DIRECT TESTIMONY OF  
STEVEN M. FETTER  
ON BEHALF OF  
GEORGIA POWER COMPANY

DOCKET NO. 44280

# INTRODUCTION

Q. Please state your name, position and business address.

A. My name is Steven M. Fetter. I am President of Regulation UnFettered. My business address is 1240 West Sims Way, Port Townsend, Washington 98368.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Georgia Power Company (“Georgia Power” or “the Company”) before the Georgia Public Service Commission (“Commission” or “GPSC”).

Q. By whom are you employed and in what capacity?

A. I am President of Regulation UnFettered, a utility advisory firm that I started in April 2002. Prior to that, I was employed by Fitch, Inc. (“Fitch”), a credit rating agency based in New York and London. Prior to that, I served as Chairman of the Michigan Public Service Commission (“Michigan PSC”). I am also an attorney, having graduated from the University of Michigan Law School in 1979.

Q. Please describe your service on the Michigan PSC.

A. I was appointed as a Commissioner to the three-member Michigan PSC in October 1987. In January 1991, I was promoted to Chairman and retained that designation following reappointment in 1993. During my tenure as Chairman, timeliness of commission processes was a major focus, and my colleagues and I achieved the goal of eliminating the agency’s case backlog for the first time in 23 years. While on the Michigan PSC, I also served as Chairman of the Board of the National Regulatory Research Institute (“NRRI”), the research arm of the National Association of Regulatory Utility Commissioners (“NARUC”). After leaving regulatory service, I was appointed to the NRRI Board as a public member. I have also served as a lecturer at Michigan State University’s Institute of Public Utilities Annual Regulatory Studies Program (“Camp NARUC”) and at NARUC’s New Commissioner Regulatory Orientation.

Q. Please describe your role as President of Regulation UnFettered.

A. I formed a utility advisory firm to use my financial, regulatory, legislative, and legal expertise to aid the deliberations of regulators, legislative bodies, and the courts, and to assist them in evaluating regulatory issues. My clients have included investor-owned and municipal electric, natural gas and water utilities, state public utility commissions and consumer advocates, non-utility energy suppliers, international financial services and consulting firms, and investors.

Q. Please describe your role during your employment with Fitch.

A. I was Group Head and Managing Director of the Global Power Group within Fitch. In that role, I served as group manager of the combined 18‑person New York and Chicago utility team. I was originally hired to interpret the impact of regulatory and legislative developments on utility credit ratings, a responsibility I continued to have throughout my tenure at the rating agency. In April 2002, I left Fitch to start Regulation UnFettered.

Q. How long were you employed by Fitch?

A. I was employed by Fitch from October 1993 until April 2002. In addition, Fitch retained me as a consultant for a period of approximately six months after I left the agency.

Q. How does your experience relate to your testimony in this proceeding?

A. My experience as Chairman and Commissioner on the Michigan PSC and my subsequent professional experience with financial analysis and ratings of the U.S. electric and natural gas sectors – in jurisdictions involved in restructuring activity as well as those still following a traditional regulated path – have given me solid insight into the importance of a regulator’s role vis-à-vis regulated utilities, both in setting their rates as well as the appropriate terms and conditions for the service they provide. In addition, for the past 21 years I have been a member of the Wall Street Utility Group, an honorary society comprised of debt and equity analysts assigned to cover and make assessments of companies within the utility sector.

Q. Have you previously given testimony before regulatory and legislative bodies?

A. Yes. Since 1990, I have testified before the U.S. Senate, the U.S. House of Representatives, the Federal Energy Regulatory Commission, federal district and bankruptcy courts, and various state and provincial legislative, judicial, and regulatory bodies in more than 100 proceedings or hearings on the subjects of credit risk and cost of capital within the utility sector, utility regulatory and legislative policies, electric and natural gas utility restructuring, fuel and other energy cost adjustment mechanisms, regulated utility mergers and acquisitions, construction work in progress and other interim rate recovery structures, utility securitization bonds, and nuclear energy. I have previously testified and been accepted as an expert witness before this Commission on behalf of Georgia Power in Docket Nos. 18300, 27800, 31958, 29849, 36989, and 42516. My full educational and professional background is presented in my Appendix - 1.

Q. What is the purpose of your direct testimony?

A. Utilizing my past experience as a state utility commission Chairman and head of a major utility credit rating practice, my direct testimony focuses on the rate-setting process and the “regulatory compact;” the importance of credit ratings for regulated utilities and their customers; the importance of constructive utility regulation as an underpinning of strong credit quality; how the Company is currently viewed by the credit rating agencies; and how the financial community currently views the utility regulatory environment within Georgia.

