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DOCKET# 29849
DOCUMENT# 191698

## Docket No. 29849
## PROCEDURAL AND SCHEDULING ORDER

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

As part of its ongoing review of construction as it proceeds, the Georgia Public Service Commission (the "Commission") hereby issues this Procedural and Scheduling Order for the purpose of initiating a proceeding to hear evidence regarding the Company's Twenty-seventh Semi-annual Construction Monitoring Report and costs incurred to date, cost estimates, and construction schedules in order to update the Commission as to the progress of the construction.

**Background**

In Docket No. 27800, Georgia Power Company ("Company") 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 Commission approval of its addition of Units 3 and 4 at Plant Vogtle ("Vogtle Units 3 and 4"). In its Amended Certification Order the Commission approved the Company's application for the certification of Vogtle Units 3 and 4 at an in-service cost of $6.447 billion[1] and as modified by a Stipulation entered into between the Commission Public Interest Advocacy Staff ("PIA Staff") and the Company ("Stipulation").

Paragraph 2(c) of the Stipulation requires the Company to file semi-annual monitoring reports with the Commission as provided by O.C.G.A. § 46-3A-7(b). Such semi-annual monitoring reports shall include any proposed revisions in the cost estimates, construction

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

schedule, or project configuration, as well as a report of actual costs incurred in the period covered by the report.

Prior to the first VCM, in 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. The ordered certificated amount for the Project as reflected in paragraph 4 was revised to $6.113 billion dollars.[2] Of that $6.113 billion, $4.418 billion was the forecasted construction costs and $1.695 billion was the forecasted financing costs. The Supplemental Information Review Stipulation adopted by the Commission on January 3, 2017, provided that the certificate will not be amended and the certified capital cost for purposes of calculating the NCCR will remain at $4.418 billion.

The Commission in its January 11, 2018 Order in the 17th VCM approved a revised capital and construction cost forecast of $7.3 billion and found that any costs spent up to this revised cost forecast will be deemed reasonable. Of the $7.3 billion construction cost forecast, costs incurred and, verified and approved, through the 14th VCM of $3.509 billion are also deemed prudent as set forth in the Commission's January 3, 2017 Order. Construction 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. Construction costs above $5.68 billion are not presumed prudent and the Company shall retain the burden to show prudency 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 $694 million and an additional contingency of $366 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, and continues to affirm, that it will not seek approval of a revised cost estimate for the additional construction costs of $694 million. In addition, the

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

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

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

Company will not seek rate recovery of this $694 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 $694 million before charging Project expenditures to the additional contingency of $366 million or any other future forecasted cost increase. The Company has not asked for approval of a revised cost estimate to include the additional forecasted contingency of $366 million at this time; however, it has reserved its right to request approval in a future proceeding. During subsequent VCM periods the Company has incurred additional costs for which it has taken a charge to income but has reserved the right to request approval in a future proceeding. As of the Twenty-seventh VCM reporting period, the amount that the Company has forecast to defer for potential Commission consideration totals $1.979 billion[5].

On August 24, 2021, the Commission issued its order in the Twenty-Fourth VCM adopting the stipulation filed by Staff and the Company on July 29, 2021. The order verified and approved the $640 million in expenditures during that reporting period. In addition, the order addressed 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.

The order reaffirmed that '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." The order quoting the stipulation also states that "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 prudency on all capital costs above $5.680 billion." (Stipulation at p. 1)

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 cost forecast previously 'deemed reasonable' by its VCM 17 Order." (Stipulation at p. 1). The Order in VCM 24 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.

The VCM 24 order states that for future VCM proceedings starting with VCM 25, the Company will continue reporting on the progress and cost of Plant Vogtle Units 3 and 4 (the "Project") and that the semi-annual construction monitoring process will continue through completion of the Project, however, "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

[5] Please refer to Table 1.1 of the Company's 27th VCM Report.

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). Further, it provided that the Commission will review costs above $7.3 billion without making determinations as to reasonableness or prudency and the Company will not seek verification and approval of such costs prior to the prudence review contemplated by the VCM 17 Order. (Stipulation at p. 2). The parties also agreed 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)." (Stipulation at p. 2).

On August 31st, 2022, Georgia Power filed its Twenty-seventh Semi-annual Construction Monitoring Report for Vogtle Units 3 and 4. The Company incurred capital construction costs of $522 million during the Twenty-seventh VCM period of January 1, 2022 through June 30, 2022. Consistent with the VCM 24 order these costs are presented by the Company for Commission review only and no action need be taken on these costs by the Commission. Consequently, no issues involved are identified for this proceeding.

