project and is the only project participant regulated by the Public Service Commission.

not an appropriate proceeding for considering changes of this magnitude. The Commission overruled Petitioners' objection.

17. Petitioners subsequently intervened in the 17th VCM proceeding pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Ga. Comp. Rules & Regs. 515-2-1-.06.

18. During the proceeding, Petitioners sought a declaratory ruling that resolving Issue 2 in Georgia Power's favor would violate Georgia law, Commission rules, and past orders of the Commission related to the Vogtle expansion project. The Commission denied Petitioners' request.

19. Petitioners participated in the 17th VCM proceeding as full parties of record, cross-examining adverse witnesses, and filing a post-hearing brief. Petitioners' post-hearing brief reasserted their objections to Commission resolution of Issue 2 of the PSO.

20. The Commission's PSO established January 10, 2018 as the final hearing date and February 6, 2018 as the date when the Commission would render a final decision.

21. However, on December 11, 2017 the Commission amended the PSO to advance the date for a final decision by 47 days, to December 21, 2017, pruning more than one-third of the original time allotted for the proceeding.

22. In connection with the scheduling change, Petitioner joined other

parties in asking the Commission to observe its ex parte rule, which forbids Commissioners and their staff from communicating privately with any parties after the evidentiary hearings conclude.

23. Over these objections, the Commission circumvented its ex parte rule in order to engage in communications with Georgia Power behind closed doors in the days leading up to the final decision without notifying other parties or giving them an opportunity to respond to the substance of the communications.

24. On December 21, 2017 the Commission voted to ignore its own staff's recommendation and to approve and find reasonable Georgia Power's revised schedule and cost forecast.

25. The Commission entered its written final decision on January 11, 2018 ("Final Decision"). *See* Final Decision, attached as Exhibit A. The Final Decision was served on Petitioner and other parties by electronic mail on January 12, 2018.

26. The Commission's Final Decision approved a revised capital cost of $7.3 billion and financing costs of $3.4 billion.[3] Together these sums represent a 75 percent increase over the original certified cost.

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3 The Commission approved Georgia Power's revised cost estimate after adjusting it to reflect receipt of a $1.47 billion payment from Toshiba, the parent and guarantor of Georgia Power's bankrupt project contractor, Westinghouse.

27. Since 2011 Georgia Power has collected costs associated with constructing the new Vogtle units from customers as a line-item on their electric bills. The accounting method used for this pre-collection is called the Nuclear Construction Cost Recovery rider. The money collected includes profits for Georgia Power shareholders, taxes on those profits, and a smaller portion for debt service. The money collected does not go toward paying down the capital cost of constructing the units. To date, Georgia Power has collected more than $2 billion in Vogtle-related costs from its customers.

28. The Final Decision allows Georgia Power to continue collecting profits and debt service financing from its customers for at least another five years, before the new units generate any electricity.

29. Georgia Power stands to reap more than $5 billion in added profit from the project delays.

30. According to Georgia Power's testimony, the projected rate impact to retail customers under the revised cost and schedule is more than double the amount that customers are already paying for the Vogtle expansion project.

PETITIONER'S INTERESTS AND AGGRIEVED STATUS

31. Petitioner is aggrieved by the Final Decision and therefore entitled to judicial review pursuant to O.C.G.A. § 50-13-19(a).

32. Petitioner Georgia Watch is a nonprofit organization dedicated to

addressing the needs and interests of Georgia citizens on a wide range of matters including energy issues through its Consumer Energy Program. Through advocacy, outreach and education, we work to ensure consumers have access to quality, affordable healthcare, fair utility rates, renewable energy options, personal financial protections, and access to the courts. Georgia Watch also promotes transparency and accountability on behalf of energy providers. Georgia Watch's membership includes over 2,000 people, the majority of whom are Georgia citizens. Georgia Watch's members reside throughout the state and more than half are retail residential customers served by Georgia Power Company. Georgia Watch and all of its employees are served by Georgia Power. Georgia Watch receives funding from community organizations, corporations, foundations, and individuals. Georgia Watch brings this action on behalf of itself and its members.

33. The Final Decision directly undermines Georgia Watch's mission, *inter alia*, to protect itself and its members from rising energy costs, to ensure fair utility rates and promote transparency and accountability of publically-regulated utilities.

34. Petitioner is directly and adversely affected by the Final Decision because it deprives them of the right, on behalf of themselves and their members and supporters, to challenge in any future proceeding the reasonableness of the revised project costs.