Q. Please summarize the conclusions of your direct testimony.

A. The core concept of utility rate-setting is to provide a fair rate of return on investment and recovery of prudently incurred costs. Meeting these goals within what has been called the “regulatory compact” provides a regulated utility with the financial integrity needed to maintain reliable utility infrastructure. Such strength is exhibited to the financial community through strong credit ratings. Accordingly, a utility’s credit ratings are central to its ability to raise capital at reasonable cost and upon reasonable terms.

Regulation is a key qualitative component of a utility’s credit ratings, and Georgia is viewed by the market as among the most credit supportive states, which is a strong positive factor in the credit ratings assigned to the state’s regulated utilities. James Coyne, the Company’s Return on Equity (“ROE”) witness, explains in detail the appropriate ROE level and capital structure for Georgia Power under its current circumstances. Georgia Power currently holds the following corporate credit ratings from the three major rating agencies: Standard & Poor’s (“S&P”), ‘BBB+’ with a Stable outlook; Moody’s Investors Service (“Moody’s”) similarly at ‘Baa1’ with a Stable outlook; and Fitch one notch lower at ‘BBB’ with a Stable outlook. These ratings are approximately one notch weaker than they were at the time of Georgia Power’s last rate case in 2019. In order for Georgia Power to be able to, at a minimum, maintain, and potentially improve its current ratings range across all three agencies, I encourage the Commission to set the ROE and capital structure at levels consistent with Mr. Coyne’s recommendations. Such a Commission determination would show a continuation of the strong regulatory support that Georgia Power has long experienced, which should avoid further weakening the Company’s credit profile. On the other hand, a less than constructive decision by the Commission in this case could lead to further negative credit rating actions, potentially continuing the Company movement below the ‘BBB+’ / ‘Baa1’ rating level that I have long testified represents the lowest appropriate credit rating level for a U.S. regulated utility. Such negative ratings actions would increase the Company’s cost of capital and its normal day-to-day capital investment for reliability during a time of increasing inflationary pressure, ultimately leading to higher rates for customers.

# RATE-SETTING AND PRUDENCY IN THE ELECTRIC UTILITY INDUSTRY

Q. Could you provide a brief review of the rate-setting process for electric utilities?

A. Yes. Electric utilities, in order to fund their operations and ongoing capital investment, need rates set that are sufficient to cover their costs. U.S. electric investor-owned electric utilities are subject to administrative price setting by the relevant state and federal regulatory authorities. Those regulators typically employ “cost of service” ratemaking. Under this method of pricing, the regulator determines a “revenue requirement” that is used to structure rates to allow the utility to recover all of its prudently incurred costs. For investor-owned utilities like Georgia Power, such rates are set by the economic regulators to allow the utility to earn a “reasonable rate of return” (i.e., the cost required to attract needed equity investment).

Q. Could you discuss the legal understanding for the rate-setting process?

A. Yes. The core principle that underlies rate-setting at both the federal and state levels is the attainment of “just and reasonable” rates that are fair to both the utility (and its investors) and also its customers. The constitutional basis for this standard goes back many years to two seminal U.S. Supreme Court cases which explained this fairness concept. First, regulated utilities should have a reasonable opportunity to receive recovery of their prudently incurred costs, a principle set forth in *Federal Power Commission v. Hope Natural Gas Co.*, (“*Hope*”), 320 U.S. 591 (1944), which held that “the result reached and not the method employed” is controlling in determining “just and reasonable” rates. In addition, the ability of a regulated utility to earn a fair return on its invested capital had earlier been ensured by the U.S. Supreme Court in *Bluefield Water Works and Improvement Co. v. Public Service Commission* (“*Bluefield*”), 262 U.S. 679, 692 (1923), which required rates “sufficient to yield a reasonable return on the value of the property to be used, at the time it is being used to render the service.” Regarding the utility’s ongoing financial integrity, *Bluefield* held that the return should be “sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise money for the proper discharge of its public duties.” Similarly, *Hope* requires that the return “should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.” The legal structure laid out by *Hope* and *Bluefield* endures to this day and guides the decision-making activities of the regulators at both the state and federal levels, as well as the courts when they are called upon to review and opine upon the legality of the determinations made by the various utility regulatory bodies.

Q. You mention the concept of prudency within your discussion of the rate-setting process. How does prudency fit within regulatory review of utility investment?

