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December 19, 2017

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334

Re: Docket No. 29849
Georgia Power Company's Seventeenth Semi-Annual Vogtle Construction Monitoring Report

Dear Mr. McAlister:

Enclosed for filing please find the Georgia Public Service Commission Public Interest Advocacy Staff's Proposed Order.

We have furnished an electronic and/or a copy by mail of this filing to all parties in this docket.

Sincerely,

Jeffrey C. Stair
Attorney

Enclosures

**In Re: GEORGIA POWER COMPANY'S SEVENTEENTH SEMI-ANNUAL VOGTLE
CONSTRUCTION MONITORING REPORT**

PROPOSED ORDER OF THE PUBLIC INTEREST ADVOCACY STAFF

I. INTRODUCTION

Georgia Power Company ("Georgia Power" or "Company") is asking that the Georgia Public Service Commission ("Commission") verify and approve its increased costs and schedules to complete Plant Vogtle 3 and 4 ("Project"). Implicit in this request is that the Commission deem these increased costs reasonable to recover from ratepayers. The Company carries the burden of proof to make this showing. O.C.G.A. § 46-3A-7(a); SIR Stipulation, Para. 5. For factual and legal reasons, the Commission finds that the Company has not satisfied its burden with respect to the proposed cost increases above \$9.0 billion. Therefore, the Commission disapproves such costs. The Company may either complete the Project with a portion of its proposed cost revisions disapproved, or it may decide to cancel the Project. If the Company chooses not to complete the Project, then the Commission will initiate a proceeding to review what portion of its investment it should recover. *See* O.C.G.A. § 46-3A-7(d).

There are two reasons for disapproving any proposed cost revisions that exceed \$9.0 billion. First, the least cost alternative to the Project is \$8.9 billion; therefore the Project is uneconomic above this amount. The \$8.9 billion figure is derived from the analysis of the Public Interest Advocacy Staff ("PIAS" or "Staff") of the cost to cancel the Project and build a combined cycle unit ("CC"). Ratepayers should not have to pay more for the Project on a going forward basis than the costs associated with the least cost alternative to meet the demand on Georgia Power's system. This Commission has long recognized that the purpose of an integrated resource plan and certification proceedings is to identify the least cost reliable resource. Obligating ratepayers to pay for an uneconomic resource has the effect of penalizing the utility's customers.

The Project is uneconomic on a going forward basis by \$1.6 billion. The Company's analysis of the Project's economics is flawed on three grounds. First, Georgia Power failed to account for the incremental income tax benefits of abandoning the Project. The Company's position is inconsistent as it does account for other incremental effects of abandoning the Project, such as on salvage on the site equipment. Georgia Power has offered no justification for this inconsistency. Second, in an effort to make the Project appear more economic than it is, Georgia Power is proposing a shift in the Net Present Value date. Not only does the Company propose such a change, but it proposes a dramatic change in the Net Present Value date from 2016 to 2021. Third, Georgia Power's natural gas price forecasts are overstated because the Company unreasonably relies on a single source for its estimate as opposed to averaging numerous sources as was done by PIAS. This analysis assumes that Production Tax Credits ("PTCs") will not be

extended through the Company's new estimated completion date for the Project. The reason for this is simple: as of yet, the extension has not been approved, and there is no concrete evidence to support that it will be extended. While the Company has stated that it is confident that the PTCs will be extended, this statement is belied by the fact that the Company insists that all of the risks of a non-extension be placed on ratepayers. However, even if the PTCs were extended, the Project would still be uneconomic. Because the costs that the Company seeks to recover from ratepayers on a going forward basis exceed those of the least cost alternative, the Company cannot meet its burden that it is reasonable to recover these costs from ratepayers.

The second reason to disapprove any costs above \$9.0 billion is that a portion of the Company's proposed increase in costs resulted from the mismanagement of the Project, and as such would be unreasonable to recover from ratepayers. After removing these unreasonable costs from the Company's proposed revisions, the total cost recoverable from ratepayers is \$9.0 billion. Georgia Power has the burden to show that costs over the certified amount are reasonable.

Basic fairness dictates that ratepayers should not have to pay for those excessive costs of the Project over which the Company had some level of control. The Georgia Court of Appeals upheld this Commission's position that ratepayers should not be held responsible for costs that were more within the control of the Company than the ratepayers. There is a common sense and legal distinction between increases in Project costs that result from something outside the Company's control, such as interest rates, and something within the Company's control such as mismanagement of the Project. Not only has this Commission and the Georgia Court of Appeals recognized that the Company should bear those costs that are more within its control, but excluding from cost recovery excessive costs that were more within the Company's control is a necessary ratepayer protection to ensure that rates remain just and reasonable.

Certain costs for which the Company is seeking recovery from ratepayers resulted from Project mismanagement. PIAS identified these costs in its testimony. Key to understanding the analysis of whether ratepayers should have to bear these costs is recognition that the question of cost recovery is not limited to whether it was reasonable for the Company to take the action under the circumstances. Instead, it is necessary to consider whether mismanagement of the process was responsible for placing the Company in the position where it had to incur the expense. The Company has acknowledged that Westinghouse mismanaged the Project. Under the specific record of this case as well as a more general matter of principle, the Company bears responsibility for the failures of its subcontractor.

The Company failed to do what it represented to the Commission during the certification proceeding that it would do. The Company said that it would be an "active manager" that would make sure that the schedule was appropriate and would hold its contractor accountable for the schedule. Regardless of any limitations in the Engineering, Procurement and Construction ("EPC") Agreement, the Company should be held responsible by this Commission for the representations that it made. Put another way, it would not be fair to ratepayers, to not hold the Company accountable. Throughout the monitoring proceedings, the Company consistently informed the Commission that the Project was on schedule and would be completed within

whatever deadline was in place. These projections were consistently wrong. This is not merely an academic issue. There are practical ways in which ratepayers were hurt as a result of the Company's errors. Had the Commission been more accurately informed by the Company as to the depth of the problems facing the Project, the Commission would have had the opportunity to assess the project status and make different decisions earlier on in the construction, when sunk costs were not so daunting an issue. In addition, the Company's failure to recognize and the delays is important because steps weren't taken earlier in the process to better manage the Project. Most notably, a fully integrated Project schedule ("IPS" or "Schedule") was not developed with the attributes outlined in the Institute for Nuclear Power ("INPO") principle number four *Schedules Are Realistic and Understood*, until these proceedings. Having a proper schedule would not merely have informed the parties how far behind the Project was slipping, but it would have provided a basis for accountability that should have improved productivity across all functional areas of the Project. In other words, a good schedule does not simply tell you where you are, it is a vital tool for appropriately managing the Project. On that note, it is a fundamental point of this analysis that the bankruptcy has not caused the delays; but rather, the delays caused the bankruptcy. The increased productivity since the bankruptcy emphasizes the benefits that having an IPS and a credible ETC earlier in the process would have offered.

