

COMMISSIONERS:

TRICIA PRIDEMORE, Chairman

TIM G. ECHOLS, Vice-Chairman

LAUREN "BUBBA" McDONALD

JASON SHAW



FILED

AUG 24 2021

**EXECUTIVE SECRETARY
G.P.S.C.**

**REECE McALISTER
EXECUTIVE SECRETARY**

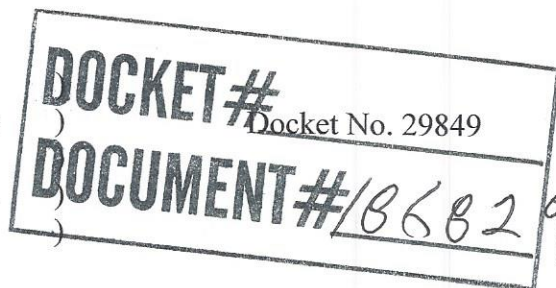
Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Twenty-Fourth Semi-annual Construction Monitoring Report.



ORDER ADOPTING STIPULATION

Background

In Docket No. 27800, Georgia Power Company ("Georgia Power," "Company," or "GPC") filed an Application on August 1, 2008, for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan ("Application"). In its Application, the Company sought Georgia Public Service Commission ("Commission") approval of its addition of Units 3 and 4 at Plant Vogtle ("Vogtle Units 3 and 4"). In its Amended Certification Order issued March 30, 2009, the Commission approved the Company's Application for the Certification of Vogtle Units 3 and 4 at an in-service cost of \$6.447 billion¹ as modified by a Stipulation between the Commission Public Interest Advocacy Staff ("PIA Staff") and the Company ("Stipulation").

Paragraph 2(c) 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). The Stipulation requires the Semi-annual Monitoring Reports to 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.

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

Prior to the first Vogtle Construction Monitoring (“VCM”) filing, in an agreement with the Company, PIA Staff established a separate monitoring docket in Docket No. 29849. The Commission Order from the First VCM adopted a Stipulation between PIA Staff and the Company, which in part, revised the certificated project cost downward to reflect Construction Work-In-Progress (“CWIP”). The Certificated amount for the project as reflected in paragraph 4 of the Stipulation was revised to \$6.113 billion.² Of that \$6.113 billion, \$4.418 billion was the forecasted capital and construction costs and \$1.695 billion was the forecasted financing costs.

The Commission, in its January 11, 2018 Order in the 17th VCM, approved a revised capital and construction forecast cost of \$7.3 billion and found that any costs spent up to this revised cost forecast will be deemed reasonable, but will be subject to the findings and presumptions as defined in the Stipulation approved on January 3, 2017. Costs verified and approved through the 14th VCM were also deemed prudent as set forth in the Commission’s January 3, 2017 Order. Costs up to \$5.68 billion are presumed prudent and the burden of proof to demonstrate imprudence shall be on the party challenging such costs. Costs above \$5.68 billion are not presumed prudent and the Company shall retain the burden to show prudence on such costs.³ This revised cost of \$7.3 billion is net of the Toshiba Parental Guarantee and does not include the Project finance costs.

In its Certification Order dated March 30, 2009, the Commission required Georgia Power Company to provide specific information in each Semi-annual Construction Monitoring Report. The information the Company was required to provide was subsequently revised in the Commission’s Order on the Ninth/Tenth Construction Monitoring Report. In its Eighteenth VCM Order dated August 24, 2018, the Commission ordered the Company to expand the reporting of project risks in their filings by including up-to-date analysis of contingency, and quantification of each risk, where reasonably estimated. The Commission also ordered the Company to include any variance(s) to its plan, both cost and schedule, quantified in dollars and days, respectively, and fully explained.

For the second quarter of 2018, Georgia Power Company incurred a charge to income of \$1.1 billion consisting of an increase in Vogtle forecast construction costs of \$700 million and an additional contingency of \$400 million.⁴ At the same time, the Company reduced its investment in Construction Work in Progress for the Vogtle Project by \$1.1 billion. The Company has stated that it will not seek approval of a revised cost estimate for the additional construction costs of \$700

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

³ These prudence and imprudence determinations will be made after reaching fuel load of Unit 4.