A. The concept of “prudency” is present in the legislative and administrative rules of every utility commission across the U.S. In their reference book *Fundamentals of Energy Regulation*, authors (and Ph.D. economists) Lesser & Giacchino discuss prudence both in terms of the deference accorded utility management decisions, as well as the review process before imprudent behavior is found to have occurred:

“…utility management is given the benefit of the doubt, and management’s decisions are presumed reasonable unless the facts show otherwise. …Moreover, the prudence of managerial decisions must be judged on their reasonableness at the time those decisions were made and based on information then available. Prudence is not meant as an exercise in hindsight regulation. In essence, a prudent decision is one that a reasonable person could have made in good faith, given the information and decision tools available at the time of the decision.”[[1]](#footnote-2)

In support of that position, economist Charles F. Phillips in his widely-respected public utility regulation treatise *The Regulation of Public Utilities* quotes the views of the Massachusetts and New York commissions:

“A prudence review must determine whether the company’s actions, based on all that it knew or should have known at the time were reasonable and prudent in light of the circumstances which then existed. It is clear that such a determination may not properly be made on the basis of hindsight judgments, nor is it appropriate for the [commission] merely to substitute its best judgment for the judgments made by the company’s managers.” [*In re Western Mass. Elec. Co.*, 80 PUR4th at 501.]

“The company’s conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company.” [*In re Consolidated Edison Co. of N.Y. Inc.*, Opinion No. 79-1 (N.Y. 1979), 5-6.] [[2]](#footnote-3)

Q. Other aspects of utility regulation that you have often testified about are the “Regulatory Compact” and “Constructive Utility Regulation”. Could you provide a description of what these key concepts entail?

A. There is an unwritten but core concept within the regulatory process known as the “regulatory compact.” Since there is no hard and fast universal rule or regulation delineating the “regulatory compact,” it has been described in many different ways. In the above-noted reference book, Lesser & Giacchino describe that under the “regulatory compact:”

… the regulator grants the company a protected monopoly, essentially a franchise, for the sale and distribution of electricity or natural gas to customers in its defined service territory. In return, the company commits to supply the full quantities demanded by those customers at a price calculated to cover all operating costs plus a “reasonable” return on the capital invested in the enterprise. The first half of this “compact” protects the company from would-be competitors and secures for the public the substantial economies of scale available in the large-scale production of electricity. The second half of the “compact” counteracts the injurious tendency of monopolies to raise prices above the level that would prevail in a competitive market.[[3]](#footnote-4)

In my experience advising a range of utility industry stakeholders across the U.S., I have found that every utility commission adheres to some conception of the “regulatory compact” in concert with the constitutionally and statutorily mandated prudency standards.

In addition, my own conception of “constructive utility regulation” is that which aligns the seemingly competitive interests of utility investors and utility customers in a manner that is consistent and steady over time, so that all parties have reasonable expectations about how regulatory policy will be effectuated. Importantly, it supports a utility’s ability to provide safe and clean utility service to its customers with a high level of reliability at reasonable rates. Constructive regulation is efficient and predictable with a long-term focus on relatively stable rates, while also recognizing the need for timely recovery of costs and the value to customers of a financially-strong utility with ready access to the capital markets at attractive rates, even when the financial markets are under stress. It recognizes that utility investors react negatively to major, frequent or sudden changes in regulatory policy and that such uncertainty ultimately has an adverse effect on customers. In sum, longstanding constructive regulatory policy should provide a utility with the confidence to make capital-intensive investments and incur O&M expenses for the benefit of its customers, with the reasonable expectation that those costs would be recovered in a timely manner, including a fair return on investment, consistent with that stable and consistent regulatory policy.

**Q.** **In your earlier legal discussion of *HOPE* and *BLUEFIELD*, you reference regulated utilities being able to maintain their credit strength. With your credit ratings leadership role at Fitch, can you discuss the importance of “Constructive Regulation” in the rating agencies’ assessment of utility credit profiles?**

A. Yes, I saw firsthand how important constructive regulation is to agencies when Fitch recruited me to provide regulatory analysis after I had decided to move on from the Michigan PSC. Moody’s has highlighted the critical role that regulators play in a June 23, 2017 report entitled “Rating Methodology: Regulated Electric and Gas Utilities:”

An over-arching consideration for regulated utilities is the regulatory environment in which they operate. While regulation is also a key consideration for networks, a utility’s regulatory environment is in comparison often more dynamic and more subject to political intervention. The direct relationship that a regulated utility has with the retail customer … can lead to a more politically charged rate-setting environment. …Our views of regulatory environments evolve over time in accordance with our observations of regulatory, political, and judicial events that affect issuers in the sector.[[4]](#footnote-5)

And S&P has long held the same view:

Regulatory advantage is the most heavily weighted factor in [S&P’s] analysis of a regulated utility's business risk profile. …An established, dependable approach to regulating utilities is a hallmark of a credit-supportive jurisdiction. …Major or frequent changes to the regulatory model invariably raise risk due to the possibility of future changes. Steady application of transparent, comprehensible policies and practices lowers risk. …We adjust the assessment downward if the development of the framework was contentious due to policy disputes or legal actions, indicating that the political consensus regarding utility regulation is fragile. … [A] regulatory approach that allows utilities the opportunity to consistently earn a reasonable return as a positive credit factor in our regulatory assessments. …We measure the timeliness of rate decisions, the obsolescence of the costs on which the rates are based, the timing of interim rates, and other practices (such as allowing rates to automatically change in a future period based on inflation) that affect a utility's ability to earn its authorized return. …Practices such as legislative or regulatory recognition of the need for preapproval of [large capital projects], periodic reviews that substantively involve the regulator in the progress of the project, and rolling prudence determinations during construction can reduce the general level of risk…[W]e consider financial stability to be of substantial importance [with cash taking] precedence in credit analysis. …We assess a jurisdiction most strongly if all large expense items are recoverable through an automatic tariff clause that is based on projected costs, adjusts frequently, and has no record of any significant disallowances. … [A] primary factor … is the political independence of regulators.[[5]](#footnote-6)

# III. CREDIT RATINGS AND THEIR IMPORTANCE TO REGULATED UTILITIES

Q. What is a credit rating and why is it important?

A**.** A credit rating reflects an independent judgment of the general creditworthiness of an obligor or of a specific debt instrument. While credit ratings are important to both debt and equity investors for a variety of reasons, their most important purpose is to communicate to investors the financial strength of a company or the underlying credit quality of a particular debt security issued by that company.

Credit rating determinations are made by credit rating agencies through a committee process involving individuals with knowledge of a company, its industry, and its regulatory environment. Corporate rating designations of S&P and Fitch have ‘AAA’, ‘AA’, ‘A’ and ‘BBB’ category ratings within the investment-grade ratings sphere, with ‘BBB-’ as the lowest investment-grade rating and ‘BB+’ as the highest non-investment-grade rating. Comparable rating designations of Moody’s at the investment-grade dividing line are ‘Baa3’ and ‘Ba1’, respectively. In addition, the agencies seek to make their rating judgments even more precise by dividing each of the rating categories into three levels (“+”, “neutral”, and “-” at S&P and Fitch, and 1, 2 & 3 at Moody’s). The following chart illustrates the comparability of ratings between the three agencies.

CHART 1 6,7,8

Ratings Categories – Comparability Between Agencies

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Investment Grade | | |  | Below Investment Grade | | |
| S&P and Fitch |  | Moody's |  | S&P and Fitch |  | Moody's |
| AAA |  | Aaa |  | BB+ |  | Ba1 |
| AA+ |  | Aa1 |  | BB |  | Ba2 |
| AA |  | Aa2 |  | BB- |  | Ba3 |
| AA- |  | Aa3 |  | B+ |  | B1 |
| A+ |  | A1 |  | B |  | B2 |
| A |  | A2 |  | B- |  | B3 |
| A- |  | A3 |  | CCC |  | Caa |
| BBB+ ([[6]](#footnote-7)) |  | Baa1 ([[7]](#footnote-8)) |  | CC |  | Ca |
| BBB ([[8]](#footnote-9)) |  | Baa2 |  | C |  | C |
| BBB- |  | Baa3 |  | D |  | [C] |

Corporate credit rating analysis considers both qualitative and quantitative factors to assess the financial and business risks of fixed-income debt issuers. A credit rating is an indication of an issuer’s ability to service its debt, both principal and interest, on a timely basis. At times, a credit rating also incorporates some consideration of ultimate recovery of investment in case of default or insolvency. Ratings can also be used by contractual counterparties to gauge both the short-term and longer-term financial health and viability of a company, including decisions related to required collateral levels, with higher-rated entities facing lower requirements.

Q. How would you describe Georgia Power’s credit ratings status?

A. Georgia Power’s corporate issuer credit ratings have fallen out of the ‘A’ category, and show some weakness within the ‘BBB’ / ‘Baa’ category.[[9]](#footnote-10) I have long testified that a regulated utility should aim to hold ratings no lower than ‘BBB+’ / ‘Baa1’, with a longer-term goal of moving into (or maintaining in) the ‘A’ category. Accordingly, Georgia Power now rests at the lower end of my recommended scale, with one rating, from Fitch, below my recommended level, which increases the importance of this rate proceeding.