The Company's filing also includes a Co-Owner agreement in which Georgia Power voluntarily gave the Co-Owners a right that prior to the agreement they indisputably did not have: the right to abandon the Project if any Company costs are disallowed for any reason, including fraud, failure to disclose a material fact or criminal misconduct. The Commission does not approve the Co-Owner agreement by itself or as part of any Project configuration, and the Co-Owner agreement in no way factors into the Commission's decision. The law provides that the Company must show costs over the approved amount are reasonable in order to recover them from ratepayers. The determination of reasonableness doesn't change as a result of the Co-Owner Agreement. This Commission will not approve costs that are not reasonable out of speculation over whether the Co-Owners will abandon the Project in response to the disallowance. There is no basis to think that the Co-Owners will be adversely impacted if the Commission disapproves certain proposed revisions to the cost. Finally, the Company cannot enter into an agreement that impairs its obligation to discharge its public duty to provide just and reasonable service.

II. STATEMENT OF PROCEEDINGS

Georgia Power filed its Seventeenth Semi-Annual Construction Monitoring Report ("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. In accordance with the September 21, 2017, Procedural and Scheduling Order, Public Interest Advocacy Staff filed a Motion to Strike ("Staff Motion") in regards to portions of Georgia Power's Report, which was incorporated by reference in the Company's testimony filed on October 6, 2017. Portions of the Report purported to state the opinions and thought processes of Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and Dalton Utilities. The Staff stated that, "...the Co-Owners have not filed testimony in this proceeding and Georgia Power has not sponsored any Co-Owner witnesses, and the statements contained in the Report and incorporated into the

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testimony are inadmissible hearsay and should be stricken.” (Staff Motion at p. 1). At the November 6, 2017 hearing, the Commission denied the Staff Motion. (Tr. 10).

On October 6, 2017, Georgia Power filed the direct testimony of the panel of Messrs. David L. McKinney and Jeremiah C. Haswell, the panel of Messrs. Mark D. Rauckhorst, Joseph B. Klecha and Tyrone P. Troutman, the panel of Messrs. Richard J. Sieracki and Mark A. Gentry, Mr. Daryl Walcroft. Mr. Jack F Williams, the panel of Ms. Alison R. Chiock and Mr. David P. Poroach, and Mr. David Gattie. Hearings on the Company’s direct testimony were held on November 6-9, 2017.

On December 1, 2017, Staff filed the direct testimony of the panel of Tom Newsome, Philip Hayet and Lane Kollen, the panel of E. Cary Cook and Shemetha Q. Jones, and the panel of William R. Jacobs Jr., Ph.D., Steven D. Roetger and Ralph Smith. On that same date, Southern Alliance for Clean Energy filed the direct testimony of Peter A. Bradford, Georgia State Building and Construction Trades Council and the Augusta Building and Construction Trades Council , filed the direct testimony of Brent Booker, Nuclear Energy Institute filed the direct Testimony of Mary G. Korsnick, Georgia Interfaith Power and Light and Partnership For Southern Equality filed the direct testimony of William M. Cox, PhD. and Jeffrey Berhold, and Nuclear Watch South filed the direct testimony of Joseph T. Pokalsky.

A hearing on the Staff and Intervenors testimony was held on December 11, 12, and 13, 2017. Georgia Association of Manufacturers, Georgia Industrial Group , Resource Supply Management, Municipal Electric Authority of Georgia (“MEAG”), Georgia Watch, and Jacksonville Electric Authority were also parties represented in the proceeding.

On December 11, 2017, the Commission issued an order modifying the Procedural and Scheduling Order. On December 12, 2017, the Commission issued a ruling on the question of when ex parte communication rules would take effect. The Commission ruled that the Commission would, “keep the record open at least until the 10th of January.” (Tr. 1859). In keeping with the Modified Procedural and Scheduling Order, all parties filed briefs and proposed order by 12:00pm December 19, 2017 and the Commission made a determination on this matter during its Special Administrative Session on December 21, 2017.

III. 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.

IV. FINDINGS OF FACT

1. In its 17th VCM filing, the Company requested that the Commission verify and approve the actual expenditures invested in the construction of Plant Vogtle Units 3 and 4 through June

30, 2017. (Tr. 168) The Company has also requested approval of its spending through the end of the 17th VCM period on June 30, 2017. During this period the Company incurred an additional \$542 million in expenditures for a total of \$4.4 billion of capital and construction cost and \$1.41 billion of financing cost for a current Total Project Cost of \$5.85 billion. (17th VCM, p. 11)

2. The Company makes the following five (5) requests in its filing and asks that the Commission make specific findings on the following:

a. That pursuant to O.C.G.A. § 46-3A-7(b), the Commission in the VCM 17 proceeding approves the new cost and schedule forecast and finds that it is a reasonable basis for going forward; and that if the Commission disapproves all or part of the proposed cost and schedule revisions, the Company may cancel Units 3 and 4 and recover its actual investment in the partially completed Facility pursuant to O.C.G.A. § 46-3A-7(d).

b. That the SIR Stipulation remains in full force and effect, including the Company retaining the burden of proving all capital costs above \$5.68 billion were prudent.

c. That while this Commission will make no prudence finding in the upcoming VCM 17 proceeding, nor will the certified amount be amended consistent with the Stipulation, the Commission recognizes 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.

d. That the Company is not a guarantor of the Toshiba Parent Guaranty, and the failure of Toshiba to pay the Toshiba Parent Guaranty, the failure of Congress to extend the PTCs, or the failure of the Department Of Energy ("DOE") to extend the DOE Loan Guarantees to reflect the increased capital amounts, will not reduce the amount of investment the Company is otherwise allowed to collect.

e. That as conditions change and assumptions are either proven or disproven, the Owners and the Commission may reconsider the decision to go forward.

3. In the alternative, the Company recommended that the Commission cancel the Project and allow the Company to fully recover its prudently incurred investment in the partially completed Facility, along with the cost of carrying the unamortized balance of that investment if the Commission disagreed with any of the above assumptions at any time. (Tr. 123-125)

4. The cost forecast presented by the Company in its 17th VCM Report assumes a 68-month delay to both Units and maintains a twelve-month gap between the Units. Consequently, the Company's target in-service dates for Units 3 and 4 are November 2021 and 2022 respectively. (Tr. 143) The Company's new forecast for Project construction and capital costs is now \$8.77 billion, and the new total revised cost is \$12.2 billion, double what this Commission approved in 2009. (Tr. 142, 205) PIAS corrected this amount to \$10.5 billion to account for the \$1.7 billion Toshiba Parental Guarantee, which the Company's figure failed to consider. (Tr. 1826).