**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**

Georgia Code § 46-3A-7(b) states:

> In addition to the review of the continuing need for an electric plant under construction prescribed in Code Section 46-3A-6, the commission, upon its own motion, may conduct or the utility may request that the commission conduct an ongoing review of such construction as it proceeds. Every one to three years, or at such lesser intervals upon the direction of the commission or request of the utility, the applicant shall file a progress report and any proposed revisions in the cost estimates, construction schedule, or project configuration. Within 180 days of such filing, the commission shall verify and approve or disapprove expenditures made pursuant to the certificate and shall approve, disapprove, or modify any proposed revisions. If the commission fails to so act within 180 days after such filing, the previous expenditures and any proposed revisions shall be deemed approved by operation of law.

**Issues Involved**

There are no issues involved for determination in this proceeding.

**Semi-Annual Review**

As ordered in the 24th VCM, starting with VCM 25, the Company will continue reporting on the progress and cost of the Project and the semi-annual construction monitoring process will continue through completion of the Project, but the Commission will no longer 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.

In this proceeding, all of the costs the Company has reported incurring are above $7.3 billion and it has not sought verification and approval of those costs. Further, the VCM 24 Stipulation provided that the Commission review of costs above $7.3 billion will not make determinations as to reasonableness or prudency and that the Commission review does not in any way constitute verification of such costs as contemplated by O.C.G.A. § 46-3A-7(c). (Stipulation at p. 2). In addition, the Company has not proposed revisions in the cost estimates, construction schedule, or project configuration.

Accordingly, the Commission will hear testimony on the progress and cost of the Project, including costs incurred in excess of $7.3 billion. However, the Commission will not verify or approve any costs over $7.3 billion in this proceeding. Failure of the Commission to act within 180 days on the Company's Progress Report, including expenditures over $7.3 billion, shall not result in any approvals by operation of law.

## Hearing Schedule and Filings

**October 27, 2022**
Georgia Power Company, consistent with the Orders and Stipulations adopted by the Commission in Docket Nos. 27800 and 29849, shall file with the Commission in the form of testimony and exhibits, discussing its actual expenditures from January 1, 2022 through June 30, 2022 and report on the progress and cost of the Project.

**December 6, 2022**
Immediately following the Administrative Session beginning at 9:30 a.m. the Commission will begin by hearing applications to intervene and any objections thereto, and any motions concerning the utility's pre-filed testimony and other appropriate motions. Immediately thereafter, the Commission will conduct hearings on the Company's direct case.

**January 3, 2023**
Staff and Interveners may file separate direct testimony (see O.C.G.A. § 46-3A-5(b)) by 4:00 p.m.

**January 17, 2023**
Immediately following the Administrative Session beginning at 9:30 a.m. the Commission will hear any motions concerning testimony and other appropriate motions. Following

these preliminary matters, the Commission will conduct hearings on the direct cases of Staff and Interveners.

**February 7, 2023**
Georgia Power Company may file any rebuttal testimony by 4:00 p.m.

**February 21, 2023**
Immediately following Administrative Session beginning at 9:30 a.m. the Commission will hear any motions concerning testimony and other appropriate motions. Following these preliminary matters, the Commission will conduct hearings on any rebuttal testimony filed by Georgia Power Company.

In accordance with the VCM 24 Order adopting the Stipulation, VCMs subsequent to the VCM 25 are for informational purposes only to apprise the Commission as to the progress on the Project, both cost and schedule. Therefore, Briefs by parties to the proceeding and a Decision by the Commission are not required.

**Discovery**

This proceeding also shall be deemed "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a). Discovery procedures shall accordingly apply. The Commission authorizes the Staff to issue discovery pursuant to O.C.G.A. 46-2-57(a). The Staff may conduct depositions and use any other methods of formal and informal discovery in this docket. The use of any informal discovery methods shall not augment or abridge existing discovery rights and responsibilities.

**Notice**

Pursuant to the Commission's Utility Rule 515-2-1-.04(3), Georgia Power is directed to give first notice of the proceedings in this docket no later than November 21, 2022.