Q. Why are credit ratings important for regulated utilities and their customers?

A. A utility’s credit ratings have a significant impact on its ability to raise capital on a timely basis and upon reasonable terms. As economist Charles F. Phillips states in his treatise on utility regulation:

Bond ratings are important for at least four reasons: (1) they are used by investors in determining the quality of debt investment; (2) they are used in determining the breadth of the market, since some large institutional investors are prohibited from investing in the lower grades; (3) they determine, in part, the cost of new debt, since both the interest charges on new debt and the degree of difficulty in marketing new issues tend to rise as the rating decreases; and (4) they have an indirect bearing on the status of a utility’s stock and on its acceptance in the market.[[10]](#footnote-11)

Thus, a utility with strong credit ratings is not only able to access the capital markets on a timely basis at reasonable rates, but it is also able to pass the benefit from those attractive interest rate levels on to customers since cost of capital gets factored into utility rates. Conversely, but of equal importance, the lower a utility’s credit rating, the more the utility must pay to raise funds from debt and equity investors to carry out its capital-intensive operations, and those higher capital costs get factored into the rates that consumers are required to pay. Maintaining Georgia Power’s credit profile is especially important in view of its significant nuclear construction activities, along with capital investment related to its ongoing duty to serve its customers in a safe and reliable manner. Significantly, a regulated utility is required to raise funding even if the markets are in turmoil and costs are escalating wildly. Strong credit ratings limit the negative effects of having to finance at times of great volatility within the capital markets.

Q. What qualitative factors are used by the rating agencies to establish utility credit ratings?

A. The most important qualitative factors are regulation, management and business strategy, and access to energy, gas and fuel supply with recovery of associated costs.

Q. What are the key quantitative measures?

A. The major rating agencies use several financial measures within their utility financial analysis. S&P has been the most transparent of the rating agencies and currently highlights the following two core financial ratios as its key indicators: Funds from Operations to Debt (FFO / Debt), which focuses on cash flow; and Debt to Earnings Before Interest, Taxes, Depreciation and Amortization (Debt / EBITDA), which provides a comparative profitability measure.[[11]](#footnote-12) A focus on these two ratios is consistent with S&P’s long-held belief that “Cash flow analysis is the single most critical aspect of all credit rating decisions,”[[12]](#footnote-13) an opinion shared by both Moody’s and Fitch. I note that all three agencies often adjust these key ratios to reflect imputed debt and interest-like fixed charges related to operating leases and certain other off‑balance sheet obligations.

Q. Why is regulation a key qualitative component of the utility credit rating process?

A. Regulation is a key factor in assessing the financial strength of a utility because a state public utility commission determines revenue levels (recoverable expenses including depreciation and operations and maintenance, fuel cost recovery, and return on investment) and the terms and conditions of service that affect a utility’s cost of service. As Moody’s has long noted, “A utility’s ability to recover its costs and earn an adequate return are among the most important analytical considerations when assessing utility credit quality and assigning credit ratings.”[[13]](#footnote-14)

# IV. FINANCIAL COMMUNITY PERCEPTIONS OF THE GPSC

Q. How is the commission viewed by the financial community?

A. Very positively. Probably the most objective and respected commentator on regulatory policy and activities from a financial community perspective is Regulatory Research Associates (“RRA”). RRA currently rates the Georgia regulatory environment (which goes beyond the Commission to also include legislative and executive branch policies) as Above Average 2, placing Georgia among the top five of the 53 regulatory jurisdictions upon which RRA currently opines. Such status is a strong positive factor within the context of credit rating analysis.

Q. Does Moody’s share the positive assessment about Georgia regulation?

A. Yes. Moody’s continues to describe the “Georgia regulatory framework [as] credit supportive,” noting this Commission’s constructive decision in the Company’s 2019 rate case, “as well as the continued support of the Vogtle [nuclear] project.”[[14]](#footnote-15)

Q. How does S&P view the Georgia regulatory environment?

A. S&P is also positive, but with similar concerns about future Plant Vogtle nuclear construction issues. In a November 18, 2021 report, S&P stated that Georgia Power’s multiyear rate plan effective since the 2019 rate case has been “supportive of GPC’s credit quality.” S&P concludes that whether GPC’s ratings go up or down will turn primarily on the timing of the completion and in-service dates of the nuclear construction project.[[15]](#footnote-16)

Q. What is Fitch’s assessment of the georgia regulatory environment?

A. Notwithstanding its recent downgrade of GPC’s corporate Issuer Default Rating to ‘BBB’ (Stable outlook), Fitch still sees “a constructive regulatory construct in Georgia.” Fitch notes that its downgrade was “driven by the continued uncertainty regarding the schedule and costs to complete the Vogtle” nuclear project.[[16]](#footnote-17)

**Q. What other key factors are impacting the views of the rating agencies?**

**A.** Across the country the electric utility industry is shifting away from carbon- intensive generating resources and toward low-to-no carbon emitting resources. The risk with this transition has become an important factor in evaluating the credit quality of the electric utility industry.