5. The Commission finds that the question to be determined in this proceeding is not merely whether the cost and schedule forecasts provided by the Company present reasonable estimates, but whether those costs (capital and schedule related) are reasonably allocated between ratepayers and the Company's shareholders. Given the concerns regarding the performance of the Company and its contractor to date, including cost overruns and the inability to meet previously submitted schedules for commercial operation, the Commission finds that it is not appropriate to allocate all of the Company's forecast cost increase to ratepayers. As described in more detail herein, the Commission finds that a portion of such costs are unreasonable and should more fairly be borne by the Company. In addition, the Commission finds that certain costs should be modified from the Company's request.

The cost and schedule contingency requested by the Company should be modified.

6. The Company considers the difference between the +60-month schedule and the + 68-month schedule to be schedule contingency. The Company has included a total contingency cost of \$1.159 as part of its revised cost estimate. (Tr. 1498) 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. The ratepayers should have the benefit of the best achievable schedule, and the risks associated with eight 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. 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.

7. The cost and schedule contingency cannot be shown to be reasonable at this time, given that they have not yet been identified or spent. The reasonableness of the contingency will be better decided at a later date when there is information pertaining to what those costs were spent on.

8. Deciding the reasonableness of the contingency at a later date does not necessarily preclude the Company from recovery of these costs. Such costs may represent a change in scope that is perfectly legitimate. (Tr. 1569) Modification of the Company's cost and schedule contingency at this time still affords the Company the opportunity to request recovery of such costs if shown to be reasonable and prudent after such costs have actually been identified and spent.

9. The modification of contingencies from the Company's request is consistent with the Commission's treatment of contingencies in the certification proceeding under Docket No. 27800. (Tr. 1503) Further, the Company cannot meet its burden of proof on the reasonableness of these contingency costs if the Company is unable at this time to identify what those costs will be spent on or when such costs will be spent. (Tr. 1774)

Costs above the certified amount should not be verified and approved

10. The certified capital construction cost for the Project is \$4.418 billion. In its Seventeenth VCM Report, the Company has requested verification and approval of an additional \$542 million, which increases the total capital and construction cost to date to \$4.44 billion. Under O.C.G.A 46-3A-7(b), the Commission only verifies and approves expenditures made pursuant to

the certificate. The Company has expressly argued that “approval” of costs under O.C.G.A. 46-3A-7(b) is not a request to change the certified cost and the Company has expressly stated that its Seventeenth VCM Report does not represent a request to amend its certificate. (Tr. 1560) By not seeking an amendment to the certificate in this proceeding, the Company avoided the requirement to file an amended Integrated Resource Plan, and avoided the payments to the State for Commission and additional PIAS consultant resources under O.C.G.A 46-2-33. (Tr. 1561)

11. Staff previously testified that expenditures over the certified amount would not be verified and approved under the terms of the VCM 8 Stipulation. (Tr. 1561)

12. As the Company has not requested an amendment to the certificate, the certified cost cannot be changed and expenditures above the certificated amount cannot therefore be “approved” since they are not “made pursuant to the certificate.”

13. The Commission finds that the break-even point for the Project is \$8.9 billion. This finding is based on PIAS’ analysis comparing the cost to complete the Project against the cost to cancel the Project and build a combined cycle unit (“CC”). The Staff’s modeling assumptions are accepted and relied on by this Commission and include the following:

- a. Loss of PTCs and bonus depreciation due to Company delays: the Commission finds that the loss of the PTCs and bonus depreciation is due to actions and inactions of the Company and its Contractor; therefore, such costs should be borne by the Company and not be borne by ratepayers, however, even if the PTCs are extended the Project would still be uneconomic;
- b. Benefits of the additional United States DOE loan guarantees: testimony indicated that these guarantees have been granted and were taken into effect in PIAS’ analysis;
- c. PIAS’ natural gas forecast: the Company’s natural gas price forecasts are overstated because the Company unreasonably relies on a single source for its estimate as opposed to averaging numerous sources as was done by PIAS;
- d. Incremental income tax benefits of abandoning the Project: the Company’s analysis takes into account several incremental effects of abandoning the Project but ignores the tax benefits, the Commission finds that this is incorrect;
- e. Reductions in the return on equity on sunk costs;
- f. Date for Present Value set at 2018: in an effort to make the Project appear more economic than it is, the Company proposes a dramatic shift in the Net Present Value date from 2016 to 2021. Such a change is not supported. However, a reasonable change to 2018 will be made and will be used for future proceedings;
- g. Assumption that the Toshiba Parental Guarantee payments will be received.

(Tr. 1797-1798, 1802-1803).

14. The Commission accepts the result of Staff's 68-month Delay Economic Evaluation (referred to by the Company as a 29 month delay evaluation) which indicates that on an expected value basis, the Project is expected to be uneconomic by \$1.6 billion. (Tr. 1805). Any further delay beyond that currently forecast by the Company will significantly increase the uneconomic nature of the Project. (Tr. 1805-1806). Because the costs that the Company seeks to recover on a going forward basis exceed those of the least cost alternative, the Company cannot meet its burden of showing that it is reasonable to recover these costs from ratepayers.

15. PIAS also analyzed delay scenarios beyond 68 months. Specifically, PIAS analyzed the following scenarios: additional 24-month delay case (92-month delay case), additional 36-month delay case (104-month delay case) and additional 48-month delay case (116-month delay case). The results showed that the Project would be uneconomic by \$3.3 billion, \$4.1 billion and \$4.9 billion, respectively.

16. The changes in the Project contract terms and configuration presents significantly more risk than expected under the EPC in terms of cost overruns. The terms the Company asks the Commission to accept in this filing place almost no exposure on the Company to that risk by asking that all capital costs be approved as reasonable, even those contingency costs that have yet to be incurred and have no specifically designated purpose. This would negate a very important rate payer protection and shift the financial impact of additional delays and costs overruns almost entirely to ratepayers. (Tr. 1808).

17. In addition to the risk of cost overruns, the loss of the EPC contract now exposes the Company and the ratepayer to additional technology risks should the Units not operate as expected. (Tr. 1809). Under the EPC, WEC bore some financial responsibility should the Project fail to function as designed; now the costs to address any such problems falls on the Company, and potentially the ratepayer.

18. As a result of the delays experienced by the Project, the Company will make considerably more profit over the lifecycle of the Units than it would have had the Project been completed on time. The Company's profit will increase from approximately \$7.4 billion to approximately \$12.6 billion over the Unit's entire lifecycle. (Tr. 1810). The Company generally argues that it is being penalized sufficiently by the terms of the SIR Stipulation. However, the Commission disagrees with the Company's characterization of the SIR Stipulation. This agreement, while reducing profits by \$500 million, merely prevents the Company's profit due solely to the Company's delay, from exceeding \$13 billion. *Id.*

19. These cost overruns have had and will have a negative effect on ratepayers by increasing the revenue requirement and reducing the economic benefit of the Project to ratepayers. (Tr. 1810-1811).

