BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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 Monitoring Report; Proposed Forecast Cost and Schedule Revisions; and Determination of Continuation or Cancellation of the Project	)	Docket No. 29849

PETITION FOR DECLARATORY RULING

Georgia Interfaith Power & Light and Partnership for Southern Equity ("Petitioners") hereby file this Petition for Declaratory Ruling by the Georgia Public Service Commission ("PSC" or "Commission") in this docket. Petitioners seek a declaratory ruling on two issues: (1) that the stipulation adopted as an Order in the Eighth Vogtle Construction Monitoring proceeding ("VCM 8") in this docket remains in full force and effect; and (2) that under O.C.G.A. § 46-3A-7(a), Georgia Power Company ("Georgia Power" or "the Company") has a single, indivisible burden to demonstrate that costs in excess of those approved by this Commission are both "reasonable and prudent," that this burden is retrospective, and that it is to be carried in its entirety upon completion of the plant, and not before. The Commission is authorized to dispose of petitions for declaratory rulings "as to the applicability of any statutory provision … or order of the [Commission]." O.C.G.A. § 50-13-11. Pursuant to Commission Rule 515-2-1.12, Petitioners show the following in support of this Petition:

1.

Georgia Interfaith Power & Light ("GIPL") and Partnership for Southern Equity ("PSE") have moved to intervene in the above docket that involves, among other things, a determination

of whether to continue or cancel the construction of Plant Vogtle Units 3 and 4. Petitioners' names and post office addresses are as follows:

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2.

Petitioners seek a ruling regarding the continuing force and effect of the Stipulation and Commission Order adopting the same that were entered at the conclusion of VCM 8 in this docket. A full and complete copy of the VCM 8 Stipulation and Order are attached as Exhibit A to this Petition. Specific provisions pertinent to this Petition include the following:

a. "Staff need not file testimony on the issues raised by the Company's application to amend the Certificate, or on issues raised in any future amendment request, until completion of Vogtle Unit 3." VCM 8 Order at 3, ¶ 2.
b. "[C]onsideration of the request to amend the Certificate, and any further requests to increase the certified cost shall be held in abeyance until the completion of Vogtle Unit 3." *Id.*

c. "[T]he current certified amount would remain at $6.113 billion until that time and costs in excess of the certified amount shall not be allowed in rate base unless shown by the Company to have been reasonable and prudent." *Id.*

d. "[M]aintaining the certified amount at $6.113 billion provides significant ratepayer protections," including that "the Company will retain the burden to prove that costs in excess of the certified amount were reasonable and prudent." *Id.* at 4, ¶ 4.

e. "The Commission finds and concludes that the Stipulation preserves any and all issues that could be raised by Staff in VCM 8 or in subsequent VCM periods." *Id.* at ¶ 5.

f. "The Commission further finds and concludes that the preservation of issues contained in the Stipulation is an appropriate means of complying with the purpose of the underlying statutes." *Id.* at 5, ¶ 6.

3.

In addition, Petitioners seek a declaratory ruling regarding O.C.G.A. § 46-3A-7(a), which provides as follows:

> "So long as the commission has not modified or revoked the certificate for an electric plant under Code Section 46-3A-6 and to the extent the utility seeks to add to its rate base upon completion of the plant construction costs that do not exceed 100 percent of those approved by the commission under Code Section 46-3A-5, Code Section 46-3A-6, or subsection (b) of this Code Section, that construction cost amount may be excluded from the rate base only on the basis of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct. Inclusion of costs in excess of 100 percent of those approved by the commission shall not be permitted unless shown by the utility to have been reasonable and prudent."

4.

Pursuant to Commission Rule 515-2-1.12(1)(c), Petitioners provide the following paragraph statement of all pertinent and existing facts necessary to a determination of the applicability of the Order and statute: In this Seventeenth Vogtle construction monitoring proceeding, Georgia Power seeks approval of a revised cost estimate and schedule for building Vogtle Units 3 and 4. Georgia Power makes its request pursuant to O.C.G.A. § 46-3A-7(b). In addition, the Company asks the Commission to find the new cost forecast and schedule "reasonable" separate and apart from any determination of prudency (or lack thereof) on the Company's part.

5.

Petitioners contend that the Company's requests are barred by both the VCM 8 Stipulation and Order and O.C.G.A. § 46-3A-7(a). The VCM 8 Stipulation and Order require that requests to increase the project cost above the amount certified by the Commission must await completion of Vogtle Unit 3. So must the carrying of the Company's burden to show the reasonableness and prudency of costs exceeding the certified costs. At "that time [i.e. completion of Unit 3] … costs in excess of the certified amount shall not be allowed in rate base unless shown by the Company to have been reasonable and prudent." VCM 8 Order 3, ¶ 2.

6.

Similarly, O.C.G.A. § 46-3A-7(a) establishes the Company's burden to prove that costs in excess of Commission approved costs were both reasonable and prudent. An "approved cost" is one that has been certified by the Commission or one that has been approved by the Commission pursuant to subsection (b) of the same statute. The latter is the type of approval the

Company seeks here. The Company's burden is triggered "upon completion of the plant" when the Company seeks to add excess costs to rate base. Further, the burden is retrospective: excess costs will be excluded from rate base "unless shown by the utility to *have been* reasonable and prudent." *Id.* (emphasis added).

7.

The Company's requests in this proceeding run afoul of the above requirements in at least two ways: (1) the Company seeks approval of a revised cost estimate, which includes costs well in excess of the certified amount, well in advance of Unit 3's completion; and (2) the Company seeks to carry its burden as to the reasonableness of those yet-to-be-incurred sums, well in advance of project completion, and separate and apart from any determination of prudency.

8.

Petitioners' interest in this matter is as stated in their Application to Intervene: many of GIPL's participating congregations and members of those congregations purchase electricity from Georgia Power Company, both for their places of worship and for their individual residences. Their electricity consumption and the associated costs will be affected by the Commission's actions in these dockets. GIPL intends to address the concerns of both itself and its members regarding how the Company's choices impact both God's creation and the resulting bills that customers, and in particular low-income customers, pay. Similarly, PSE and many of its supporters purchase electricity from Georgia Power Company. Their consumption and costs for electricity will be affected by the Commission's actions in this docket. PSE is a founding member of, and active participant in, the Just Energy Circle, a morally-grounded collaborative effort that empowers sustainable, self-sufficient communities and encourages participation in

developing clean energy solutions that benefit everyone. The Just Energy Circle seeks to establish structures to ensure that energy opportunities are available to all, including low-income protections, reduced energy costs, and employment.

9.

As intervenors in this docket, Petitioners are full parties of record in these proceedings with all rights attendant thereto. Petitioners are uncertain or insecure with respect to these rights, which may include a stipulation and settlement of this matter, because the Company's request for approval of its revised cost estimate and schedule appears premature and not ripe for adjudication under the VCM 8 Stipulation and Order. Further, the Company's attempt to split its burden and receive a determination of "reasonableness" as to its revised cost estimate and schedule in this proceeding appears barred by the VCM 8 Order as well as under § 46-3A-7(a). Petitioners are concerned that if the Commission grants the Company's requests it will undermine vital ratepayer protections established under prior Orders in this docket, as well as contravene Georgia law regarding the nature and timing of the Company's burden of proof.

WHEREFORE, for the reasons set forth in this Petition and the accompanying Brief in Support, Petitioners respectfully request the following:

a. That their Petition be read and considered;
b. That 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.
c. 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."

d. 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.

e. That Petitioners have such other and further relief as the Commission deems proper.