⁴ Georgia Power Company 10-Q 6/30/2018 P.78.

million. In addition, the Company will not seek rate recovery of this \$700 million and these construction costs shall be borne by stockholders. Above the \$7.3 billion, the Company will first expend in total the increase in forecast construction costs of \$700 million before charging Project expenditures to the additional contingency of \$400 million or any other future forecasted cost increase. The Company stated that it was not requesting approval of a revised cost estimate to include the additional forecasted contingency of \$400 million at that time; but, reserved its right to request approval in a future proceeding.

On February 18, 2021, Georgia Power filed with the Commission its Twenty-Fourth Semi-annual Construction Monitoring Report (“Monitoring Report”). Paragraph 2(c) of the Stipulation in Docket 27800 requires the Company to file its Report for the six-month period of July through December on February 28th of the subsequent year. Consequently, the Staff and the Company agreed that, for statutory purposes, the actual filing date of the Report of February 18, 2021 was early, and therefore the Report was deemed filed as of February 26th, 2021, or the last business day in February. The Monitoring Report includes construction costs from July 1, 2020 up to and including December 31st, 2020. In the Report the Company requested verification and approval of \$670 million of Project expenditures.

The Company did not propose any revisions in the cost estimates, construction schedule, or project configuration in its Twenty-Fourth VCM report.⁵

Jurisdiction

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

Applicable Statutes

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

In addition to the review of the continuing need for an electric plant under construction prescribed in Code Section 46-3A-6, the Commission, upon its own motion, may conduct or the utility may request that the Commission conduct an ongoing review of such construction as it proceeds. Every one to three years, or at

⁵ While the VCM 8 stipulation does not prohibit the Company from requesting amendments to the certificate prior to completion of Unit 3, the stipulation provides that the proceeding to consider any such requests to amend the certificate shall be held in abeyance until the completion of Vogtle Unit 3.

such lesser intervals upon the direction of the Commission or request of the utility, the applicant shall file a progress report and any proposed revisions in the cost estimates, construction schedule, or project configuration. Within 180 days of such filing, the Commission shall verify and approve or disapprove expenditures made pursuant to the Certificate and shall approve, disapprove, or modify any proposed revisions. If the Commission fails to so act within 180 days after such filing, the previous expenditures and any proposed revisions shall be deemed approved by operation of law.

Issue Involved and Proceedings

The Commission issued a Procedural and Scheduling Order (“PSO”) on March 16, 2021, but was revised March 23, 2021 setting out one issue to be decided during this proceeding:

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

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

If the Commission verifies expenditures as made pursuant to a certificated capacity resource, that verification forecloses subsequent exclusion of those costs from the utility’s rate base, absent fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct. O.C.G.A. § 46-3A-7(c).

Following Georgia Power’s February 18th submission, seven parties filed for intervention: Concerned Ratepayers of Georgia (“CRG”); Georgia Association of Manufacturers (“GAM”); Georgia Interfaith Power & Light and Partnership for Southern Equity (“GIPL-PSE”); Georgia Watch; Resource Supply Management (“RSM”); and Southern Alliance for Clean Energy (“SACE”).

On April 20, 2021, Georgia Power filed the Direct Testimony of David L. McKinney and Jeremiah C. Haswell and the Direct Testimony of Stephen E. Kuczynski and Aaron P. Abramovitz in support of the VCM 24 Report. The Commission held a hearing on Georgia Power’s direct case on May 18, 2021.

On June 7, 2021, PIA Staff filed the Direct Testimony of Steven D. Roetger and William R. Jacobs, Jr., Ph.D.; Donald Grace; Tom Newsome, Philip Hayet, and Lane Kollen, and Shemetha Q. Jones. No intervenor filed testimony in this proceeding. The Commission heard testimony and cross examination of PIA Staff on June 24, 2021.