35. In addition, the Final Decision unlawfully shifted the burden of proof away from Georgia Power to show a basis for assigning the new excess costs to electricity ratepayers as opposed to Georgia Power shareholders.

36. The Final Decision deprived Petitioner of the type of review required under the circumstances—i.e. an amended certification proceeding—which would have afforded a more thorough and quantitative consideration of renewable energy and energy efficiency as lower-cost alternatives to continuing the Vogtle project at the sharply revised cost and schedule.

37. Lastly, the Final Decision deprived the Petitioner of adequate notice that the Commission would decouple Units 3 and 4 of Vogtle Expansion Project, putting Unit 3 into the ratepayer base on an earlier schedule and prior to the completion of both units. Correlatively, this relieved Georgia Power Company of either carrying its burden with evidence and prevented Petitioner from subjecting any such evidence to scrutiny or challenge regarding, inter alia, the potential economic effect on ratepayers of this change.

38. The above legal and procedural injuries are the direct result of the Final Decision.

39. In addition, Petitioner is directly and adversely affected because the Final Decision ensures that billions of additional ratepayer dollars will go toward the Vogtle expansion project rather than to more cost-effective energy and energy

efficiency projects that Petitioner seeks to promote in furtherance of its missions.

40. Many of Georgia Watch's members are Georgia Power customers who are paying for the construction of Plant Vogtle Units 3 and 4 now through the Commission-approved Nuclear Construction Cost Recovery rider surcharge on their bills.

41. Georgia Watch and its members who purchase electricity from Georgia Power are directly impacted by the Public Service Commission's decision to approve and deem reasonable a dramatic increase in cost for Plant Vogtle Units 3 and 4. The higher project cost will increase electric rates paid by them and thereby divert limited resources away from their other missions in the public interest.

42. Further, the Commission's approval of the schedule delay means that for an additional five years a portion of those residential customer electric bills will go toward extra profits for Georgia Power shareholders rather than toward funding renewable energy and energy efficiency projects that advance the aims of Georgia Watch.

43. The injuries suffered by Georgia Watch as a result of the Final Decision are germane to, and undermine, its missions and goals.

44. Georgia Watch participated as an intervenor in the 17th VCM proceeding pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Ga. Comp. R. & Regs. 515-2-1-.06. No party challenged Petitioner's right to intervene in the 17th

VCM proceeding. The Public Service Commission allowed Petitioner to proceed as parties and participate in the VCM proceeding.

45. The above injuries caused by the Final Decision will not be redressed except by an order of this Court reversing and remanding the Commission's Final Decision.

TRANSMITTAL OF THE RECORD

46. The Georgia Administrative Procedure Act ("APA"), O.C.G.A. §§ 50-13-1 to 50-13-44, provides that the agency shall transmit to this Court the original or a certified copy of the entire record of the proceeding under review within 30 days after service of the petition or within further time as allowed by the Court. O.C.G.A. § 50-13-19(e). Petitioner requests that the Court direct that the record be filed in a time and manner that will permit a timely decision in this case.

GROUNDS FOR REVIEW

47. This Petition is brought pursuant to the Georgia APA, O.C.G.A. § 50-13-1 to § 50-13-44. Under the APA (O.C.G.A. § 50-13-19(h)), a superior court sitting in review of a Commission's final decision may reverse the decision if substantial rights of the petitioner have been prejudiced because the Commission's findings, inferences, conclusions and decisions are:

(1) In violation of constitutional and statutory provisions;

(2) In excess of statutory the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; and

(6) Arbitrary and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

48. The final decision here is contrary to the Integrated Resource Planning Statute, O.C.G.A. § 46-3A-1 to § 46-3A-11, and regulations promulgated thereunder, and substantially prejudices Petitioner's rights in all respects under O.C.G.A. § 50-13-19(h).

COUNT I

THE COMMISSION ERRED BY APPROVING SIGNIFICANT CHANGES TO THE COST AND SCHEDULE WITHOUT AN AMENDED CERTIFICATION PROCEEDING.

49. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

50. Georgia Power sought approval of its revised cost estimate and schedule pursuant to O.C.G.A. § 46-3A-7(b), which requires the Commission to approve, disapprove, or modify any proposed revisions in the cost estimates, construction schedule, or project configuration of a certified electric plant under construction.