Respectfully submitted this 6th day of November, 2017.

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BRIEF IN SUPPORT OF PETITION FOR DECLARATORY RULING

Intervenors Georgia Interfaith Power & Light ("GIPL") and Partnership for Southern Equity ("PSE") (collectively, "Petitioners") hereby file this Brief in Support of their Petition for Declaratory Ruling in the above matter. As set forth in their Petition, Petitioners seek a declaratory ruling that the stipulation adopted as an Order in the Eighth Vogtle Construction Monitoring proceeding ("VCM 8") in this docket remains in full force and effect and that, as a consequence, Georgia Power Company's ("Georgia Power" or "the Company") request for approval of its sharply increased, revised cost estimate is premature and not ripe for adjudication. As this proceeding to determine the fate of Vogtle Units 3 and 4 gets underway, it is extremely important for the parties to know whether and to what extent vital ratepayer protections secured in VCM 8 remain in place.

In addition, Petitioners seek a declaratory ruling that under the VCM 8 Order and O.C.G.A. § 46-3A-7(a), the Company may not split its burden of proof as it proposes to do here. The Company has a single, indivisible, and retrospective burden to demonstrate that costs exceeding those previously approved by this Commission are "reasonable and prudent." The law is clear as to when that burden is to be carried: upon completion of the plant, when the utility seeks to add the excess costs to its rate base. Hence, Georgia Power's attempt to carry part of its

burden (reasonableness) in this proceeding while reserving the other half (prudency) for determination five or more years from now is forbidden as a matter of law.

INTRODUCTION

Georgia Power seeks authorization to proceed with constructing Plant Vogtle Units 3 and 4 at double the original certified cost and with more than two years of added delay (making the project a full 5 years behind schedule). The Company seeks approval of the revised cost estimate and schedule under a statute, O.C.G.A. § 46-3A-7(b), not intended for changes of this magnitude. In addition, the Company wants the Commission to find the new cost forecast and schedule "reasonable" separate and apart from any determination of prudency (or lack thereof) on the Company's part.

The Company's requests appear to run afoul of the settled expectations contained in the VCM 8 Stipulation, which was adopted as an Order of the Commission. The VCM 8 Stipulation and Order provide, in no uncertain terms, that proposed increases to the certified cost – i.e. the original "approved cost" – must await completion of Unit 3. This decision was for the protection of ratepayers. An increase in the "approved cost" has significant implications for ratepayers because it shifts the burden to them to exclude those costs from rate base. Once a cost becomes an approved cost it is no longer an "excess cost" under O.C.G.A. § 46-3A-7(a). The Company's burden to show reasonableness and prudence applies only to costs exceeding the approved costs. For purposes of allocating the burden of proof, the approval of a revised cost estimate under O.C.G.A. § 46-3A-7(b) has the same effect as amending the certified cost. In both cases, the newly approved cost is presumed reasonable and prudent, making it the ratepayers' burden to show otherwise.

The burden of proof is fundamentally a risk allocation mechanism. Thus, it matters a great deal who bears it. If the burden is on the Company to prove the reasonableness and prudency of its expenditures if and when Unit 3 is complete, the Company bears the risk that some of its costs may be deemed unreasonable or imprudent and not suitable for inclusion in rate base, as indeed happened with the construction of Vogtle Units 1 and 2. Not eager (presumably) to repeat that experience, the Company now seeks to shift the risk for excess costs to ratepayers, who have already paid more than $2 billion in financing costs for Units 3 and 4 despite not receiving any power from them. The Commission's approval of the Company's revised cost estimate will make those sums presumptively recoverable, *meaning that in the end they will almost certainly be borne in full by its customers*. The Company's filing makes its aim unmistakably clear: if there is even a hint of doubt that the Company will not be able to recover its costs (and the profits that come with it), it will cancel the project. Georgia Power Company's Seventeenth VCM Report at 8-9 (hereinafter, "VCM 17 Report").

Ratepayers would not be wrong to think that the issue presented by the Company's request had already been resolved, adversely to the Company, several proceedings ago. The VCM 8 Stipulation provides that increases to the certified cost, and related consequences for the burden of proof, must await completion of Unit 3. VCM 8 Order Adopting Stipulation at 4, 6 (Oct. 8, 2013) ("VCM 8 Order") (attached as Exhibit A). Georgia Power appears now to want to unwind that deal given the drastically changed circumstances. Proceeding without an assurance of recovery at such a substantially higher cost is indeed risky, but the Company must live with the deal it struck (which, incidentally, is consistent with Georgia law regarding the nature and timing of the Company's burden). The Commission should reject the Company's attempt to make an end run around VCM 8's protections by declaring that they remain in force.

In addition, the Commission should reject the Company's attempt to split its burden. The Company's own past filings in this matter make it unmistakably clear that reasonableness and prudence are related concepts that must be determined at the same time. Because the timing of the Company's burden to prove the legitimacy of excess costs is reserved until Unit 3's completion, reasonableness may not receive a separate determination here. The Commission should recognize the absurdity of declaring "reasonable" considerable sums that have not even been spent, without any accompanying determination of whether the Company was prudent in spending them. Georgia law is clear that the Company's burden is to be carried after the fact, not before.

STATEMENT OF FACTS

Vogtle Units 3 and 4 were certified for construction more than 8 years ago as a result of the Commission's Final Order in Docket No. 27800. *See* Amended Certification Order (Mar. 30, 2009) ("Certification Order"). The Certification Order established a certified in-service cost for the Company's interest in Units 3 and 4 of $6.4 billion, which included a certified capital and construction cost of $4.4 billion. *Id.* at 12. The total certified amount was later reduced to $6.1 billion to reflect lower financing costs claimed to result from passage of the Construction Work in Progress ("CWIP") law, Senate Bill 31. The Commission's approval was premised on the assumption, as set forth Company's certification application, that Units 3 and 4 were needed to meet energy and capacity needs arising in 2016 and 2017. Certification Order at 2.

The Certification Order adopted a stipulation between PIA Staff and the Company that directed the Company to file semi-annual monitoring reports with the Commission. Certification Order at 12, Att. 1, ¶ 2. The stipulation established that monitoring reports would be filed each August 31st and February 28th, and would "cover any proposed revisions in the cost estimates,

construction schedule, or project configuration and actual costs incurred" during the preceding six months. *Id.* at ¶ 2.c.

Relevant Terms

For clarity, Petitioners highlight several terms relevant to discussion of these issues:

- ***Certified cost:*** is the cost estimate of the Vogtle Project approved by the Commission in the final order of the Vogtle Certification Proceeding (Docket No. 27800). This amount has two components totaling $6.113 billion:

  - Capital and construction costs: $4.418 billion
  - Financing costs: $ 1.695 billion[1]

  Through the Nuclear Construction Cost Recovery ("NCCR") rider, the Company is permitted to collect financing costs on capital investments up to the certified cost. The certified cost has not been revised.