20. The Company can provide adequate and reliable electric service without addressing national security. (Tr. 1377).

21. Following WEC's bankruptcy filing, the Company and its Co-Owners entered in a revised Co-Owners agreement with its partners in this Project – MEAG, Oglethorpe Power, and

Dalton Utilities. (17th VCM, p. 89). The Company has requested that the reasonableness of the Project Configuration, including the revised Co-Owners agreement, Southern Nuclear Company's Proposed Management Structure and Bechtel as a Construction Contractor be considered in this proceeding although Company Witness, David McKinney testified that the Company was not seeking approval of the Co-Owner agreement. (Tr. 185)

22. The revised Co-Owner agreement provides the Co-Owners the right to cancel the Project in the event that the Commission fails "to approve Georgia Power's share of the proposed revised cost forecast and construction schedule" or finds that "any part of Georgia Power's capital investment or associated financing costs (other than already provided in the Stipulation) are not recoverable or will be presumed non recoverable," unless ninety percent of the owners vote to proceed with the Project. (17th VCM Filing, p. 89).

23. The Commission finds that the Co-Owners agreement is unacceptable as it may impair the Company's ability to meet its obligation to its customers. It is this Commission's jurisdiction and responsibility to ensure that Company's customers do not pay unreasonable costs. This agreement attempts to prevent the Commission from doing so breaches the regulatory compact, between the Commission and the utility, and therefore cannot be accepted.

24. On March 29, 2017, Westinghouse Electric Company ("WEC") declared bankruptcy and since that time, has rejected the EPC Agreement with the Company. (17th VCM, Sec. III, p. 33, 35). The EPC Agreement required the Contractor to absorb certain capital cost overruns. (Tr. 1807).

25. The Company transitioned to Southern Company subsidiary Southern Nuclear as the new Project manager. (17th VCM, pp. 6-7). They also transitioned from Fluor as the construction contractor to Bechtel. (17th VCM, pp. 6-7). Contracts between Southern Nuclear and WEC, as the technology provider and Southern Nuclear and Bechtel, as the constructor are on a "cost-plus" basis, leaving the Company and the other Co-Owners now fully responsible for any capital cost overruns. (Tr. 1806-1807). In addition, as a result of WEC's failure to pay several of their contractors prior to the bankruptcy filing, these contractors placed liens on the Project, and the Company took it upon itself to satisfy those liens so that work could continue on the Project. (Tr. 1486).

26. As a result of the bankruptcy, Southern Nuclear performed an evaluation of the Project and developed its own Estimate to Complete. (17th VCM, p. 46). Southern Nuclear determined that the costs and completion schedules previously presented to this Commission were not feasible. (17th VCM, p. 48). In fact, it appears to this Commission that the presented schedule may never have been feasible or achievable. It also appears that the Company has finally compelled its contractors to develop a Level 3 IPS, although it is not clear whether the schedule is finally complete. (17th VCM, p. 48)

27. At Certification, the Company projected that Unit 3 would be in commercial operation in April 2016. In this filing, Company now forecasts that Unit 3 will be in commercial operation in November 2021. (17th VCM, p. 7). At Certification, Unit 4 was projected to be in commercial operation by April 2017. Currently, the Company shows that it expects Unit 4 to be in commercial operation by November 2022. (17th VCM, p. 7). As late as December, 2016, the

Company unequivocally stated that the Company was “going to get this Project completed by December 30th of 2020.” (Tr. 556)

28. The Company now forecasts a schedule delay of 68 months from the Certification dates of 2016/2017, up from 39 months in the 16th VCM filing, and a Total Project Cost of \$12.2 billion, which has doubled from \$6.1 billion at Certification. (Tr. 1786). The breakdown of the \$12.2 billion is \$8.8 billion is Project construction/capital costs, and \$3.4 billion in financing costs. (17th VCM)

29. The \$8.8 billion in construction/capital costs does not take into account the potential receipt of the Toshiba Parental Guarantee. (Tr. 1786, 1791). Should Toshiba Parental Guarantee be received, the total construction/capital costs would be reduced to \$7.1 billion. (Tr. 1786). The \$3.4 billion in financing costs projected by the Company already assumes the receipt of the Toshiba Parental Guarantee. (Tr. 1786). The Commission finds that as presented by the Company, completion of the Project is uneconomic as compared to cancellation of the Project. (Tr. 1788)

The Project was not managed effectively, this failure resulted in delays and increased costs, and the Company had some control over these increased costs.

30. Based on the record, the Commission finds that the Project was not effectively managed. The Commission finds the following costs are as a result of the ineffective practices by the Company and the delay caused by those practices:
- a. Increases in cost due to construction mismanagement;
 - b. Increase in direct engineering, procurement and construction costs of the Project due to the loss of the fixed price cost protection after bankruptcy and the rejection of the EPC agreement by WEC;
 - c. Increase in direct engineering, procurement and construction costs of the Project due to the transition from WEC to Southern Nuclear and from Fluor to Bechtel, including incremental costs to restructure management of the Project, develop construction schedule, EPC cost estimates, etc;
 - d. Increases in owners' costs due to schedule delays;
 - e. Increases in direct engineering, procurement and construction costs of the Project due to the Company's payment of contractor liens against WEC;
 - f. Increases in financing costs incurred through the NCCR and capitalized AFUDC due to the schedule delays and increased construction costs;
 - g. Increases in ad valorem taxes due to schedule delays and increased construction costs;

- h. Increases in ratepayer revenue requirements due to the lost bonus depreciation and production tax credit tax benefits due to the schedule delays
- i. Contingency costs that have not yet been incurred and for which no particular purpose or use has been identified.

31. The loss of the bonus depreciation and PTCs are a direct result of the failure of the Contractor to meet its EPC obligations and the failure of the Company to ensure that the Project is completed before these tax benefits sunset on December 31, 2020.

32. In deciding whether particular costs are unreasonable and as such should not be borne by the Company's ratepayers, it is appropriate for the Commission to consider the Company's own testimony regarding the Company's efforts to manage the Project. Beginning with the certification proceeding in Docket No. 27800, and continuing throughout each of the VCM proceedings, the Company has made representations regarding the cost and schedule to complete the Project that have not been fulfilled. During the certification proceeding, the Company's panel witnesses of Edward Day III and Jeffrey Burleson testified that the Company would be "active managers" of the Project and that the Company would "...have people on site day to day, week to week, month to month, that are watching the processes, watching the schedules, getting advanced schedules for us to look and see if they're appropriate and we're going to hold the consortium accountable for those schedules and methods and processes..." (Tr. 1507) As discussed below, these statements are inconsistent with the actions that were actually taken by the Company or its contractor.

33. Throughout the first seven semi-annual VCM proceedings, the Company continued to represent to this Commission that it was actively managing the Project, would obtain schedules from its contractor, and would hold the contractor responsible for those schedules. (Tr. 557, 1508) Despite these representations, the Project has not been effectively managed, and it is apparent that there has never been a realistic, and therefore achievable, fully integrated schedule for the Project.