**Q. Have transition risks been an important factor in the evaluation of Georgia Power by the various rating agencies?**

**A.** Yes. Coal resources have been an integral component of Georgia Power’s large diverse generation fleet. With increasing regulatory pressure regarding the utility sector’s historic use of coal, the industry has been shifting toward a greater use of renewables and natural gas to replace coal resources. Further, there is also growing pressure from both consumers of electricity as well as investors to move to cleaner sources of electric generation. The ability to manage this risk and to do so in a constructive regulatory environment has become critical for many utilities, and the rating agencies have begun to focus on the management of this transition.

**Q. What have been the opINIONS of the rating agencies regarding Georgia Power’s Management of the growing transition risk?**

A. Moody’s states that “Georgia Power has moderate carbon transition risk within the utility sector [and that as] an integrated utility, its generation ownership places it at a higher risk profile than electric T&D companies.” The Company’s current long-term Integrated Resource Plan (IRP) was approved by the Commission on July 19, 2019, and incorporated the decertification and retirement of about 1,000 MWs of coal-fired generation; the addition of 1,000 MWs of new nuclear power; and the investment of 2,210 MWs of new renewable resources through competitive bidding to offset the coal-fired generation retirement and meet future load growth. With all of this planned activity, including bringing Vogtle to completion, Moody’s assesses the overall regulatory environment as “credit supportive.” [[17]](#footnote-18)

As noted above, notwithstanding Georgia Power’s “exposure to energy transition risks given its coal-fired fleet,” S&P maintains a Stable outlook on the Company’s credit ratings with an expectation of continuing “strong regulatory support.”[[18]](#footnote-19) Similarly, Fitch, having recently downgraded Georgia Power’s rating, now has the Company at Stable outlook and views ESG issues as “credit-neutral,” only having “a minimal credit impact …, either due to their nature or the way in which they are being managed.”[[19]](#footnote-20)

q. how does constructive regulation factor into the COMPANY’S TRANSITION PLAN?

A. The concept of “constructive regulation” recognizes that there are mutual obligations across all stakeholders. Georgia Power would move forward to successfully structure a modified investor-owned utility method of providing needed power, the Commission would support this transition strategy and maintain its longstanding regulatory support for the Company’s prudent actions and expenditures, and the financial community would provide funding for the Company’s less traditional infrastructure future with the expectation of receiving a fair return on investment and recovery of all prudent expenditures. The end result is efficient movement toward the evolving utility model.

# V. CONCLUSION

Q. Do you have concluding thoughts?

A. Yes. During my participation in regulatory proceedings in Georgia over the past eighteen years, I have seen firsthand this Commission deliberate difficult issues affecting customers and investors in a constructive manner. Such balanced decision-making has allowed this body to create a regulatory climate in which investors desire to fund utilities in their efforts to provide reliable service at reasonable rates. As I have testified to before this Commission in the past, I believe that utilities and their regulators should strive to attain corporate / issuer credit ratings no lower than ‘BBB+’ / ‘Baa1’, with a longer-range strategy to achieve ratings within the “A” category. A utility that holds “A” category ratings status should possess sufficient financial strength to access the capital markets even under the most stressful of conditions. This Commission has been supportive of that position. Accordingly, my recommendation in this testimony is that the Company should seek to achieve excellent operational performance going forward, and the Commission should sustain its ongoing constructive regulatory support, which together should maintain Georgia Power’s credit ratings no lower than their current levels, with the potential for positive movement down the road.

Q. Does this conclude your direct testimony?

A. Yes, it does.

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Education University of Michigan Law School, J.D. 1979

Bar Memberships: U.S. Supreme Court, New York, Michigan

University of Michigan, A.B. Media (Communications) 1974

April 2002 – Present

President - Regulation UnFettered- Port Townsend, Washington

Founder of advisory firm providing regulatory, legislative, financial, legal and strategic planning advisory services for the energy, water and telecommunications sectors, including public utility commissions and consumer advocates; federal and state testimony; credit rating advisory services; negotiation, arbitration and mediation services; skills training in ethics, negotiation, and management efficiency.

Service on Boards of Directors of: Central Hudson (Fortis Inc. subsidiary) (Chairman, Governance and Human Resources Committee); and Previously CH Energy Group (Lead Independent Director; Chairman, Audit Committee, Compensation Committee, and Governance and Nominating Committee); National Regulatory Research Institute (Chairman); Keystone Energy Board; and Regulatory Information Technology Consortium; Member, Wall Street Utility Group; Participant, Keystone Center Dialogues on RTOs and on Financial Trading and Energy Markets.