- ***Approved Revised Cost***: is the revised approved cost from 2016 "Supplemental Information, Staff Review, and Opportunity for Settlement" ("SIR") proceeding. This approved revised capital cost is $5.680 billion. Based on the terms of the SIR Stipulation, this approved revised cost is presumed "reasonable and prudent." We note that O.C.G.A. § 46-3A-7(b) holds that the Commission may approve or disapprove any proposed revisions to cost estimates or schedules, but this subsection of the code treats the approval of any cost or schedule revisions differently from the approval of any expenditures made pursuant to the certificate (addressed in O.C.G.A. § 46-3A-7(c)). Neither O.C.G.A. § 46-3A-7(b) or (c) prohibits an approved revised cost estimate from being subsequently excluded from the utility's rate base. The terms of the SIR Stipulation positively affirm this treatment above what is guaranteed in statute.

- ***Verified and approved expenditure***: is any expenditure verified and approved by the Commission, through a final order of a formal VCM proceeding (Docket No. 29849). These verified and approved expenditures are included in the calculation of total of expenditures to date and used for the determination of financing costs and NCCR revenue requirements. O.C.G.A. § 46-3A-7(c) holds that Commission verification of any ***expenditure*** made pursuant to the certificate forecloses subsequent exclusion of these costs from the utility's rate base absent fraud, imprudence, etc.

- ***Reasonable cost:*** is a legally vague concept being invoked by Georgia Power as tantamount to verified and approved. The term "reasonable" does not appear in

[1] *See* First VCM Stipulation, Dkt. 29849, at ¶ 4 (Feb. 10, 2010) ("In future Semi Annual Reports . . . the Company will report against a total certified cost of $6.113 billion (which is the effective certified amount after recognizing the effects of SB 31) . . . ."), adopted by the Commission Feb. 25, 2010.

the statute that forms the basis for the Company's current requests – i.e., O.C.G.A. § 46-3A-7(b). Instead, the term appears only in subsection (a), in reference to the Company's burden as to excess costs.

- ***Prudently incurred cost***: is any cost determined by the Commission to be prudently incurred by the Company in the course of a prudency determination and approved to be recovered from ratepayers.

Eighth VCM Proceeding

Over the last several years the Company has filed regular semi-annual construction monitoring reports as required by the Certification Order. The Company filed its eighth such report on February 28, 2013. In it the Company requested that the Commission amend its certificate to reflect a revised construction schedule and capital cost of $4.8 billion, an increase of $400 million above the original certified capital cost. VCM 8 Order at 2. This proceeding also was resolved by a stipulation between the Company and PIA Staff. Under the terms of the stipulation, the Company's request for amendment of the cost and schedule was deemed withdrawn and held in abeyance until completion of Vogtle Unit 3. *Id.* at 3. In addition, "any further requests to increase the certified cost" would be held in abeyance until completion of Unit 3. *Id.* The "current certified amount would remain at $6.113 billion *until that time* and costs in excess of the certified amount shall not be allowed in rate base unless shown by the Company to have been reasonable and prudent." *Id.* (emphasis added).

At the time of the VCM 8 proceeding the Company was in litigation with its lead (and now bankrupt) contractor, Westinghouse. The Commission was concerned that many of the issues presented by the Company's proposed cost increase were relevant to that litigation and could adversely impact the Company's prosecution of it, raising the prospect of additional costs that could be borne by ratepayers or the Company's shareholders. *Id.* at 4. The Commission held

that it was in the public interest to defer the Company's request for amendment of the certified cost, along with any future requests to amend, until Unit 3 is in operation. *Id.*

Two "significant ratepayer protections" would result from this deferral. *Id.* First, the Company would "retain the burden to prove that costs in excess of the certified amount were reasonable and prudent." *Id.* Second, the Commission noted that collections under the NCCR tariff, the mechanism that implements the CWIP law, accrued only as to "certified" costs. *Id.* Hence, declining to increase the certified amount would prevent those additional sums from being collected through the NCCR tariff.

The Company's amendment request was made pursuant to O.C.G.A. § 46-3A-5, which covers both original and amended applications for the certification of new capacity, and Commission Rule 515-3-4-.08(b). The latter rule provides that "[t]he Utility *shall* submit an amended application for certification" under various circumstances, including when "the total cost estimate has been revised such that the costs are over the estimates in the approved certificate by more than five percent," which was true of the Company's proposed revision to the project cost in VCM 8. *See* VCM 8 Stipulation at ¶ 1. In order to overcome this restriction and give effect to the stipulation, the Commission purported to waive the rule pursuant to O.C.G.A. § 50-13-9.1(c). VCM 8 Order at 5. The Commission found that "the potential additional costs to ratepayers or shareholders by proceeding with these issues now given the pending litigation would constitute a substantial hardship justifying waiver of Commission Rule 515-3-4-.08(b)." *Id.* The Commission further found that preservation of the issues contained in the stipulation was an appropriate means of complying with the purpose of the "underlying statutes." *Id.*

The underlying statutes included not just the certification statute, O.C.G.A. § 46-3A-5, but also O.C.G.A. § 46-3A-7, under which proposed revisions to the cost estimate for a plant

under construction, if not acted upon by the Commission within 180 days (in the form of an approval, disapproval, or modification) would be deemed approved by operation of law. To overcome the potential problem of the Company's revised capital cost receiving default "approval" under this Code section (with resulting adverse consequences for ratepayers), the Commission's final order explicitly directed that the amendment request be deemed withdrawn. The request would be deemed "re-filed whenever the issues it presents are considered by the parties to be ripe for consideration," which the order elsewhere makes clear means following "completion of Vogtle Unit 3." *Id.* at 3, 6.

Twelfth VCM Proceeding

In its Twelfth Semi-Annual Vogtle Construction Monitoring Report ("VCM 12"), filed on February 27, 2015, Georgia Power again sought to amend its certificate in light of further significant delays and cost increases. VCM 12 Final Order at 3 (Aug. 18, 2015). The Commission reaffirmed the VCM 8 Stipulation and declined to rule on the Company's request: "while the VCM 8 Stipulation does not prohibit the Company from requesting amendments to the Certificate prior to completion of Unit 3, it does provide that the proceeding to consider any such request to amend the Certificate shall be held in abeyance until the completion of Vogtle Unit 3." *Id.* Hence, the Commission held that the request, like the one made in VCM 8, would be held in abeyance pending completion of construction of Unit 3. *Id.*

Supplemental Information Proceeding

In late 2015 the Company settled its litigation with Westinghouse. The Company then sought approval of the settlement agreement as "reasonable and prudent and in the best interest of the Company's customers." Order Adopting Stipulation, Docket No. 29849, at 2 (entered Jan. 3, 2017). In lieu of considering the Company's request, the Commission ordered a special

proceeding, titled "Supplemental Information, Staff Review, and Opportunity for Settlement" ("SIR Proceeding"). The proceeding resulted in another settlement between the Company and PIA Staff, which is set forth in a stipulation dated October 20, 2016 ("SIR Stipulation"). The SIR Stipulation, which the Commission later adopted as an Order, contains a number of important provisions, including the following:

- That none of the costs incurred through 12/31/15 (i.e. those incurred, verified and approved through the 14th VCM) would be disallowed from rate base on the basis of imprudence as specified in O.C.G.A. § 46-3A-7.
- That the settlement with Westinghouse was "reasonable and prudent" and that none of the amounts paid to Westinghouse pursuant to the settlement would be disallowed from rate base on the basis of imprudence as specified in O.C.G.A. § 46-3A-7.
- That a revised capital cost of $5.680 billion would be presumed "reasonable and prudent," such that the burden of proof would fall on the party challenging such costs.
- That the Company would have the burden to show that capital costs above the revised forecast of $5.680 billion are reasonable and prudent.
- That the original certificate would not be amended, so that the certified capital cost for purposes of calculating the NCCR would remain at $4.418 billion.