On July 12, 2021, Georgia Power notified the Commission that it would not file rebuttal testimony in this proceeding.

Statement of the Case

On July 29, 2021, PIA Staff and the Company filed a Stipulation (Attached as Exhibit “A”) designed to resolve the one issue identified in the PSO and to address the issue of how the Commission should review costs in excess of the \$7.3 billion previously “deemed reasonable” in the Commission’s Order on the Company’s Seventeenth VCM Report which was raised by PIA Staff testimony.

A brief in support of the Stipulation was filed by Georgia Power. Briefs were also filed by Concerned Ratepayers of Georgia, Resource Supply Management, Georgia Interfaith Power & Light and the Partnership for Southern Equity and Southern Alliance for Clean Energy. Georgia Association of Manufacturers and Georgia Watch intervened in this proceeding but did not file briefs.

The Company requested verification and approval of actual expenditures incurred during this reporting period of \$670 million. (24th VCM Report at p. 5). (McKinney-Haswell’s Testimony at p. 12). (Company’s Brief at p. 2). PIA Staff recommended “that the expenditures of \$670 million incurred during the Twenty-Fourth VCM period be verified and approved.” (Roetger-Jacobs’ Testimony at p. 75). Provision one (1) of the Stipulation calls for the Commission to verify and approve the \$670 million in expenditures made by Georgia Power pursuant to the Certificate of Public Convenience and Necessity and O.C.G.A. § 46-3A-7(b) for Plant Vogtle Units 3 and 4 for the period July 1, 2020 through December 31, 2020. (Stipulation p. 1).

Provision two (2) of the Stipulation includes language which has appeared in previous VCM orders: “‘Verification and approval’ of costs means a determination that such costs have been spent on the Project and does not preclude subsequent exclusion from the Company’s rate base by the Commission on the basis of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct.” Provision two also states “All Commission decisions regarding the prudence of investments not already deemed prudent in paragraph 1 of the Stipulation approved by the January 3, 2017 Order Adopting Stipulation shall be made after a prudence review as contemplated in the VCM 17 Order dated January 11, 2018. The Company

retains the burden of proof on prudence on all capital costs above \$5.680 billion.” (Stipulation at p. 1)

Provision three (3) of the Stipulation acknowledges that “Beginning with the VCM 25 reporting period (January 1, 2021 through June 30, 2021), the Project has exceeded the \$7.3 billion capital costs forecast previously ‘deemed reasonable’ by its VCM 17 Order.” (Stipulation at p. 1).

Provision four (4) restates language provided in the VCM 17 Order regarding the continuation of semi-annual VCM reviews and the understanding that the VCM 17 Order provides that all issues pertaining to prudence not already decided by the Commission in the January 3, 2017 Order Adopting Stipulation will be determined in a later proceeding. Provision five (5) speaks to the agreement between PIA Staff and the Company regarding the VCM 19 PSO as it relates to the treatment of a charge to income by the Company of \$1.1 billion consisting of an increase in Vogtle forecast construction costs of \$694 million and an additional contingency of \$366 million. (Stipulation at p. 1).

Provision six (6) sets out agreement between PIA Staff and the Company that for VCM proceedings starting with VCM 25, while it is appropriate for the Company to continue reporting on the progress and cost of Plant Vogtle Units 3 and 4 (the “Project”) and for the semi-annual construction monitoring process to continue through completion of the Project, it is no longer appropriate for the Commission to verify and approve the dollars invested in the Project prior to the conclusion of the prudence review contemplated by the VCM 17 Order since the Company has exceeded the approved revised capital cost of \$7.3 billion. (Stipulation at p. 2). As stated in the Company’s brief, Georgia Power will continue to file construction monitoring reports on a semi-annual basis through completion of the Project and the Commission will continue holding the VCM proceedings. However, beginning with VCM 25 and in each subsequent VCM proceeding thereafter, the Commission will only review costs incurred on the Project above \$7.3 billion without making determinations as to reasonableness or prudence. Further, the Company will not seek verification and approval of such costs prior to the prudence review contemplated by the VCM 17 Order. (Georgia Power Brief p. 4).