October 1993 – April 2002

Group Head and Managing Director; Senior Director -- Global Power Group, Fitch IBCA Duff & Phelps -- New York / Chicago

Manager of 18-employee ($15 million revenue) group responsible for credit research and rating of fixed income securities of U.S. and foreign electric and natural gas companies and project finance; Member, Fitch Utility Securitization Team.

Led an effort to restructure the global power group that in three years’ time resulted in 75% new personnel and over 100% increase in revenues, transforming a group operating at a substantial deficit into a team-oriented profit center through a combination of revenue growth and expense reduction.

Achieved national recognition as a speaker and commentator evaluating the effects of regulatory developments on the financial condition of the utility sector and individual companies; Cited by Institutional Investor (9/97) as one of top utility analysts at rating agencies; Frequently quoted in national newspapers and trade publications including The New York Times, The Wall Street Journal, International Herald Tribune, Los Angeles Times, Atlanta Journal-Constitution, Forbes and Energy Daily; Featured speaker at conferences sponsored by Edison Electric Institute, Nuclear Energy Institute, American Gas Assn., Natural Gas Supply Assn., National Assn. of Regulatory Utility Commissioners (NARUC), Canadian Electricity Assn.; Frequent invitations to testify before U.S. Senate (on C-Span) and House of Representatives, and state legislatures and utility commissions.

Participant, Keystone Center Dialogue on Regional Transmission Organizations; Member, International Advisory Council, Eisenhower Fellowships; Author, "A Rating Agency's Perspective on Regulatory Reform," book chapter published by Public Utilities Reports, Summer 1995; Advisory Committee, Public Utilities Fortnightly.

March 1994 – April 2002

Consultant -- NYNEX -- New York, Ameritech -- Chicago, Weatherwise USA -- Pittsburgh

Provided testimony before the Federal Communications Commission and state public utility commissions; Formulated and taught specialized ethics and negotiation skills training program for employees in positions of a sensitive nature due to responsibilities involving interface with government officials, marketing, sales or purchasing; Developed amendments to NYNEX Code of Business Conduct.

October 1987 - October 1993

Chairman; Commissioner -- Michigan Public Service Commission -- Lansing

Administrator of $15-million agency responsible for regulating Michigan’s public utilities, telecommunications services, and intrastate trucking, and establishing an effective state energy policy; Appointed by Democratic Governor James Blanchard; Promoted to Chairman by Republican Governor John Engler (1991) and reappointed (1993).

Initiated case-handling guideline that eliminated agency backlog for first time in 23 years while reorganizing to downsize agency from 240 employees to 205 and eliminate top tier of management; MPSC received national recognition for fashioning incentive plans in all regulated industries based on performance, service quality, and infrastructure improvement.

Closely involved in formulation and passage of regulatory reform law (Michigan Telecommunications Act of 1991) that has served as a model for other states; rejuvenated dormant twelve-year effort and successfully lobbied the Michigan Legislature to exempt the Commission from the Open Meetings Act, a controversial step that shifted power from the career staff to the three commissioners.

Elected Chairman of the Board of the National Regulatory Research Institute (at Ohio State University); Adjunct Professor of Legislation, American University’s Washington College of Law and Thomas M. Cooley Law School; Member of NARUC Executive, Gas, and International Relations Committees, Steering Committee of U.S. Environmental Protection Agency/State of Michigan Relative Risk Analysis Project, and Federal Energy Regulatory Commission Task Force on Natural Gas Deliverability; Eisenhower Exchange Fellow to Japan and NARUC Fellow to the Kennedy School of Government; Ethics Lecturer for NARUC.

August 1985 - October 1987

Acting Associate Deputy Under Secretary of Labor; Executive Assistant to the Deputy Under Secretary -- U.S. Department of Labor -- Washington DC

Member of three-person management team directing the activities of 60-employee agency responsible for promoting use of labor-management cooperation programs. Supervised a legal team in a study of the effects of U.S. labor laws on labor-management cooperation that has received national recognition and been frequently cited in law reviews (U.S. Labor Law and the Future of Labor-Management Cooperation, w/S. Schlossberg, 1986).

January 1983 - August 1985

Senate Majority General Counsel; Chief Republican Counsel -- Michigan Senate -- Lansing

Legal Advisor to the Majority Republican Caucus and Secretary of the Senate; Created and directed 7-employee Office of Majority General Counsel; Counsel, Senate Rules and Ethics Committees; Appointed to the Michigan Criminal Justice Commission, Ann Arbor Human Rights Commission and Washtenaw County Consumer Mediation Committee.