34. As early as the Fourth VCM Staff witness Jacobs began warning of schedule slippage and the contractor's inability to recover, or mitigate, that slippage, testifying as to his concern about the contractor's ability to achieve the schedule compression and recover the Project commercial operation dates, given its performance to date in essentially all areas of the Project. (Tr. 1515) Despite the concerns raised by Staff, the Company continued, through the Sixth VCM proceeding, to represent that the Project was on time and on budget. (Tr. 1755) In the Sixth VCM Staff witness Jacobs testified that it was imprudent for the Project to not have a proper integrated Project schedule, a point that was re-iterated by Staff in the Eleventh VCM when Staff testified that "...it runs counter to any prudent Project management, nuclear or otherwise, the Engineering, Procurement, and Construction Agreement requirements, and the nuclear industry's own self-funded INPO Principles for Excellence in Nuclear Project Construction." (Tr. 1516)

35. This pattern has continued throughout the VCM proceedings, with the Company providing testimony that the Project schedule was achievable, followed by testimony that the in-service dates were no longer achievable. This trend of Project slippage has continued through this proceeding, with the Company requesting an additional 68 month delay for each Unit to reach commercial operation. Just as predictably, the Staff has consistently and accurately testified as to its concerns regarding the ability of the Company and its contractor to achieve the continually changing in-service dates of Units 3 and 4.

36. The Company's failure to provide accurate schedules to this Commission, despite the concerns consistently raised by Staff, has had a significant impact on the Project as well as this Commission's considerations. Certainly, had the Company actively managed the Project, insisted that its contractor provide accurate integrated Project schedules and held the contractor to those schedules, this Commission would have been advised far earlier that the Project could not be completed within the original certified amount. As it was, until the Company filed a petition to increase the certified amount in the Eighth VCM proceeding, the Commission was acting under the Company's assurance that there was a greater than 50% chance that the Project would be completed for less than the certified amount. Had this Commission been advised before additional billions of dollars had been expended that the Project could not be completed within the original certified amount and schedule, the economic evaluation of the Project would have looked far different and may have suggested a different decision regarding going forward with the Project. Moreover, the failure to have accurate integrated Project schedules not only prevented the Commission from learning earlier about the delays facing the Project, but it also led to a lack of accountability to meet schedules.

37. The Commission agrees with Staff witness Jacobs' view that the Company's pattern of providing testimony to this Commission as to the fidelity and accuracy of the Project schedule, only to consistently be forced to admit that the promised in-service dates were not in fact achievable is not indicative of a utility that is actively managing the Project. (Tr. 1757). This view is supported by the testimony of Company witness Rauckhorst, the Southern Nuclear Executive Vice President of Vogtle 3 and 4. Despite the Company's consistent representations to this Commission that it would be an active manager of the Project, Mr. Rauckhorst testified that he was aware that "there was not the leadership and accountability within the Westinghouse organization that was driving the accountability to produce the performance" (Tr. 544). Despite representing that he was aware of these fundamental problems at Westinghouse, as recently as December, 2016 Mr. Rauckhorst unequivocally assured this Commission in sworn testimony that the Company was "going to get this Project completed by December 30th of 2020." (Tr. 556). Less than nine months after Mr. Rauckhorst offered his assurances to this Commission, the Company filed its Seventeenth VCM Report projecting the target in-service dates for Units 3 and 4 at November 2021 and 2022 respectively. The events leading to a 23 month delay to the in-service dates could not have simply occurred in the nine months between Mr. Rauckhorst's December, 2016 testimony and the Company's filing of the Seventeenth VCM Report. If the Company was truly actively managing the Project and holding its contractor accountable for Project schedules, the Executive Vice President for Units 3 and 4 would certainly have known in December, 2016 that the Project could not be "completed by December 30 or 2020." Moreover, Mr. Rauckhorst's testimony from December 2016 cannot be reconciled with his testimony from

November 2017. If Mr. Rauckhorst was aware, as he claims he was, of the fundamental problems with the contractor, there is no plausible justification for providing an unequivocal assurance to this Commission that the Project will be completed on time. It is elemental that one cannot reasonably have total confidence in work being done correctly and on schedule when one expresses a basic lack of confidence in the company that is tasked with performing the work.

38. The Company's failure to actively manage the Project manifested itself in areas other than its failure to provide this Commission with accurate schedules. For example, the Company's contractor was unable to meet the quality assurance requirements for the Project. The contractor's inability to meet these quality assurance requirements resulted in the Company having to increase, at considerable cost, its oversight of the contractor's quality assurance work. This additional cost is reflected in the large increase in owners cost. During the certification proceeding for Units 3 and 4, the Staff clearly identified quality assurance as an issue that would require serious attention for the Project to be successful. (Tr. 1525) The Company should have developed plans at that time to be pro-active in mitigating quality assurance risks.

Instead of actively developing plans to mitigate quality assurance risks, the Company initially relied on the EPC Agreement which required the contractor to adhere to Nuclear Regulatory Commission rules regarding quality assurance. The Company took minimal action until an incident relating to First Nuclear Concrete occurred. At that time, each Party to the EPC Agreement had a separate quality assurance program. This lack of cross organizational transparency resulted in a deficient Project and vendor wide quality assurance program.

Had the Company been actively managing the Project as promised, it would have been prepared to intercede when quality issues at the Project were first identified. It was known or knowable that quality assurance would be a significant challenge to the Project for several reasons including the 30-year nuclear construction hiatus in the United States and the need to re-establish the commercial nuclear supply chain, as well as the history of substantial cost overruns and schedule delays that had been experienced with many of the previously constructed nuclear generating units in this country. (Tr. 1528) The level of quality assurance oversight was not sufficient for this Project. The Company should, and could have, performed intrusive inspections and audits of all safety related contractor and major vendors work beginning at Project inception.

39. In addition, the Company failed to assure quality assurance with regard to Shaw Modular Solutions ("SMS"). SMS was primarily responsible for fabricating the structural sub-modules which were to be shipped to the Project site complete, and assembled into full modules. As detailed by Staff witnesses, a Nuclear Regulatory Commission inspection team determined that SMS was not fully implementing its quality assurance program in the areas of training, design control, procurement document control, control of special processes, control of measuring and test equipment, control of nonconforming items, and corrective actions consistent with regulatory and contractual requirements, and applicable implementing procedures.

The payment of liens resulted from the Westinghouse bankruptcy, which in turn resulted from the Project not being managed effectively.

40. The Westinghouse bankruptcy did not cause the delay; the delay caused the bankruptcy. And the delay was the result of ineffective Project management.

41. Numerous vendors who performed work at the Project under contracts with Westinghouse were not paid for the services they performed prior to Westinghouse's bankruptcy filing. The Company subsequently elected to pay such vendors in order to satisfy the liens. Based on the evidence in this proceeding, the Commission finds and concludes that the amount paid by the Company in order to satisfy the liens, \$93 million, is unreasonable and should not be borne by the Company's ratepayers.