SIR Stipulation at ¶¶ 1-6. Neither the SIR Stipulation nor the Order adopting it contains any explicit reference to the VCM 8 Order and Stipulation. Nor do they say that the SIR Stipulation controls in the event of a conflict with prior stipulations.

The Current Proceeding

In the current proceeding, Georgia Power asks the Commission to approve yet another revision to its cost and schedule forecast and to find it a "reasonable basis for going forward."

VCM 17 Report at 10. This time, however, the stakes are considerably higher. The Company's new capital cost estimate, $8.771 billion, is nearly double the original certified capital cost. *Id.* at 103, Table 1.1. Combined with financing cost estimates, the in-service cost estimate now totals $12.17 billion. *Id.* In addition, the Company projects another 29 months of delay as the "most reasonable schedule," though the range of schedule outcomes considered by the Company includes delays of 41 months. *Id.* at 12, 76.

Georgia Power's request is made pursuant to O.C.G.A. § 46-3A-7(b). It asks the Commission to approve the revisions and find them "reasonable," even though subsection (b) does not contain that term. *Id.* at 10. If the Commission declines such wholesale approval, the Company threatens to cancel Units 3 and 4 and recover its actual investment pursuant to subsection (d) of the same statute. *Id.* Other assumptions about "regulatory treatment" underlie the Company's recommendation – namely that the SIR Stipulation supposedly remains "in full force and effect," which includes that (1) the certified capital cost amount will not be amended and will remain at $4.418 billion; and (2) that the Company will retain the burden to prove prudency of capital costs exceeding the cost revision approved just last year, i.e. $5.68 billion. While the Company does not seek a determination of prudency regarding the new $8.771 billion capital cost estimate, it does seek a finding that such amount "is a reasonable basis for going forward." *Id.* at 10.

ARGUMENT AND CITATIONS OF AUTHORITY

I. Applicable Legal Standard.

Under Commission Rule 515-2-1-.12, the Commission is authorized to issue a declaratory ruling "as to the applicability of an order of the Commission entered in a contested case." *See also* O.C.G.A. § 50-13-11. A declaratory ruling under Georgia law is appropriate

when there is "uncertainty and insecurity with respect to rights, status and other legal relations." O.C.G.A. § 9-4-1. Relief is authorized when there are

> circumstances showing [a] necessity for a determination of the dispute to guide and protect the [movant] from uncertainty and insecurity with regard to the propriety of some future act or conduct, which is properly incident to his alleged rights and which if taken without direction might jeopardize his interest.

GeorgiaCarry.org v. Atlanta Botanical Garden, Inc., 785 S.E.2d 874, 877 (Ga. 2016) (citing *Morgan v. Guar. Nat'l Cos.*, 489 S.E.2d 803 (1997).

The VCM 8 Stipulation was adopted as an Order of the Commission. Because this proceeding may, like past proceedings, be resolved by stipulation, it is critical for the parties to know whether the rights and protections established under the crucially important VCM 8 Stipulation remain in place. Petitioners submit that the VCM 8 Stipulations do remain in place, and the Commission should so hold. As the Company's counsel has stated, "the consistency of regulatory policy developed by this Commission over the years relies on stipulations." K. Greene letter to Commission, Docket 29849, at 4 (June 8, 2017). The Commission should be extremely hesitant to void prior stipulations, especially one as fundamental and important to this docket as the VCM 8 Stipulation.

II. Under the VCM 8 Order and Stipulation, the Company's request for approval of a revised cost estimate is not ripe, and if granted, will significantly harm ratepayers.

A. Approval under O.C.G.A. § 46-3A-7(b) will shift enormous risk to ratepayers by reallocating the burden of proof for excess costs.

There are three ways the Company can go about securing Commission approval of a revised cost estimate for a certified plant under construction. It can seek to amend the original certificate under O.C.G.A. § 46-3A-5. It can ask the Commission to reexamine and modify the certificate under O.C.G.A. § 46-3A-6. Or it can file as part of a construction monitoring report

"any proposed revisions in the cost estimates, construction schedule, or project configuration" pursuant to O.C.G.A. § 46-3A-7(b). In each case the effect of Commission approval is the same: the revised cost becomes the new "approved cost" for purposes of setting the Company's burden of proof. O.C.G.A. § 46-3A-7(b). The Company's burden to show reasonableness and prudence applies only to those costs in excess of the approved costs. *Id.*

Thus, it is extremely important for the Commission to understand what approving the Company's new cost estimate would mean for ratepayers: under current Orders and stipulations Georgia Power bears the burden to show that costs in excess of $5.68 billion are both reasonable and prudent. Commission approval of the revised cost estimate would change that. For any costs up to $8.771 billion, ratepayers would bear the burden to show some basis for exclusion (fraud, concealment, imprudence, etc.).

The Commission should not be fooled by the Company's efforts to claim otherwise. While the Company gives lip service to the SIR Stipulation and claims it will retain the burden as to capital costs exceeding $5.68 billion, that is not what the governing statute – Code Section 46-3A-7(a) – says. Moreover, that is not the opinion of former Georgia Supreme Court Justice Norman S. Fletcher, whose expert report the Company proffered as part of last year's SIR Proceeding: "For construction costs up to 100% of the amount approved by the Commission under O.C.G.A. § 46-3A-5, O.C.G.A. § 46-3A-6, *or O.C.G.A. § 46-3A-7(b)*, it is presumed that the construction costs are prudent and thus will be included in Georgia Power's rate base … [T]he burden of establishing imprudence rests with the party seeking exclusion." Georgia Power's Supplemental Information Filing, Expert Report of the Hon. Justice Fletcher, Docket 29849, at 5-6 (Apr. 5, 2016) (hereinafter, "Justice Fletcher Report") (emphasis added).

It should give no comfort to the Commission or to ratepayers for Georgia Power to assert that the SIR Stipulation "remains in full force and effect" because the Company has taken the position *in this proceeding* that statutes control over stipulations. The Company's counsel made this statement in reference to the VCM 8 Stipulation, arguing that the requirement for the Commission to approve, disapprove or modify the Company's revised cost estimate within 180 days, as provided for under O.C.G.A. § 46-3A-7(b), trumps any contrary language from VCM 8. The same claim can be made as to effect of such approval under subsection (a), governing the Company's burden, versus any contrary language in the SIR Stipulation or elsewhere.

The Commission should not take it on faith that the Company will not avail itself of that argument when the time comes. The Commission can avoid this potential pitfall by declaring that the VCM 8 Stipulation and Order remain in full force and effect. If the Commission does not so declare, it will give the Company a strong legal basis for avoiding its burden as to more than $3 billion of excess capital costs.

B. The Commission should declare that the VCM 8 Stipulation remains in full force and effect and requires that any approval of excess costs await completion of Unit 3.

The Company's filing proposes several major revisions to the project: capital costs have increased by another $3 billion (nearly doubling the original certified cost), the schedule has slipped by another two years, the load forecast is dramatically reduced, and the terms of the construction contract have changed significantly, as the former lead project contractor (Westinghouse) has changed roles, Southern Nuclear Company is now the main project contractor, and a new contractor (Bechtel) will become the lead construction contractor. Ordinarily any one of those changes would trigger the requirement for Georgia Power to apply for an amended certification under Commission Rule 515-3-4-.08(1). Stated differently, these

are not the sort of minor revisions appropriate for approval under O.C.G.A. § 46-3A-7(b) as part of a routine construction monitoring report.