51. Revisions of the magnitude under consideration in the 17th VCM,

however, may not receive Commission approval pursuant to O.C.G.A. § 46-3A-7(b). Georgia Power was instead required to seek an amendment to its certificate—its original grant of approval to build Vogtle Units 3 and 4—pursuant to O.C.G.A. § 46-3A-5.

52. A rule adopted by the Commission under the Integrated Resource Planning statute requires the utility to submit an amended application for certification under certain defined circumstances, including a significant change to the construction schedule or an increase in the total cost estimate that exceeds the estimate in the original certificate by more than five percent. Ga. Comp. R. & Regs. 515-3-4-.08(1)(a) & (b).

53. Georgia Power's proposed revisions, which sought approval of five years' delay and a 75 percent increase in the certified project cost, triggered the requirement to file an application to amend its certificate under the rule.

54. An amended certification proceeding would have differed from the 17th VCM proceeding in several significant ways, including additional time (up to two months) for consideration of the Company's request; additional resources for Commission Staff's review of the proposal; and the requirement for Georgia Power to file an updated Integrated Resource Plan.

55. An Integrated Resource Plan is a document detailing the utility's electric demand and energy forecast for at least a twenty-year period. It must

contain the utility's program for meeting the requirements shown in its forecast in an economical and reliable manner, and it must include the utility's analysis of all capacity resource options, including both demand-side (i.e., customer-sited energy efficiency) and supply-side options.

56. Because the decision about whether to continue the project was explicitly raised for determination in light of the drastically changed circumstances, the Commission was required to give Georgia Power's request the same level of attention and scrutiny as when it first authorized the project almost ten years ago. An updated Integrated Resource Plan would have provided the level of detail necessary to allow for such review.

57. An updated Integrated Resource Plan would have included a demonstration that the Vogtle expansion project is still needed to meet forecast demand. It would also have included a more thorough consideration of alternative, potentially cheaper resource portfolios for meeting demand than occurred in the truncated 17th VCM proceeding.

58. The Commission's failure to require an updated Integrated Resource Plan allowed Georgia Power to reject renewable energy and energy efficiency measures as lower-cost alternatives to continuing the Vogtle project on a subjective, qualitative basis.

59. By refusing to require Georgia Power to seek an amendment to its

certificate, and by instead shoehorning major changes to the project cost and schedule into an otherwise routine construction monitoring proceeding, the Commission violated the Integrated Resource Planning statute and its own rule.

60. Any purported waiver by the Commission of Rule 515-3-4-.08 was not legally effective.

61. Accordingly, the Final Decision is in violation of the Integrated Resource Planning statute, *see* O.C.G.A. § 50-13-19(h)(1); in excess of statutory authority, *see id.* at (2); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

COUNT II

THE COMMISSION ERRED BY APPROVING THE REVISED COST ESTIMATE AND SCHEDULE AND DECLARING THEM "REASONABLE."

62. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

63. The Commission improperly allowed Georgia Power to carry its burden of proof as to the reasonableness of billions of dollars in excess costs well in advance of Unit 3's completion and before such sums are even spent.

64. As Georgia Power has admitted, and as past Commission Orders have held, reasonableness and prudence are distinct but related concepts that cannot be determined independently of one another. Prudence goes to the decision-making

process, while reasonableness goes to the cost of that prudent decision. A cost can be unreasonable even if it results from a prudent decision.

65. By rubber-stamping reasonableness now, the Commission has made it impossible for Petitioner to challenge the reasonableness of the revised project cost in any future proceeding, including the prudency review set to take place following the project's completion.

66. Georgia Power sought a determination that its new cost estimate was "reasonable" pursuant to O.C.G.A. § 46-3A-7(b). This provision does not include the word "reasonable." As a result, the Commission did not have authority under O.C.G.A. § 46-3A-7(b) to declare the new excess costs reasonable.

67. The authority for the Commission to determine reasonableness derives from a different statutory subsection, O.C.G.A. § 46-3A-7(a), which requires Georgia Power to demonstrate, upon project completion, that costs in excess of the approved costs were both reasonable and prudently incurred.

68. In a prior VCM proceeding, the Commission held that costs in excess of the certified amount would not be considered until Unit 3's completion, and that at that time Georgia Power would have the obligation to show that such excess costs were reasonable and prudent.