42. The payment of liens by the Company represents an additional expense to the Project over which the Company certainly had more control than the ratepayers. Each of Westinghouse's pre-bankruptcy petition vendors was a sophisticated entity and accepted the risk of extending credit to Westinghouse for work performed. (Tr. 1500) Each such vendor had the ability to pursue recovery of their claims through the Westinghouse bankruptcy proceedings. Contracts between Westinghouse and its pre-bankruptcy petition vendors were arrangements over which the Company's ratepayers had no control, and the Company's payment to the vendors to satisfy these liens was certainly more in the control of the Company than the ratepayers. Even at this date, the Company may still proceed against the Westinghouse bankruptcy estate to pursue recovery of all amounts paid to the Westinghouse vendors to satisfy the liens. (Tr. 1768) Therefore, it is appropriate that such costs be borne by the Company and not by its ratepayers.

43. Critically, the determination of whether the lien payments are reasonable for the Company's ratepayers to bear does not hinge on whether it was prudent for the Company to pay the liens once Westinghouse was in bankruptcy. Instead, the Commission looks at what transpired to put the Company in the position that it would have to incur this expense. As Staff witness Roetger testified, payment of the liens by the Company could have been a prudent decision at the time such payments were made. (Tr. 1760) But as Staff demonstrated during cross-examination of Company witness Jack F. Williams, whether the decision was prudent at the time is not the dispositive issue.

Q. (PIAS Counsel) Let's say I borrow your car, and I wrap it around a telephone pole and it becomes engulfed in flames. I grab a fire extinguisher and put out the fire. You could say that my decision to use a fire extinguisher was in the best interests of you, the car owner, but making that statement as a stand-alone statement, somewhat discounts the events that led me to be in a place where I need to use a fire extinguisher. Would you agree with that?

A. (Company witness) Based on the hypothetical you gave, yes. (Tr. 974-75).

Throughout the VCM proceedings the Commission has been assured by the Company that it would actively manage the Project, monitor Project schedules and hold the Contractor accountable for such schedules. Despite these assurances, the Company consistently failed to obtain a fully Integrated Project Schedule. It was this lack of schedule that led in large part to the

Westinghouse bankruptcy, and that bankruptcy in turn led to the liens being placed on the Project.

**The Loss of Production Tax Credits Resulted from the Delays due to
Ineffective Project Management**

44. The Project will qualify for the advanced nuclear facility federal income PTC of 1.8 cents for each kWh of electrical energy produced and sold to third parties for an eight-year period following the placed in-service date of the plant, provided the plant is placed in service prior to January 1, 2021, subject to certain limits. (Tr. 159) The Southern Nuclear estimate to complete, based on information provided by Westinghouse, Southern Nuclear's schedule development and analysis, and industry experience, projects commercial operation dates ranging from February 2021 to March 2022 for Unit 3 and from February 2022 to March 2023 for Unit 4. (Tr. 130)

45. The Company has admitted that it is now clear that the Project will be placed in service after January 1, 2021. (Tr. 159) As discussed above, the Project schedule delay beyond January 1, 2021 resulted from multiple programmatic deficiencies in procurement, construction, design, and engineering by the Company or its contractor. It is clear to this Commission that the intent of Congress when enacting the PTCs was to spur development of nuclear energy within the time frame for eligibility of the PTCs. Congress also provided the time frame it believed was reasonable to build new nuclear units and for those units be operational and producing maximum energy. The Commission finds that this time frame was sufficient to complete the Project had the Company actively managed the Project as promised, and had the Company and its contractor used industry norms and practices. The failure to do so by the Company and its contractor should not encumber ratepayers for increased costs related to the inability to utilize tax benefits due to schedule delays and the inability to meet commitments. Such increased costs represent an additional expense to the Project which is certainly more in the control of Company and stem directly from the failure of the Company and its contractor to actively manage the Project. Therefore, the Commission finds that the additional costs incurred by the Company from the loss of the PTCs costs are unreasonable and should be the responsibility of the Company and not its ratepayers.

46. Based on Georgia Power's repeated representations that it was going to be an active manager of the Project and that it would hold the contractor accountable to its schedules, along with the testimony of Dr. Jacobs and Roetger that there were numerous steps the Company could have taken to influence productivity, the Commission finds that the Company had some control over the costs and timing of the Project. The Commission also finds that it is not fair for ratepayers to have to pay excessive costs that were incurred as a result of construction on the Project being ineffectively managed.

47. The adjustments that should be made to the Company's cost estimates to remove the unreasonable costs are set forth in the table below:

	Capital Cost	Associated Financing³⁸	Total
Company \$8.771 B request	8,771	3,399	12,170

Toshiba Parental Guarantee ³⁹	(1,682)		(1,682)
Schedule Contingency	(530)	(69)	(599)
Interim Payments and Liens	(493)	(164)	(657)
Mobilization costs beyond Dec 31, 2020	(230)	(8)	(238)
Staff Quantification	5,836	3,158	8,994

V. CONCLUSIONS OF LAW

1. Upon completion of the plant, Georgia Power may recover plant construction costs that do not exceed 100 percent of those approved by the Commission under O.C.G.A. §§ 46-3A-5, 46-3A-6 or 46-3A-7(b), unless it is shown that there has been fraud, concealment, failure to disclose a material fact, imprudence or criminal misconduct. The burden rests with the party requesting that the Commission disallow approved costs. O.C.G.A. § 46-3A-7(a).

2. Georgia Power shall not be permitted to recover costs in excess of 100 percent of those approved by the Commission unless shown by the utility to have been reasonable and prudent. *Id.*

3. The IRP Act provides Georgia Power with the discretion as to whether to file proposed revisions to the cost estimates, construction schedule or Project configuration. O.C.G.A. § 46-3A-7(b). The Commission recently determined that the settlements that the Staff and Company entered into and were approved by this Commission in the 8th, 12th and 16th VCMs did not provide that any filing by the Company to revise costs and schedules was deemed withdrawn and refiled at the end of the Project. (September 21, 2017 Procedural and Scheduling Order). Therefore, the Commission must either approve, disapprove or modify the proposed revisions within 180 days of the Company's filing to revise schedules and costs or else the filing is deemed approved by operation of law, except that the Commission may rescind or revise the Procedural and Scheduling Order, dated September 21, 2017, in the event that the Company's recommendation is to abandon the Project for any reason. *Id.*

4. In the event that the Commission disapproves all or part of Georgia Power's proposed revisions, it is the decision of the Company as to whether to cancel the Project. O.C.G.A. § 46-3A-7(d). If the Project is cancelled, the Commission will 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 should be recovered from ratepayers.