The *only* reason the Company is not required to seek an amended certificate under the present circumstances is because of the Stipulation and Order in VCM 8. There the Commission waived its Rule 515-3-4-.08(b) not just for VCM 8 but for "the duration of the VCM monitoring period." VCM 8 Order at 6. The Company's request to amend the certificate, and *any further requests to increase the certified cost*, would be held in abeyance until the completion of Unit 3. *Id.* at 3. This was done expressly to preserve "any and all issues that could be raised by Staff in VCM 8 or in subsequent VCM periods" as well as to provide two "significant ratepayer protections." First, by keeping the certified amount where it was, the Company would retain the burden to prove that costs in excess of that amount were reasonable and prudent. *Id.* at 4. Second, because the NCCR tariff accrues only on certified costs, the Company would be unable to collect NCCR costs exceeding the certified amount. *Id.*

The VCM 8 Stipulation and Order require the Commission to defer consideration of proposed cost increases until Unit 3 is complete. While the stipulation and order speak in terms of *certified* costs, it is important to recognize that the Company would be required here to seek an amended certificate *but for* the ongoing waiver established in VCM 8. Hence, the Company is effectively seeking approval of a new certified cost. For purposes of allocating the burden of proof, the difference between the two vehicles – amending the certified amount versus securing approval for a revised project cost under § 46-3A-7(b) – is meaningless. Either path establishes a new "approved cost" up to which the Company enjoys a presumption of recoverability. It is no answer to say that ratepayers are protected by keeping the certified cost where it is, for that is only one of the "significant ratepayer protections" given the force of law in the Commission's

VCM 8 Order. The other ratepayer protection was holding the Company to its burden to prove the reasonableness and prudency of costs exceeding the certified amount. If the Commission approves the Company's revised cost estimate under § 46-3A-7(b) ratepayers will lose that vital protection.

The Company cannot do indirectly what it cannot do directly. Just as an attempt to amend the certified cost would be forbidden under the VCM 8 Stipulation and Order, so too is the attempt to shift the burden by other means. The Company must live with the deal it struck: consideration of costs in excess of the certified amount must await completion of Unit 3.

C. The SIR Stipulation did not vitiate the VCM 8 Stipulation's protections.

The Company will no doubt note that the SIR Proceeding resulted in a new approved cost and accompanying burden shift. Under the stipulation resolving that matter, the Company secured approval of a revised capital cost estimate of $5.68 billion, along with a presumption that such excess costs are reasonable and prudent. This means, as the SIR Stipulation states, "the burden of proof shall be on the party challenging such costs." SIR Stipulation at ¶ 4. As a result of this settlement, ratepayers lost a portion of VCM 8's protections: they now bear the burden as to more than $1.2 billion in added capital costs. But in return they gained other valuable protections, including both immediate and potential future reductions in the Company's rate of return.

The Company apparently views the SIR Stipulation as having replaced the VCM 8 Stipulation. In addition, the Company apparently believes that it can carry part of its burden now, in this proceeding, while the VCM 8 Stipulation and Order make it clear that the Company's burden is to be carried upon completion of Unit 3 (the SIR Stipulation is silent as to timing). If the foregoing represents the Company's position, it is incorrect.

The VCM 8's protections remain in force. Nothing suggests otherwise. The SIR Stipulation and Order contain no direct reference to VCM 8 and there is no language stating that the SIR Stipulation controls over prior stipulations. In any event, there is no conflict. The SIR Stipulation instead reaffirms VCM 8's protections beyond the limited concessions staff made for purposes of settlement.

The SIR Proceeding outcome illustrates the very problem the Petition seeks to avoid. If approval of the revised cost estimate is a proper issue for determination in this case, it opens the door to resolutions that, at best, create further ambiguity and, at worst, directly undermine prior stipulations and orders to ratepayers' detriment. Petitioners submit that the VCM 8 Stipulation remains in force, but to the extent doubt exists, it is the direct result of having allowed a cost revision to occur in the SIR Proceeding. The Commission should not make the same mistake twice.

III. The Company may not split its burden by proving "reasonableness" in this proceeding.

The Company retains the burden to prove the reasonableness and prudency of costs exceeding the current approved capital cost amount, $5.68 billion. The VCM 8 Stipulation and Order are clear as to timing of that burden: it is to be carried following completion of Unit 3. At "*that time* ... costs in excess of the certified amount shall not be allowed in rate base unless shown by the Company to have been reasonable and prudent." VCM 8 Order at 3 (emphasis added). While the SIR Proceeding may have resulted in a new approved cost in excess of the certified amount, and may have shifted the burden away from the Company to the extent of the increase ($1.2 billion), it left the burden on the Company as to any further cost increases and is silent as to the timing of its burden. For timing the VCM 8 Stipulation controls.

In keeping with its apparent position that the VCM 8 Stipulation no longer applies, the Company wants to carry part of its burden (reasonableness) now, while carrying the other part of it (prudency) later. *See* VCM 17 Report at 10. The law does not allow the Company's burden to be split in this manner. Under OCGA § 46-3A-7(a), the Company has a single, indivisible burden to show both reasonableness and prudency of costs in excess of 100 percent of those approved by the commission, with the timing of that burden held until when "the utility seeks to add [such excess costs] to its rate base upon completion of the plant." Just last year, the Company showed that it understood perfectly well both the nature and timing of its burden: "Thus, when a utility seeks to add costs over the certified amount to rate base (*which is when the reasonableness test comes into play*) the utility must *not only* establish that costs above the certified amount are the product of cautious, judicious, and prudent decision-making, *it must also* establish that the amounts of those costs are reasonable." Georgia Power's Supplemental Information Report, at 27 (citing O.C.G.A. § 46-3A-7(a)) (emphases added).

Until the Company's current filing, every reference to the Company's burden described it as a single burden to show that excess costs were "reasonable and prudent." Not until this filing has the Company sought to divide its burden in half. Now when the Company assures us that the SIR Stipulation remains in "full force and effect," that means that its burden upon completion of the plant is only as to the "prudence" of costs in excess of $5.68 billion. In the Company's current view, "reasonableness" is a separate burden, which the Company proposes to carry in this proceeding. VCM 17 Report at 8. But as the Company has previously explained, reasonableness and prudence are related concepts that cannot be neatly separated:

> "[R]easonableness" as used in O.C.G.A. § 46-3A-7(a), *is part of the test of prudence* ("what a reasonable manager would have done"), but also a slightly different test. Prudence goes to the decision making process, reasonableness goes to the cost of that prudent decision.

Georgia Power's Supplemental Information Report, at 27 (emphasis added).

Further, the burden is retrospective, not prospective: as the VCM 8 Order states, excess costs "shall not be allowed in rate base unless they are shown by the Company *to have been* reasonable and prudent." VCM 8 Stipulation at 4. This accords with the plain language of O.C.G.A. § 46-3A-7(a), which states that "[i]nclusion of costs in excess of 100 percent of those approved by the commission shall not be permitted unless shown by the utility to *have been* reasonable and prudent." *Id.* (emphasis added). The statute additionally states that the timing of the Company's burden is when "the utility seeks to add to its rate base *upon completion of the plant*" the costs of constructing the plant. As the Justice Fletcher Report states, the "utility must show that the costs *were* not only the result of prudent decisions but that there *were* not less costly ways to implement the prudent decision." Justice Fletcher Report at 11 (emphasis added). The prudence standard "asks the Commission to put itself in the shoes of the project manager *at the time* critical decisions *were being made*, and ask itself 'what would a reasonable manager have done and *was what the Vogtle Project managers did* within an acceptable zone of reasonableness?'" *Id.* at 13 (emphases added).