69. While the Final Decision nominally retains Georgia Power's burden to show the prudency of the excess costs following Unit 3's completion, the law is

clear that Georgia Power has a single burden to show both reasonableness and prudency *after* the plant is completed.

70. By pre-determining reasonableness of the revised cost estimate and schedule in the 17th VCM proceeding, more than five years ahead of the project's estimated completion, the Commission improperly allowed Georgia Power to split, or bifurcate, its burden of proof. This violates both the letter of Georgia law and the spirit of oversight which is the fundamental purpose for which the Commission exists.

71. Further, by approving Georgia Power's revised cost estimate, the Commission relieved Georgia Power of any further burden of proof as to the revised costs because the new costs are now approved costs. By statute, Georgia Power's burden of proof applies only to costs in excess of approved costs.

72. In past filings with the Commission related to the Vogtle expansion project, Georgia Power has asserted that its burden of proof applies only to costs in excess of those approved by the Commission, including approval pursuant to O.C.G.A. § 46-3A-7(b).

73. By approving Georgia Power's revised cost estimate while simultaneously claiming that Georgia Power retains a burden of proof as to such costs, the Final Decision is internally inconsistent and arbitrary.

74. Accordingly, the Final Decision is in violation of the Integrated

Resource Planning statute; *see* O.C.G.A. § 50-13-19(h)(1); in excess of statutory authority, *see id.* at (2); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

COUNT III

THE COMMISSION ERRED BY REFUSING TO OBSERVE ITS EX PARTE RULE.

75. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

76. To preserve public trust, proceedings before the Commission must be open and transparent to all parties and to the public. Ga. Comp. R. & Regs. 515-2-1-.14(2).

77. Except for trade secret matters, all communications between a party and the Commission, an individual Commissioner, or a member of the Commission's Advisory Staff relating to a proceeding before the Commission must be made in a public and open manner that allows all other parties the opportunity to respond to such communication or information. *Id.*

78. The Commission adopted its ex parte rule in 2007 to restore the public's confidence that its decisions are fairly decided based on what was said in the open hearing room and not behind closed doors.

79. The Commission's ex parte rule applies immediately upon the

conclusion of the hearings to receive testimony in the proceeding and ends the day after the official time for filing for reconsideration. Ga. Comp. R. & Regs. 515-2-1-.14(6).

80. In the 17th VCM proceeding, the hearings concluded on December 13, 2017 as a result of the Commission's late decision to truncate the proceeding by advancing its final decision date from February 6, 2018 to December 21, 2017. As a result, the Commission's ex parte rule applied as of the final hearing date, December 13, 2017.

81. The Commission failed to observe its ex parte rule.

82. Upon information and belief, between the conclusion of the hearings on December 13, 2017 and the final decision date of December 21, 2017, Georgia Power and member(s) of the Commission met privately and exchanged communications and information without giving all other parties the opportunity to respond, in violation of the ex parte rule.

83. The illegal ex parte communications between the Commissioners and Georgia Power resulted in terms that favor Georgia Power at the expense of ratepayers, which terms were subsequently incorporated into the Final Decision.

84. The Commission's stated justification for refusing to observe its ex parte rule was that *if* the Commission failed to render a final decision on December 21, 2017, the proceeding would continue, in that Georgia Power would have the

right to file rebuttal testimony and a final round of hearings on such testimony would be held in January 2018.

85. The Commission's stated justification conflicted with the language of its order modifying the schedule, which stated that on December 21, 2017 "the Commission will render a decision in this docket."

86. Further, had the Commission failed to render a decision on December 21, 2017, the ex parte rule would have, by its own terms, ceased to apply until the hearings concluded. Therefore, the Commission's stated justification for suspending the rule was unreasonable and arbitrary. The Commission was required to observe the ex parte rule for the limited period between December 13 and December 21, 2017, in case, as happened, the Commission reached its final decision on the latter date.

87. Upon information and belief, the Commissioners continued to engage in ex parte communications with Georgia Power following the decision on December 21, 2017 even though the ex parte rule expressly applied through the day after the official time for filing for reconsideration, and if a motion for reconsideration was made, through the Commission's rendering of a final decision on such a motion.

88. In the 17th VCM proceeding, a motion for rehearing and reconsideration was filed, such that the ex parte rule continued to apply through the

Commission's decision on that motion by order dated February 28, 2018.

89. The Commission's stated justification for suspending the ex parte rule could not logically have applied after December 21, 2017 because a final decision was made on that date and no further evidentiary hearings would be held.