5. Capital costs incurred up to \$5.680 billion will be presumed to be reasonable and prudent. (January 3, 2017 Stipulation, Paragraph 4). Interested parties still have the opportunity to rebut the presumption that such capital costs are reasonable and prudent. The Company has the burden to show that costs above this amount are reasonable and prudent. *Id.*

6. The PIAS does not need to address the prudence of costs above the certified amount until the completion of Plant Vogtle Unit 3. (August 30, 2013 Settlement, Paragraph 3).

7. The Commission has identified as an issue to be determined as part of this proceeding whether it should verify and approve the expenditures made between January 1 and June 30, 2017. Once costs are verified and approved, then they can only be excluded from rate base upon a finding of fraud, concealment, failure to disclose a material fact, imprudence or criminal misconduct. Once verified and approved, costs cannot be excluded from rate base upon a finding that they are unreasonable. O.C.G.A. § 46-3A-7(c). Based on the foregoing, the Commission concludes as a matter of law that \$44 million of the costs expended by the Company during the period January 1, 2017 to June 30, 2017 should be verified and approved. Verification and approval of costs means a determination that such costs have actually been spent on the Project and does not preclude a subsequent disallowance by this Commission.

8. The Company has not met its burden to show its proposed revisions to the costs and schedules are reasonable both because the Project is not economic under a forward looking analysis, and because it is not reasonable to recover from ratepayers excessive costs over which the utility had more control.

9. Based on the finding of fact that the Project is not economical above \$9.0 billion, the Commission concludes as a matter of law that it would be unreasonable to approve the Company's proposed cost and schedule revisions above that dollar amount. The PIAS analysis shows that the Project is uneconomical by \$1.6 billion assuming the PTCs are not extended, and by \$0.7 billion if the PTCs are extended. So, even if the PTCs are extended, the Project is uneconomical, assuming the Company's proposed revisions are adopted. The IRP Act provides for the certification of resources that can meet the need on the utility's system in an "economical and reliable manner." O.C.G.A. § 46-3A-4(a). Although it is reasonable for the Commission to consider fuel diversity as a benefit to consumers, the Company has not quantified this benefit, and there is no basis in the record to conclude that the benefits of fuel diversity is substantial enough to account for the difference between the cost of the Project and the cost of the least cost alternative. The Commission will ensure that Project completion is economic compared to cancellation, will provide an appropriate allocation of risks and costs between the Company and its customers, and will ensure that costs identified as unreasonable by PIAS in this proceeding will be borne by stockholders, and not ratepayers.

10. Consistent with Staff testimony, the Commission declines to adopt the Company's proposed condition that the Project capital costs not be reduced in a future rate proceeding if the Project does not qualify for the Production Tax Credits ("PTCs"). Instead, the Commission adopts a condition that because of the Company's repeated schedule delays, the failure to receive the PTCs, unless extended by Congress, will be reviewed in a future post-construction prudence and reasonableness review of the Company's actual decisions, actions, and inactions, and the actual costs that were incurred. The Commission will consider as part of that review the fact that the Company is no longer eligible for 50% or any other amount of bonus tax depreciation because of the repeated schedule delays.

11. The Company has included a contingency amount to complete the Project of \$1.159 billion. By the nature of the contingency, the Company did not provide support for what purpose the contingency would be used. Therefore, the Commission cannot determine the legitimacy of the

expense that the contingency may or may not be used to cover. Georgia Power cannot meet its burden of proof to demonstrate that the contingency is reasonable to recover from ratepayers when it has not been stated what the contingency will cover. Because the Commission finds that it is possible that this expense may be shown to be reasonable at some future date, the Commission is not approving or disapproving these expenses, and instead, will modify the Company's proposed revisions to not include the contingency at this time.

12. The Georgia Court of Appeals held:

The purpose and nature of rate making . . . is not to resolve fault or damages in the same sense that these issues are determined and litigated in contract and negligence disputes between owners, contractors, subcontractors and suppliers. Instead, it is to set a fair and reasonable rate for both the ratepayer and the utility.

Ga. Power Co. v. Ga. Public Serv. Com., 196 Ga. App. 572, 584 (1990).

In this same decision, the Court of Appeals explained that, in the underlying administrative proceeding, the Commission "noted that excessive or unreasonable costs could result from a decision that was prudent when made, but that "[t]he determinative issue is not whether the decision to incur the costs was prudent, but *who should bear such costs.*" *Id.* at 578 (emphasis in original) (footnotes excluded). In examining the costs that were excluded, the Commission reasoned that it was appropriate to allocate the costs to the Company, as opposed to the ratepayer, because the expense in question was more in the control of Georgia Power's management. *Id.* at 579. Although the Integrated Resource Planning ("IRP") statute was enacted after the issuance of *Ga. Power Co. v. Ga. Public Serv. Com.*, the reasoning is consistent with the IRP Act. On April 5, 2017 in this Docket, the Company filed its Supplemental Information Report that included the Expert Report by former Georgia Supreme Court Justice Norman Fletcher. In his report, former Justice Fletcher stated that this Court of Appeals decision "is not contrary to [his] reading of the statute, which also makes a distinction between 'reasonable' and 'prudent.'" (Expert Report, p. 10). Based on the foregoing, the Commission concludes as a matter of law that excessive costs over which the Company had some control are not reasonable to recover from ratepayers.

The Company is responsible for its contractor's decisions, actions, and inactions which resulted in the Project's increased cost. It is also responsible for its own actions and inactions as well as its failure to live up to its assurances to this Commission of being an "active manager" of this Project. In this regard there is no distinction between the Company's responsibility on behalf of its contractor and its own responsibility. It is unreasonable for ratepayers to have to bear increased costs as the result of the shortcomings of the Company's chosen contractor and the Company itself.

In the event that PTCs are not extended, the additional costs incurred by the Company from the loss of the PTCs represent an additional expense to the Project that is certainly more in the control of Company and stem directly from the failure of the Company and its contractor to actively and effectively manage the Project. Additionally, consistent with the findings of fact that the ineffective Project management contributed to the delay, which in turn, contributed to the bankruptcy, the Company had some control over the expense related to the payment of liens.

As stated, in the factual findings, the issue is not whether the payment of the liens once in bankruptcy was prudent. Instead, the question is whether it is reasonable to recover this expense from ratepayers. Application of the legal standard established by the Georgia Court of Appeals and this Commission to the evidence that shows that the Company's level of control as a purported "active manager" of the Project, the Commission concludes as a matter of law that it is not reasonable to recover from ratepayers the costs associated with the loss of the PTCs or the liens. Therefore, the Commission finds that these costs are unreasonable and should be the responsibility of the Company and not its ratepayers.