If Georgia Power can prove reasonableness in this proceeding, any subsequent prudency review four or more years from now will be nothing more than a meaningless charade. One can envision the Company easily carrying its burden of "prudency" as to expenditures the Commission many years prior pre-determined were "reasonable." An advance stamp of reasonableness from this Commission would give the Company no incentive to hold down costs, as a prudent manager would do. Given that ballooning costs have plagued this project from the outset, the foregoing concern should be of significant importance to this Commission.

The reality is that, as discussed previously, the Company will have *no* burden if the Commission approves its revised cost estimate. Thus, a determination of reasonableness here would benefit the Company, while harming ratepayers, who would bear the burden of challenging the newly approved costs years from now, long after the sums are spent. It would be difficult, if not impossible, for customers to succeed in excluding from rate base as "imprudent" costs that this Commission had already ruled were reasonable. The Company's request, as currently framed, is a devastating one-two punch to customers: it would shift the burden immediately to customers for the largest single project cost increase to date while making it nearly impossible to hold the Company accountable for any of it in the future.

Georgia law and the Commission's prior Orders in this docket provide the way out of this dilemma. The Company must be held to the deal it has already struck: it retains the burden to prove the reasonableness and prudency of costs exceeding the certified cost, with the timing of that burden occurring upon completion of Unit 3. It may not secure advance approval of its revised cost estimate, which would relieve the Company of its burden as to more than $3 billion in excess capital costs, and it may not receive an advance determination of reasonableness. If the Company is unwilling to proceed on that basis, it is a sure sign that the path ahead is too risky. But that hardly justifies forcing ratepayers to bear all the risk.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully urge the Commission to enter an order declaring that:

- The VCM 8 Stipulation and Order remain in full force and effect such that any consideration or approval of the Company's request to increase costs above the certified amount must await completion of Vogtle Unit 3.

- 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 amounts approved by the Commission were "reasonable and prudent."
- 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.

Respectfully submitted this 6th day of November, 2017.

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EXHIBIT A

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Docket No. 27800
Docket No. 29849

In Re: Review of Proposed Revisions and Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Eighth Semi-Annual Construction Monitoring Report, and Request to Amend Certificate.

ORDER ADOPTING STIPULATION

This matter comes before the Georgia Public Service Commission ("Commission") for consideration of the Proposed Stipulation ("Stipulation"), attached hereto as Attachment A and incorporated herein by this reference, executed on behalf of the Commission Public Interest Advocacy Staff ("PIA Staff") and Georgia Power Company ("Georgia Power" or the "Company"), which addresses the protocol for the evaluation of issues arising during the Eighth Semi-Annual Vogtle Construction Monitoring ("VCM") Reporting Period and the filing of the Ninth Semi-Annual Vogtle Construction Monitoring Report.

BACKGROUND

In Docket No. 27800, Georgia Power filed an application for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan ("Application"). In its Application, the Company sought Commission approval of its addition of Units 3 and 4 at Plant Vogtle ("Vogtle Units 3 and 4"). In its Amended Certification Order dated March 30, 2009, the Commission approved the Company's Application for the Certification of Vogtle Units 3 and 4 as modified by a stipulation entered into between the PIA Staff and the Company ("Certification Stipulation").

Paragraph 2 of the Certification Stipulation requires the Company to file semi-annual monitoring reports with the Commission as provided by O.C.G.A. § 46-3A-7(b). Such semi-annual monitoring reports must include any proposed revisions in the cost estimates, construction schedule, or project configuration, as well as a report of actual costs incurred in the period covered by the report.

On February 28, 2013 the Company filed with the Commission its Eighth Semi-Annual Construction Monitoring Report ("Monitoring Report"). The Eighth Semi-Annual Construction Monitoring Report covers capital and financing expenditures incurred up to and including December 31, 2012. In the Monitoring Report, the Company requested:

> That pursuant to O.C.G.A 46-3A-7 the Commission verify and approve the expenditures made during the period , which total $209 million, as having been made in compliance with the certificate, and
>
> That pursuant to O.C.G.A 46-3A-5 the Commission amend the existing certificate to reflect a revised construction schedule, and the associated extension costs, and a total projected capital cost of $4.8 billion.
>
> (Monitoring Report, p. 4.)

At its April 17, 2013 Administrative Session, the Commission approved a Procedural and Scheduling Order identifying the following as the issues to be considered in this proceeding:

1. Whether the Commission should verify and approve or disapprove the expenditures as made pursuant to the certificate issued by the Commission.

2. Whether the Commission should exclude certain construction cost amounts from the Company's rate base on the basis of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct.

3. Whether the Commission should amend the existing certificate to reflect a revised construction schedule, and the associated extension costs, and a revised total project cost.

(Procedural and Scheduling Order, pp. 3 and 4.)

On July 31, 2013, the PIA Staff and Georgia Power filed the proposed Stipulation with the Commission which would provide, among other things, that the

Company's request for an Amendment to the Certificate that was filed on February 28, 2013, shall be deemed withdrawn and held in abeyance until the completion of Vogtle Unit 3.

On August 1, 2013, the Chairman of the Commission issued an Order Extending Date For Filing Testimony for PIA Staff and Interveners from August 2, 2013, until August 8, 2013, in order to allow PIA Staff and Interveners an opportunity to address issues relating to the Stipulation in their testimony.

On August 8, 2013, PIA Staff and Nuclear Watch South filed direct testimony that addressed, inter alia, the Stipulation. No other interveners filed testimony. The Commission held its hearing on the direct cases of Staff and Interveners commencing on August 13, 2013.

On August 26, 2013, Georgia Power filed a letter with the Commission requesting that the Stipulation be considered at the Commission's September 3, 2013 Administrative Session.

FINDINGS AND CONCLUSIONS

1.

After considering the Stipulation, the Commission finds and concludes that the terms and conditions of the Stipulation are reasonable. The Commission further finds and concludes that it is appropriate and in the public interest to approve the Stipulation. The Commission further finds and concludes that it is authorized to resolve matters, in whole or in part, by stipulation. O.C.G.A. 50-13-13(a)(4).

2.

The Commission finds and concludes that the Stipulation provides that the Company's request for an Amendment to the Certificate that was filed on February 28, 2013, shall be deemed withdrawn. In addition, the Stipulation provides that Staff need not file testimony on the issues raised by the Company's application to amend the Certificate, or on issues raised in any future amendment request, until completion of Vogtle Unit 3. The Stipulation further provides that consideration of the request to amend the Certificate, and any further requests to increase the certified cost, shall be held in abeyance until the completion of Vogtle Unit 3. Therefore, the current certified amount would remain at $6.113 billion until that time and costs in excess of the certified amount shall not be allowed in rate base unless shown by the Company to have been reasonable and prudent. Pre-Filed Testimony of Steven D. Roetger and William R. Jacobs, Jr., Ph.D., pp. 20-21. See, O.C.G.A. 46-3A-7.

3.