March 1982 - January 1983

Assistant Legal Counsel -- Michigan Governor William Milliken -- Lansing

Legal and Labor Advisor (member of collective bargaining team); Director, Extradition and Clemency; Appointed to Michigan Supreme Court Sentencing Guidelines Committee, Prison Overcrowding Project, Coordination of Law Enforcement Services Task Force.

October 1979 - March 1982

Appellate Litigation Attorney -- National Labor Relations Board -- Washington DC

Other Significant Speeches and Publications

Filing for Bankruptcy Isn’t the Right Solution for Puerto Rico (Forbes Online, November 2015)

The “A” Rating (Edison Electric Institute Perspectives, May/June 2009)

Perspective: Don’t Fence Me Out (Public Utilities Fortnightly, October 2004)

Climate Change and the Electric Power Sector: What Role for the Global Financial Community (during Fourth Session of UN Framework Convention on Climate Change Conference of Parties, Buenos Aires, Argentina, November 3, 1998) (unpublished)

Regulation UnFettered: The Fray By the Bay, Revisited (National Regulatory Research Institute Quarterly Bulletin, December 1997)

The Feds Can Lead…By Getting Out of the Way (Public Utilities Fortnightly, June 1, 1996)

Ethical Considerations Within Utility Regulation, w/M. Cummins (National Regulatory Research Institute Quarterly Bulletin, December 1993)

Legal Challenges to Employee Participation Programs (American Bar Association, Atlanta, Georgia, August 1991) (unpublished)

Proprietary Information, Confidentiality, and Regulation's Continuing Information Needs: A State Commissioner's Perspective (Washington Legal Foundation, July 1990)

1. Jonathan A. Lesser & Leonardo R. Giacchino, *Fundamentals of Energy Regulation*, 42 (1st Ed. 2007). [↑](#footnote-ref-2)
2. Phillips, *The Regulation of Public Utilities*, 340-341. [↑](#footnote-ref-3)
3. Lesser & Giacchino, *Fundamentals of Energy Regulation*, 43-44. [↑](#footnote-ref-4)
4. Moody’s Research: “Rating Methodology: Regulated Electric and Gas Utilities,” June 23, 2017. [↑](#footnote-ref-5)
5. S&P Research: “Assessing U.S. Investor-Owned Utility Regulatory Environments,” January 7, 2014. [↑](#footnote-ref-6)
6. Georgia Power corporate credit rating from S&P with a Stable outlook. [↑](#footnote-ref-7)
7. Georgia Power corporate credit rating from Moody’s with a Stable outlook. [↑](#footnote-ref-8)
8. Georgia Power corporate credit rating from Fitch with a Stable outlook. [↑](#footnote-ref-9)
9. Corporate or issuer utility credit ratings reflect the intrinsic financial strength of the utility being rated, with no backing from or recourse against specific utility assets.  At times, regulated utilities issue secured debt, representing utility borrowings that are backed by collateral, usually in the form of utility real property.  In almost all instances, secured credit ratings are higher than corporate/issuer credit ratings because, in the case of a utility defaulting on its bond payment obligations, secured debtholders have recovery priority on the defined collateral as compared to the claims of unsecured debtholders. [↑](#footnote-ref-10)
10. Phillips, Charles F., Jr., The Regulation of Public Utilities, Arlington, Virginia: Public Utilities Reports, Inc., 1993, at p. 250 (emphasis supplied). *See also* Public Utilities Reports Guide: “Finance,” Public Utilities Reports, Inc., 2004 at pp. 6-7 (“Generally, the higher the rating of the bond, the better the access to capital markets and the lower the interest to be paid.”). [↑](#footnote-ref-11)
11. S&P Research: “Corporate Methodology,” November 19, 2013 (republished on April 1, 2019 with revisions and nonmaterial changes unrelated to references to that report in this testimony). [↑](#footnote-ref-12)
12. S&P Research: “A Closer Look at Ratings Methodology,” November 13, 2006. [↑](#footnote-ref-13)
13. Moody’s Research: “Cost Recovery Provisions Key to Investor Owned Utility Ratings and Credit Quality: Evaluating a Utility’s Ability to Recover Costs and Earn Returns,” June 18, 2010. [↑](#footnote-ref-14)
14. Moody’s Research: “Georgia Power Company,” October 13, 2021. [↑](#footnote-ref-15)
15. S&P Research: “Georgia Power Co.,” November 18, 2021. [↑](#footnote-ref-16)
16. Fitch Research: “Fitch Downgrades Georgia Power to ‘BBB’; Outlook Stable; Revises Southern’s Outlook to Negative,” February 22, 2022.’s IDR’; Places on Negative Watch,” August 9, 2018. [↑](#footnote-ref-17)
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