90. That the Commission continued, upon information and belief, to engage in ex parte communications with Georgia Power after the final decision date shows that its stated justification for suspending the ex parte rule was spurious.

91. Accordingly, the Final Decision was made upon unlawful procedure, see O.C.G.A. § 50-13-19(h)(3); is arbitrary and capricious, *see id.* at (6); and an abuse of discretion, see id.; and affected by other errors of law, *see id.* at (4).

COUNT IV

THE COMMISSION ERRED BY TRUNCATING ITS REVIEW.

92. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

93. The Commission's decision, late in the proceeding, to amend the PSO to advance the Final Decision by 47 days, abbreviated the length of the overall proceeding by more a third and left insufficient time for the Commission to reach a fair and balanced decision.

94. Under the amended PSO, Petitioner and the other parties were required to submit final briefs within five days of the final hearing date, and the Commission

then rendered its Final Decision a mere two days later.

95. The shortened timeframe did not allow for careful consideration of the evidence in the record.

96. Instead, as detailed in Count III, the Commission, upon information and belief, met behind closed doors with Georgia Power in the days between the final hearing date and the Final Decision.

97. The result was a Final Decision that reflects no in-depth analysis and substantially mirrors Georgia Power's settlement position.

98. The Commission's stated justification for amending the PSO was that, in light of tax law changes then under consideration in the United States Congress, a decision to abandon the project before year's end would provide $150 million in ratepayer benefits.

99. The alleged tax savings were stated in a letter from Georgia Power CEO Paul Bowers to Commission Chairman Stan Wise.

100. Petitioners and other parties were unable to conduct cross-examination regarding the substance of the allegation in the letter from Mr. Bowers to Commissioner Wise.

101. The alleged savings amounted to only 2.5 percent of the more than six billion in increased costs for which Georgia Power was seeking approval.

102. The alleged savings totaled less than the amounts incurred by Georgia

Power at the Plant Vogtle construction site in just three of the preceding months under review.

103. Hence the nominal alleged savings were not a reasonable basis for the Commission to truncate the schedule.

104. The Commission refused to hear from the parties regarding the proposed scheduling change before entering the amended PSO.

105. The Commission's decision to abbreviate the proceeding was contrary to the original PSO's finding that the proceedings constituted "complex litigation."

106. In a proceeding in the late 1980s regarding cost overruns at Plant Vogtle Units 1 and 2, the Commission held 42 days of hearings over five months, before issuing a lengthy and detailed final decision.

107. Here, by contrast, the Commission held just seven days of hearings, before issuing a twenty page order that was insufficiently detailed, as set forth in Count V.

108. Given the magnitude of the issues at stake, the Commission's decision to truncate its review process by 47 days for the mere possibility of three months' worth of savings on a project now delayed by five years, was arbitrary and capricious, and an abuse of discretion, *see* O.C.G.A. § 50-13-19(h)(6).

COUNT V

THE COMMISSION ERRED BY ISSUING A DECISION DEVOID OF DETAILED ANALYSIS AND FINDINGS.

109. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

110. Under the Georgia Administrative Procedure Act, a final order in a contested case must include separately stated findings of fact and conclusions of law. O.C.G.A. § 50-13-17(b). Findings of fact must be "accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.*

111. In resolving Issue 2 of the PSO, the Final Decision simply summarizes the positions of the parties, before declaring: "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."

112. The Commission thus failed to make detailed findings of fact and conclusions of law on the monumental question framed by Issue 2 of the PSO, as required by law.

113. Accordingly, the Final Decision was made in violation of a statutory provision, *see* O.C.G.A. § 50-13-19(h)(1); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); and an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

COUNT VI

THE COMMISSION ERRED BY DECOUPLING VOGTLE UNITS 3 AND 4 AND PLACING UNIT 3 INTO THE RATE BASE PRIOR TO COMPLETION OF BOTH UNITS WITHOUT PRIOR NOTICE OR DUE PROCESS OF LAW.

114. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

115. By Order of December 20, 2016, the Commission adopted a Prudency Review Stipulation (reached October 20, 2016), that, among other matters, expressly restricted the earliest point that either Unit 3 or 4 of the Vogtle Project could be placed into the retail rate base.

116. Specifically, the Commission's Order adopting the Prudency Review Stipulation stated that "Units 3 and 4[] will be placed into retail rate base on December 31, 2020 or upon reaching commercial operation *whichever is later*." (emphasis supplied).