The Commission finds and concludes that many of the issues presented by the Company's proposed certification amendment are also subject to, or may be subject to, claims by the Consortium in the pending litigation between the Owners and the Consortium. There is a possibility that discussion of these issues in this proceeding may adversely impact the Company's prosecution of the litigation. In such an event, additional costs could potentially be borne by either the Company's ratepayers or its shareholders. The Stipulation preserves issues that could be raised by Staff in VCM 8 or in subsequent VCM periods and provides that Staff need not file testimony on these issues until Vogtle Unit 3 is completed. Accordingly, ratepayer interests are protected in a manner that avoids unnecessary discussion of issues that could impact the litigation. As such, deferral of consideration of the Company's request to amend the Certificate, and any further requests to increase the certified cost, until the completion of Vogtle Unit 3, is in the public interest. Id. at 21-22.

4.

The Commission finds and concludes that maintaining the certified amount at $6.113 billion provides significant ratepayer protections. First, the Company will retain the burden to prove that costs in excess of the certified amount were reasonable and prudent. Second, as financing charges recovered under the Nuclear Construction Cost Recovery ("NCCR") tariff accrue only on "certified" costs as they are recorded in the Company's construction work in progress account, the Company would be unable to collect financing costs through the NCCR tariff on costs above those that have been certified. Id. at 22. See, O.C.G.A. 46-2-25(c.1).

5.

The Commission finds and concludes that the Stipulation preserves any and all issues that could be raised by Staff in VCM 8 or in subsequent VCM periods. The Stipulation also expressly provides that if the Commission makes a finding of fraud, concealment, failure to disclose a material fact, imprudence or criminal misconduct in the Vogtle Units 3 and 4 construction, the Commission has the authority to disallow associated financing costs and replacement fuel costs even if such costs have already been collected from customers. Thus, the Stipulation does not limit in any way the Commission's ability to protect ratepayers and to disallow any costs that are the result of fraud, concealment, failure to disclose a material fact, imprudence or criminal misconduct. Id. at 21.

6.

The Commission finds and concludes that the potential additional costs to ratepayers or shareholders by proceeding with these issues now given the pending litigation would constitute a substantial hardship justifying waiver of Commission Rule 515-3-4-.08(b). The Commission further finds and concludes that the preservation of issues contained in the Stipulation is an appropriate means of complying with the purpose of the underlying statutes. O.C.G.A. 50-13-9.1(c).

7.

The Commission finds and concludes that, since the period for reviewing VCM 8 and for the Commission's decision on VCM 8 have both been extended by agreement of the parties past the date on which the VCM 9 report was to be filed, it is reasonable to combine the Ninth and Tenth VCM filings into a single filing, which will cover the period from January 1 through December 31, 2013. Such a combined filing will promote administrative efficiency by not requiring the parties to participate in two separate but overlapping VCM proceedings simultaneously. In lieu of a formal Ninth VCM filing, the Company will file on, or before, September 3, 2013, an abbreviated update on the status of the Project and the expenses incurred on the Project during the period from January 1 through June 30, 2013. Pre-Filed Testimony of Steven D. Roetger and William R. Jacobs, Jr., Ph.D., p. 21. The Commission further finds and concludes that O.C.G.A. 46-3A-7(b) gives the Commission discretion in determining the appropriate intervals for monitoring construction.

8.

The Commission finds and concludes that Nuclear Watch South provided no credible rationale for not approving the Stipulation. In contrast, the testimony of PIA Staff provided abundant support for approval. Nuclear Watch South's testimony demonstrated a lack of understanding of the Stipulation. First, Nuclear Watch South's testimony stated that the Stipulation "absolves PIA staff from testifying on (requested increased capital) costs." Pre-filed testimony of Steven C. Prenovitz, p. 27. It does not. The Stipulation simply gives PIA Staff flexibility in the timing of such testimony. Paragraph 3 of the Stipulation states that "PIA Staff need not file testimony ... until completion of Vogtle 3. Second, Nuclear Watch South states that the Stipulation requests approval from the Commission "to recover $209 million spent July 1-December 31, 2013." Id. Nothing in the Stipulation requested such an approval and that issue remains to be decided in this case. Third, Nuclear Watch South states that the Stipulation does a disservice to ratepayers "by ignoring the cost increases, quality, and managerial issues which are necessary for weighing the prudency of continuing to construct Vogtle reactors." On the contrary, the Stipulation protects ratepayers by preserving issues and keeping the burden of proof on the prudency and reasonableness of the cost increases on the Company. Stipulation, Paragraph 3, 4 and 7. In addition, Nuclear Watch South complains that the Stipulation "was a closed agreement between the company and the PSC staff. No other parties

were allowed, or even aware, of these negotiations. This gives the appearance of a collusive and unhealthy relationship between the regulated, and those responsible for regulating them." Pre-filed testimony of Steven C. Prenovitz, p. 27. As the Procedural and Scheduling Order issued in that matter made clear, PIA Staff is authorized to enter into Stipulations just like any other party to this proceeding. Similarly, Nuclear Watch South was free to discuss possible Stipulations with any party it desired. More importantly, the proposed Stipulation was simply a recommendation by two parties to the case. The decision in the case remains the province of the Commission itself and the Commission's process allowed all intervenors the opportunity to cross-examine PIA Staff on the Stipulation and it allowed all intervenors the opportunity to present their own testimony on the Stipulation, on alternatives to the Stipulation, and on all other issues in this proceeding, resulting in an open and fair hearing process.

* * * * *

WHEREFORE IT IS ORDERED that the Commission hereby adopts as an Order of this Commission, the Stipulation executed on behalf of the PIA Staff and Georgia Power Company, which Stipulation is attached hereto as Attachment A and incorporated herein by reference.

ORDERED FURTHER, that consideration of Georgia Power's request to amend the certificate, and any further requests to increase the certified cost, should be held in abeyance until the completion of Vogtle Unit 3.

ORDERED FURTHER, that PIA Staff need not file testimony on the issues raised by the Company's application to amend the Certificate, or on the issues raised in any future amendment request, until the completion of Vogtle Unit 3.

ORDERED FURTHER, that for purposes of interpreting the "180 day rule" in OCGA 46-3A-7, the Company's request for an amendment to the Certificate which was filed on February 28, 2013, as well as any further requests to increase the certified cost, shall be deemed withdrawn and deemed re-filed whenever the issues it presents are considered by the parties to be ripe for consideration.

ORDERED FURTHER, that Commission Rule 515-3-4-.08(b) shall be waived for the duration of the VCM monitoring period and the Company shall withdraw its pending request to amend the Certificate. The costs of the Vogtle Units 3 and 4 project shall be monitored against the first amended Certificate ($6.113 billion) during the semi-annual VCM processes as set out in the Certification Stipulation. As provided in OCGA 46-3A-7(a) costs in excess of the certified amount shall not be allowed in rate base unless they are shown by the Company to have been reasonable and prudent.

ORDERED FURTHER, that Georgia Power Company will combine the VCM 9 and VCM 10 filing into a single filing, which will cover the period from January 1, 2013 through December 31, 2013. The Company will submit the filing on or before February 28, 2014. In lieu of a formal VCM 9 filing, the Company will file on or before September 3, 2013 an abbreviated update on the status of the project and the expenses incurred on the project during the period from January 1, 2013 through June 30, 2013.

ORDERED FURTHER, that in order to preserve issues that could be raised by Staff in VCM 8 or in subsequent VCM periods, if the Commission subsequently makes a finding of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct in the Vogtle Unit 3 and 4 construction, the Commission has the authority to disallow associated financing costs and replacement fuel costs. In the event that such financing costs or replacement fuel costs have already been recovered by the Company from customers, the Company shall credit such costs back to the benefit of customers in a manner to be determined by the Commission.