Finally, provision seven (7) states that PIA Staff and Georgia Power agree that the process as described in the Stipulation (starting with VCM 25) is allowed by Georgia statute and the VCM 17 Order. In its brief, the Company states that the Parties to the Stipulation agree that the Commission is not obligated to verify and approve costs if the Company does not seek such verification and approval during a Reporting Period, but the Company may later seek verification and approval of the expenditures over \$7.3 billion. This provision also states that “...subject to the Company's agreement that it will not seek to recover in rates \$694 million addressed in VCM 19, all determinations of the reasonableness of Project expenditures above the \$7.3 billion approved

in VCM 17 shall be reserved until the prudence review contemplated by the VCM 17 Order and the Company shall continue to bear the burden of proof on the reasonableness of such costs.” (Stipulation p. 2)

CRG recommended that the Commission enact cost caps for the construction costs of Plant Vogtle Units 3 and 4 whereby it claimed “... that any cost over X amount of dollars, regardless of cause/reason, is the financial responsibility of GA Power.” CRG stated that it has been advocating this position for years through testimony, briefs, cross of Georgia Power and PIA Staff witnesses and even as public witnesses. (CRG Brief pp. 45-46). By its own admission, CRG has acknowledged that the Commission has been previously presented with this issue, considered and rejected the notion of cost caps.

GIPL-PSE recommended that the Commission take no action to verify or approve sums presented after this VCM but instead hold any such requests in abeyance pending the final prudency review. (GIPL-PSE Brief p. 3). GIPL-PSE stated specifically that “If Georgia Power does not seek to amend its certificate, the Commission should hold all future request for approval of project costs in abeyance until the final prudency review.” (GIPL-PSE p. 14). The Commission notes provisions six and seven of the Stipulation provide a process for the treatment of costs above \$7.3 billion including agreement that Georgia Power will not seek verification and approval of costs above \$7.3 billion prior to the prudence review contemplated by the VCM 17 Order.

In its brief, RSM stated that the proper action for this Commission is to deny any recovery of Vogtle cost and profits from being imposed on ratepayers and that if the Commission approves the Company’s requests, it will result in significant rate increases for customers. Therefore, future Commission actions should explore ways to cut other costs that are imposed on electricity customers. RSM presents a list of customer costs that can be reduced or eliminated to mitigate to some extent what it believes to be the growing, unchecked Vogtle costs to customers. Specifically, RSM recommended that the Commission: (1) End the cross-class subsidy from small businesses to residential customers;(2) Stop the favoritism of renewable generation and electric vehicles; (3) Eliminate phantom taxes; (4) Stop natural gas hedging with ratepayer money; (5) The Company’s and the Commission’s Demand Side Measures programs should cease; and (6) Enhance customer demand response. (RSM Brief pp. 1-3). While the Commission appreciates and welcomes intervenor input in all matters, these recommendations, as RSM puts it, are requests “for future Commission action” and therefore, are not appropriate for a ruling in this Proceeding, but will be considered, if brought back to the Commission in the upcoming Georgia Power rate case and Integrated Resource Planning proceedings.

SACE offered four (4) recommendations in this proceeding:

- 1) The Commission should disallow the cost of the various “rebaselining” or “schedule refinement” efforts that do not provide value to this process and disallow costs associated with the March 2021 site-wide stand-down to address quality issues and costs associated with the uncommonly high level of rework. The Commission notes that the Stipulation provides that it is no longer appropriate for the Company seek verification and approval of dollars invested in the Project during the 25th VCM so the additional \$649 million that was a result of the March delay is not an issue in this proceeding;
- 2) The Commission should prospectively order that responses to the five questions that relate to Peak Rate Impacts by Customer Class in STF-5 (docket 43838) not be redacted; The Commission finds that SACE should be s aware, that as a party to the proceeding, has the ability to sign a confidentiality agreement or challenge the trade designation before the Commission and have full access to the information.
- (3) Future PSOs should be amended to reflect actual practices of the Commission. Changes should include, but not be limited to removing the following provision: “Summations should be limited to testimony and exhibits in the pre-filed testimony;” Proposed Procedural and Scheduling Orders are presented by PIA Staff to the Commission during its regularly scheduled Energy Committee. The Commission invites SACE to address any issues that it may have with that document during deliberation at that time.
- (4) The Commission should order that any costs above \$8 billion (\$7.3 billion deemed reasonable plus \$700 million the Company agreed to absorb) need not be verified but could be brought forward by the Company in a subsequent prudence hearing. (SACE Brief pp. 6-7). The Commission’s adoption of the Stipulation, and specifically provisions six and seven, provide a process for the treatment of costs above \$7.3 billion including agreement that Georgia Power will not seek verification and approval of costs above \$7.3 billion prior to the prudence review contemplated by the VCM 17 Order.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After thorough consideration of the attached Stipulation, the Commission finds as a matter of fact and concludes as a matter of law that the terms and conditions of the Stipulation are reasonable and in the public interest. The Commission further finds and concludes that adoption of the Stipulation constitutes a fair, efficient, effective and responsible discharge of the Commission's duties in accordance with Georgia law. All other recommendations and/or requests are denied.

ORDERING PARAGRAPHS

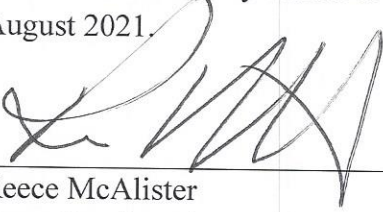
WHEREFORE IT IS ORDERED, that the Commission hereby adopts as an Order of this Commission, the Stipulation attached as Exhibit "A" executed on behalf of PIA Staff and Georgia Power, and incorporated herein by reference and thereby verifies and approves the expenditures made by Georgia Power Company pursuant to the Certificate of Public Convenience and Necessity and O.C.G.A Section 46-3A-7(b) for Plant Vogtle Units 3 and 4 for the period beginning July 1, 2020 through December 31, 2020.

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.

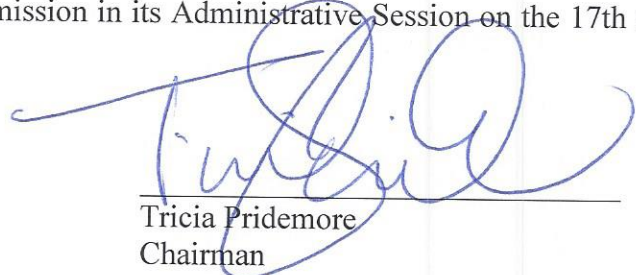
The above by action of the Commission in its Administrative Session on the 17th day of August 2021.



Reece McAlister
Executive Secretary

8-24-21

Date



Tricia Pridemore
Chairman

8-24-21

Date

STIPULATION


The Georgia Public Service Commission ("Commission") Public Interest Advocacy ("PIA") Staff and Georgia Power Company ("Georgia Power" or "Company") agree that the Twenty-fourth Semi-annual Vogtle Construction Monitoring ("VCM 24") proceeding should be resolved by the Commission entering an order that finds as follows:

1. The Commission verifies and approves the \$670 million in expenditures made by Georgia Power pursuant to the Certificate of Public Convenience and Necessity and O.C.G.A. § 46-3A-7(b) for Plant Vogtle Units 3 and 4 (the "Project") for the period July 1, 2020 through December 31, 2020.
2. "Verification and approval" of costs means a determination that such costs have been spent on the Project and does not preclude subsequent exclusion from the Company's rate base by the Commission on the basis of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct. All Commission decisions regarding the prudence of investments not already deemed prudent in paragraph 1 of the Stipulation approved by the January 3, 2017 Order Adopting Stipulation shall be made after a prudence review as contemplated in the VCM 17 Order dated January 11, 2018. The Company retains the burden of proof on prudence on all capital costs above \$5.680 billion.
3. Beginning with the VCM 25 reporting period (January 1, 2021 through June 30, 2021), the Project has exceeded the \$7.3 billion capital cost forecast previously "deemed reasonable" by the Commission in its VCM 17 Order.
4. The VCM 17 Order provided that "[t]he Commission will continue to conduct semi-annual VCM reviews and, as appropriate, verify and approve all expenditures on a semi-annual basis regardless of whether they exceed the original certified amount." The VCM 17 Order also provided that all issues pertaining to prudence not already decided by the Commission in the January 3, 2017 Order Adopting Stipulation will be determined in a later proceeding.
5. For the second quarter, 2018, Georgia Power Company incurred a charge to income of \$1.1 billion consisting of an increase in Vogtle forecast construction costs of \$694 million and an additional contingency of \$366 million. At the same time, the Company reduced its investment in Construction Work in Progress for the Vogtle Project by \$1.1 billion. The VCM 19 Procedural and Scheduling Order (PSO) provided that the Company will not seek approval of a revised cost estimate to include this increase in forecast construction costs of \$694 million and will not seek rate recovery of this \$694 million and these costs shall be borne by stockholders. The PSO further provided that above the \$7.3 billion, the Company will first expend in total the increase in forecast construction costs of \$694 million before charging Project expenditures to the additional contingency of \$366 million or any other future forecasted cost increase. The PSO also provided that the Company did not request for approval of a revised cost estimate to include the additional forecasted contingency of \$366 million at that time; however, it reserved its right to request approval in a future proceeding.

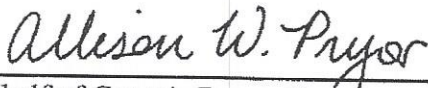
6. The parties to this Stipulation agree that, as contemplated by the terms of the VCM 17 Order, it is appropriate for the Company to continue reporting on the progress and cost of the Project and for the semi-annual construction monitoring process to continue through completion of the Project, but since the Company has exceeded the approved revised capital cost of \$7.3 billion, it is no longer appropriate for the Commission to verify and approve the dollars invested in the Project during the VCM 25 reporting period or in subsequent VCM reporting periods prior to the conclusion of the prudence review contemplated by the VCM 17 Order. Accordingly, the Company will continue to file construction monitoring reports on a semi-annual basis through completion of the Project and the Commission will continue to hold the VCM proceedings. However, beginning with VCM 25 and in each subsequent VCM proceeding thereafter, the Commission will only review costs incurred on the Project above \$7.3 billion without making determinations as to reasonableness or prudence and, subject to its right to seek verification and approval of costs as described in paragraph 7 of this stipulation, the Company will not seek verification and approval of such costs prior to the prudence review contemplated by the VCM 17 Order.

7. The Parties agree that this process is allowed by O.C.G.A. § 46-3A-7(b) and the VCM 17 Order. Pursuant to O.C.G.A. §46-3A-7(b), the construction monitoring process is permitted, but not required, by Georgia law. If the Company does not seek verification and approval of costs incurred during a reporting period, the Commission is not obligated to verify and approve such costs during that reporting period. For the avoidance of doubt, the parties agree that Commission review of Project expenditures above \$7.3 billion does not in any way constitute verification of such costs as contemplated by O.C.G.A. § 46-3A-7(c). This Stipulation in no way limits or prohibits Georgia Power from bringing expenditures above \$7.3 billion to the Commission for verification and approval, or for inclusion in rate base, at a later time, but no earlier than the prudence review contemplated by the VCM 17 Order, and subject to the Company's agreement that it will not seek to recover in rates the \$694 million addressed in VCM 19. All determinations of the reasonableness of Project expenditures above the \$7.3 billion approved in VCM 17 shall be reserved until the prudence review contemplated by the VCM 17 Order and the Company shall continue to bear the burden of proof on the reasonableness of such costs.

Agreed to this 28th day of July 2021.



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



On behalf of Georgia Power Company