117. In defining the scope of the proceedings in the 17th VCM below, the Commission's PSO declared "nothing in this Order or subsequent proceeding modifies the Prudency Review Stipulation agreed by the Company and Staff and approved by this Commission on January 3, 2017."

118. Further, the Commission affirms by its PSO that that the Prudency Review Stipulation's prohibition that "neither Unit [3 or 4] can go into the rate base until the later of December 21, 2020, or when both Units reach Commercial

Operation will remain in effect."

119. Nonetheless, the Final Decision adopted by the Commission decoupled Units 3 and 4 in order to put Unit 3 into the ratepayer base on an earlier schedule and prior to completion of both units.

120. The Final Decision ordered that, regardless of whether Unit 4 was also commercially operational, costs related to Unit 3 could be placed into the rate base the first month after Unit 3 is in commercial operation.

121. The Final Decision deprived Petitioner of adequate and fair notice that the Commission was considering the decoupling of Units 3 and 4 of Vogtle Expansion Project in order to put Unit 3 into the ratepayer base on an earlier schedule (i.e. prior to both units' completion) than previously ordered (and affirmed) by the Commission. Correlatively, this relieved Georgia Power of responsibility for carrying its burden by producing evidence and prevented Petitioner from subjecting any such evidence to scrutiny or challenge regarding, inter alia, the potential economic effect on ratepayers of this change.

122. The Commission failed either to consider evidence or make detailed findings of fact and conclusions of law on the decoupling issue, as required by law.

123. Accordingly, the Final Decision violates the Commission's own orders that established and defined the scope of the 17th VCM proceeding and is, therefore, made upon unlawful procedure, *see* O.C.G.A. § 50-13-19(h)(1); clearly erroneous in

view of the reliable, probative and substantial evidence on the whole record, *see id.* at (5); arbitrary and capricious, *see id.* at (6); an abuse of discretion, *see id.*; and affected by other errors at law, *see id.* at (4).

REQUEST FOR WRITTEN BRIEFING, ADDITIONAL PROOF AND ORAL ARGUMENT

Pursuant to O.C.G.A. § 50-13-19(g), Petitioners request (1) oral argument; (2) the opportunity to submit written briefs and (3) due to irregularity in the procedure before the Commission regarding both the manipulation of the proceedings as to scope and alleged ex parte communications, proof should be taken in the court in the form of reasonable discovery, testimony/cross-examination and/or further proof taken in court.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Petitioners pray that:

(1) The Court enter a schedule for the parties to brief the issues on appeal and set a date for hearing oral argument;

(2) The Court take evidence of unlawful ex parte communications as a procedural irregularity not shown in the record, as permitted by O.C.G.A. § 50-13-19(g);

(3) Reverse the Final Decision;

(4) Remand to the Commission with direction that they instruct Georgia Power Company to file an application for amended

certification, as required by law; and

(5) Grant such other relief as the Court deems just and fair, consistent with the Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 to 50-13-44.

Respectfully submitted this 8th day of March, 2018.

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EXHIBIT A

COMMISSIONERS:

STAN WISE, CHAIRMAN
CHUCK EATON
TIM G. ECHOLS
H. DOUG EVERETT
LAUREN "BUBBA" McDONALD, JR.

FILED
JAN 11 2018
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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 # Docket No. 29849
DOCUMENT #

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[1] 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,

[1] 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.[2]

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 17th 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 17th 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 17th Semi-Annual Construction monitoring proceeding was deemed to determine or prejudge the prudency of any costs. The prudency 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 prudency 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)

[2] 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.

Jurisdiction

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 17th 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 17th 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 prudency 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. (17th 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. (17th 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 prudency of the expenses incurred. The intervenors noted that a full prudency review will take place later with an opportunity for all parties to make their views known. Reserving judgment on prudency 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). (17th 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. (17th 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. (17th 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.

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 prudency 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 3rd 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." (17th 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 prudency 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 3rd 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.

Reece McAlister
Executive Secretary

1-11-18
Date

Stan Wise
Chairman

1-11-18
Date

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **PETITION FOR JUDICIAL REVIEW** via electronic mail as follows:

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I hereby further certify that I have this day served a copy of the **PETITION FOR JUDICIAL REVIEW** via United States First Class Mail as follows:

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Respectfully submitted this 8th day of March, 2018.

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