ORDERED FURTHER, that to the extent that this Stipulation is inconsistent with the Certification Stipulation entered into in March 2009 (as it would affect the filing requirement for VCM 9) or the stipulation entered into on July 15, 2011(addressing Risk Sharing Mechanisms), this Stipulation will govern. Otherwise, those stipulations will remain in full force and effect.

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 Administrative Session on the 3rd day of September, 2013

REECE MCALISTER
EXECUTIVE SECRETARY

CHUCK EATON
CHAIRMAN

10-1-13
DATE

10/8/13
DATE

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In Re:	)	
Review of Proposed Revisions and Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4 Eighth Semi-Annual Construction Monitoring Report	)	Docket No. 29849

Stipulation

Joint Agreement Concerning the Protocol for the Evaluation of Issues Arising During the Eighth Semi-Annual Vogtle Construction Monitoring Reporting Period and the Filing of the Ninth Semi-Annual Vogtle Construction Monitoring Report

The Public Interest Advocacy Staff ("PIA Staff") and Georgia Power Company (the "Company") agree as follows:

1. The Public Interest Advocacy Staff ("PIA Staff") and Georgia Power Company (the "Company") recognize that the Company has requested an amendment to the current Vogtle 3 & 4 Certificate of Public Convenience and Necessity (the "Certificate") to reflect an updated forecast of the schedule and cost to complete. The Company made this request pursuant to Commission Rule 515-3-4-.08(b), which requires the Company to request an amendment to the Certificate when the Company's current cost estimate exceeds the cost estimate in the approved Certificate by five percent. The Company has also requested that the Commission verify and approve the Company's investments in Vogtle 3 and 4 from July 1 through December 31, 2012.

2. The PIA Staff and the Company further recognize that many of the issues presented by the Company's proposed amendment are also subject to, or may be subject to, claims by the Contractors and the pending litigation between the Owners and the Contractors. The PIA Staff and the Company acknowledge that the cost and schedule impacts of several identified Company decisions and actions may not be fully ascertainable until subsequent events unfold. Moreover, some decisions and actions are ongoing in nature and can span multiple reporting periods. Also, the budgeted costs to be reviewed in

considering whether to amend to certificate are forecasted costs, which will be reviewed during subsequent VCM proceedings when and if they become actual expenditures. For these reasons, the PIA Staff and the Company agree that the request to amend the Certificate is not ripe for consideration.

3. The PIA Staff and the Company jointly agree that consideration of the request to amend the certificate, and any further requests to increase the certified cost, should be held in abeyance until the completion of Vogtle 3. The PIA Staff and the Company specifically agree that the PIA Staff need not file testimony on the issues raised by the Company's application to amend the certificate, or on the issues raised in any future amendment request, until the completion of Vogtle 3. The Company specifically agrees that for purposes of interpreting the "180 day rule" in OCGA 46-3A-7, the Company's request for an amendment to the certificate which was filed on February 28, 2013, as well as any further requests to increase the certified cost, shall be deemed withdrawn and deemed re-filed whenever the issues it presents are considered by the parties to be ripe for consideration.

4. Commission Rule 515-3-4-.08(b) should be waived for the duration of the VCM monitoring period and the Company should withdraw its pending request to amend the certificate. The costs of the Vogtle project should be monitored against the first amended certificate ($6.113 billion) during the semiannual VCM processes as set out in the original stipulation supporting the original certification. As provided in OCGA 46-3A-7(a) costs in excess of the certified amount shall not be allowed in rate base unless they are shown by the Company to have been reasonable and prudent.

5. The PIA Staff and the Company also recognize that the period for reviewing VCM 8 and for the Commission's decision on VCM 8 have both been extended by agreement of the parties past the date on which the VCM 9 report is to be filed. The Commission's simultaneous consideration of two VCM filings does not promote administrative efficiency and could complicate the regulatory framework in which the Commission considers the Company's requests related to Vogtle 3 and 4.

6. For that reason, the Company will combine the VCM 9 and VCM 10 filing into a single filing, which will cover the period from January 1 through December 31, 2013. The Company will submit the filing on or before February 28, 2014. In lieu of a formal VCM 9 filing, the Company will file on or before September 3, 2013 an abbreviated update on the status of the project and the expenses incurred on the project during the period from January 1, 2013 through June 30, 2013.

7. In order to preserve issues that could be raised by Staff in VCM 8 or in subsequent VCM periods, the Company agrees that, if the Commission subsequently makes a finding of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct in the Vogtle construction, the

Commission has the authority to disallow associated financing costs and replacement fuel costs. In the event that such financing costs or replacement fuel costs have already been recovered by the Company from customers, the Company shall credit such costs back to the benefit of customers in a manner to be determined by the Commission.

8. To the extent that this Stipulation is inconsistent with the Company and PIA Staff's stipulation at Certification entered into in March 2009 (as it would affect the filing requirement for VCM 9) or the stipulation entered into on July 15, 2011(addressing Risk Sharing Mechanisms), this Stipulation will govern. Otherwise, those Stipulations will remain in full force and effect.

Agreed to this 30th day of July 2013.

On behalf of the Georgia Public Service Commission
Public Interest Advocacy Staff

On behalf of Georgia Power Company

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Review of Proposed Revisions and Verification of	)	
Expenditures Pursuant to Georgia Power Company's	)	
Certificate of Public Convenience and Necessity for	)	**Docket No. 29849**
Plant Vogtle Units 3 and 4, Eighth Semi-Annual	)	
Construction Monitoring Report, and Request to	)	
Amend Certificate	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Adopting Stipulation** in the above-referenced docket was filed with the Commission's Executive Secretary, and a copy of same was served upon all parties and persons listed below via hand-delivery where indicated by an asterisk, or by depositing same in the United States mail with sufficient postage thereon to insure delivery and addressed as follows:

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So certified, this 9th day of October, 2013.

Nancy Gibson/am

Nancy Gibson
Staff Attorney

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before the undersigned officer, duly authorized to administer oaths in the State and County aforesaid, **Kurt Ebersbach**, who, after being duly sworn, deposes and says he is Counsel for Georgia Interfaith Power & Light and the Partnership for Southern Equity, and that the facts contained in the foregoing Petition for Declaratory Ruling and Brief in Support in Docket No. 29849 are true and correct to the best of his information and belief.

This 6th day of November, 2017.

Kurt Ebersbach

Sworn to and subscribed before me
this 6th day of November 2017.

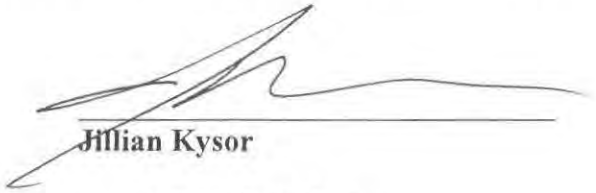
MARY M PEARCE
NOTARY
MY COMM.
EXPIRES
SEP. 21, 2018
PUBLIC
DEKALB COUNTY, GEORGIA

Mary M. Pearce

Notary Public

CERTIFICATE OF SERVICE

I certify that the foregoing Petition for Declaratory Ruling and Brief in Support in Docket No. 29849 was filed with the Public Service Commission by hand delivery on the 6th of November, 2017. An electronic copy of same was served upon all parties listed below by electronic mail as follows:



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