13. Georgia Power may only recover for those costs that are used and useful in the provision of electric service. See *Ga. Power Co. v. Ga. Public Serv. Com.*, 196 Ga. App. 572, 577 (1990) ("a reasonable return on the net valuation of the utility's property used and useful in the public interest." quoting *Georgia Power Co. v. Ga. Public Svc. Comm.*, 231 Ga. 339, 341 (1973)). The record shows that any costs related to national security interests are not used and useful in the provision of electric service. Therefore, any effect that the Project may have on national security interests is outside the scope of this proceeding. Georgia Power ratepayers should not have to pay as part of their electric bill any costs associated with national security. An uneconomic plant should not be built based on a purported non-monetized benefit to national security, unless the federal government or some other entity is willing to pay the difference between the break-even point with the least cost alternative and the total cost of the Project.

14. Georgia Power has "the right to enter into contracts between themselves, or with others, free from control or supervision of the State, so long as such contracts are not unconscionable or oppressive and do not impair the obligation of the utility to discharge its public duties." *Georgia Power Co. v. Georgia Public Service Commission*, 211 Ga. 223, 228 (1954). This holding by the Georgia Supreme Court recognizes the distinction between two private parties entering into a contract that does not impact the rights of anyone other than the contracting parties, and two private parties entering into a contract that may adversely impact non-parties to the agreement. Such is the present case with the Co-Owner agreement. It is not disputed that Georgia Power, through the Co-Owner agreement, has given the Co-Owners a right that they previously did not have. Specifically, the Co-Owner agreement provides the Co-Owners with the right to abandon the Project if there are any cost disallowances for any reason. Of course, it is this Commission's charge to disallow certain costs for the reasons listed in O.C.G.A. § 46-3A-7. If, in response to the disallowance contained herein, Co-Owners abandon the Project pursuant to the Co-Owner agreement, then that may jeopardize the completion of the Project. Through cross-examination, Georgia Power suggested that this was a non-issue because, faced with disapproval of its proposed cost increases, the Company has the ability to choose to cancel the Project. (Tr. 2029). This misses the point entirely. Prior to the agreement, Georgia Power *could* continue with the Project, even if this Commission disapproved of some costs as unreasonable, in which case Georgia Power's ratepayers would still receive the benefit of what this Commission had determined to be the least cost reliable resource. But, under the Co-Owner Agreement, that is no longer the case. Even if Georgia Power is willing to absorb some disallowances and complete

the Project, the Co-Owners can thwart the Project by abandonment. That is unconscionable, and it impairs the obligation of the utility to discharge its public duties.

The Commission is also not persuaded by the Company's inferences that how the Co-Owners may react to a disallowance should influence the Commission's decision as to whether a cost is reasonable or unreasonable. During Georgia Power's cross-examination of PIAS panel Newsome, Hayet, Kollen, the following exchange took place:

Q (Counsel for Georgia Power) . . . what I'm suggesting is, is that if it is unfair to allocate certain costs -- capital costs to Georgia Power customers, perhaps the MEAG and Oglethorpe customers themselves will decide they don't want to allocate that to themselves either, and since these dollars haven't been spent yet, they'd just as soon not spend them.

A (Witness Kollen) Well, that would be up to their boards or their city councils. That's not this Commission's jurisdiction, quite frankly. (Tr. 2022).

PIAS witness Kollen is correct. The Commission does not set rates for the Co-Owners. Its charge is to ensure that the rates Georgia Power charges are just and reasonable. Georgia Power's cross illustrates that the Co-Owner agreement is unconscionable. Prior to entering into the agreement, the Co-Owners did not have the right to abandon the Project in response to a finding by the Commission that certain costs should not be recovered from the Company's ratepayers because the costs were not shown to be reasonable. Now, the Co-Owners have that right. And Georgia Power suggests that the Commission should weigh how the Co-Owners may exercise that right in its consideration of whether it is reasonable to make the Company's ratepayers foot the bill for excessive costs that were within the Company's control.

It is also not lost on this Commission the self-serving nature of the Co-Owner Agreement. Georgia Power stands to benefit if the threat of the Co-Owners abandoning the Project caused this agency to approve the recovery from ratepayers of unreasonable costs. However, the Commission concludes as a matter of law that such a threat does not factor into the determination of whether a cost is reasonable. The Commission cannot approve the recovery of costs above the approved amount, unless it has been shown that the costs are reasonable and prudent. O.C.G.A. § 46-3A-7(a).

Moreover, Georgia Power's argument that it was somehow required to accommodate the Co-Owners' positions in the contract because it is acting as their agent is erroneous. (Tr. 2029-30). Georgia Power has confused being an agent of the Co-Owners for purposes of the construction, which it is, with being an agent of the Co-Owners for purposes of negotiation of the Co-Owner Agreement, which it is not. Indeed, it is difficult to understand how it could be an arms-length contract if Georgia Power was negotiating on behalf of every party to the agreement.

VI. ORDERING PARAGRAPHS

WHEREFORE IT IS ORDERED, that the Commission verifies and approves \$44 million of the costs expended by the Company during the period January 1, 2017 to June 30, 2017 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. Verification and approval of costs means a determination that such costs have actually been spent on the Project and does not preclude a subsequent disallowance by this Commission.

ORDERED FURTHER, that the Commission denies the Company's request for approval of its new cost and schedule forecast and finds that it is not a reasonable basis for going forward with Plant Vogtle Units 3 and 4.

ORDERED FURTHER, that the Commission finds that costs above \$9.0 billion are unreasonable to recover from ratepayers.

ORDERED FURTHER, that the Commission declines to adopt the Company's proposed condition that the Project capital costs not be reduced in a future rate proceeding if the Project does not qualify for the Production Tax Credits. Instead, the Commission adopts a condition that because of the Company's repeated schedule delays, the failure to receive the PTCs, unless extended by Congress, will be reviewed in a future post-construction prudence and reasonableness review of the Company's actual decisions, actions, and inactions, and the actual costs that were incurred.

ORDERED FURTHER, that the Commission modifies the Company's proposed revisions to not include the \$1.159 billion contingency.

ORDERED FURTHER, that the Commission rejects the Company's proposed condition that effectively restates, and possibly modifies, the terms of the SIR Stipulation adopted by the Commission on January 3, 2017. The Commission adopts the Company's proposed condition that affirms the terms of the SIR Stipulation.

ORDERED FURTHER, that the Commission rejects the Co-Owner Agreement and finds that the Co-Owner Agreement is unacceptable as it impairs its obligation to discharge its public duty to provide just and reasonable service. The Commission's determination of what costs are unreasonable did not consider the Co-Owner Agreement.

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

Stan Wise
Chairman

Date

Date

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **PROPOSED ORDER OF THE GEORGIA PUBLIC SERVICE COMMISSION PUBLIC INTEREST ADVOCACY STAFF** upon all parties listed below via electronic service or by hand delivery and addressed as follows:

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This 19th day of December 2017.

A handwritten signature in cursive script, appearing to read "Jeff Stair", written over a horizontal line.

Jeffrey Stair

Attorney for the Georgia Public Service Commission