**Advocacy and Advisory Staff Designations**

Pursuant to O.C.G.A. § 50-13-13, this proceeding shall be considered a contested case. As such, the Commission hereby designates the following staff members to act as Public Interest Advocacy Staff in this proceeding:

Steve Roetger
Tom Newsome
Robert Trokey
Shemetha Jones
Chesley Dix
Dan Walsh
Preston Thomas
Jack Branch

The Public Interest Advocacy Staff shall be responsible for performing an independent evaluation of the filed case from the standpoint of promoting the public interest and advocating for that position. The Public Interest Advocacy Staff is considered a party to the case and may negotiate settlements with other parties, in the public interest.

The Commission hereby designates the following staff members to act as Commissioner Advisory Staff in this proceeding:

Nancy Gibson

The Commissioner Advisory Staff shall not be a party to this case, but shall act as a technical advisor to the Commissioners, and shall advise Commissioners upon request based exclusively on its own independent evaluation of the facts contained in the record.

## Intervention

### *Intervention Period*

(a) Any person or party, on whom a statute does not confer an unconditional right to intervene, must file an application for leave to intervene within 30 days following the first published notice of the proceeding.

### *Application Requirements*

(b) In addition to the requirements prescribed by O.C.G.A. § 46-2-59 for applications for leave to intervene, the application must (1) identify other intervening parties or intervening party applications whose interest is similar to that of the applicant, along with an explanation of why the identified intervening party or intervening party applicant will not adequately represent the applicant's interest; and (2) state the applicant's present intention to submit direct testimony and by whom and on what subject. The requirements identified herein shall constitute a continuing obligation of the applicant or intervening party.

### *Late Applications for Intervention*

(c) Any application for leave to intervene filed late must state the reason why such application was not submitted within 30 days of first published notice. Objections to late intervention applications must be filed in conformance with the requirements of O.C.G.A. § 46-2-59-(d).

### *Rulings on Intervention Applications*

(d) The Commission will take up and rule on applications for leave to intervene on the date set forth in this Order.

## Filing and Service

An original and fifteen copies of all filings, including direct testimony, rebuttal testimony, briefs and proposed orders, shall be accompanied by an electronic version of the filing that shall be made on a CD ROM using Microsoft Word ® format for text documents and

Excel ® for spread sheets. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington St., SW, Atlanta, Georgia 30334-5701.

Each party has the responsibility to serve copies of any documents filed with the Commission upon each intervener and intervener applicant. Furthermore, in the case of documents filed prior to the deadline for intervention established above, copies shall also be served upon each party indicated in the Certificate of Service accompanying this Order.

**Witnesses' Testimony**

(a) Summations of direct testimony will take no longer than fifteen (15) minutes or, at the discretion of the Commission, no longer than thirty (30) minutes.

(b) Summations should be limited to testimony and exhibits in the pre-filed testimony.

(c) Demonstrative handouts intended to be used during summations of the pre-filed testimony or in opening or closing statements, if applicable, must be pre-filed at least five (5) days prior to the hearing and must be limited to the scope of the testimony and exhibits in the pre-filed testimony.

(d) Except for good cause shown, corrections to testimony must be pre-filed at least five (5) days prior to the hearing.

(e) In the absence of a valid objection made and sustained to pre-filed testimony, the pre-filed testimony and exhibits, with corrections, will be admitted into the record as if orally given prior to the witness' summation, subject to a motion to strike after admission or other relevant objection.

(f) Where the testimony of a panel of witnesses is presented, cross-examination may either be addressed to the panel, in which case any member of the panel may answer, or cross-examination may be addressed to an individual panel member, in which case that panel member shall give the answer; provided, however, that any other panel member shall be allowed to supplement the answer given.

(g) Motions to strike any portion of pre-filed testimony must be filed at least two days prior to the hearing.

(h) Any individual that presents testimony during this proceeding may not conduct cross examination of other parties.

## Hearing Exhibits

For the record in all hearings, it shall be the responsibility of the parties sponsoring any hearing exhibits to ensure that the Hearing Reporter and all parties of record receive copies of the hearing exhibits at the time of introducing the exhibits at the hearings. (Exhibits filed with pre-filed testimony should already have been provided in fifteen (15) or more copies, as per Commission Rule 515-2-1-.04(3).)

## Procedures and Forms for Making an Application to Intervene

Applications to intervene and Commission approval thereof are addressed in O.C.G.A. § 46-2-59 and the Commission's Utility Rule 515-2-1-.06. Each applicant shall submit fifteen (15) copies of their application to intervene to the Commission, addressed to the Executive Secretary, Ms. Sallie Tanner, 244 Washington St. S.W., Atlanta, Georgia 30334-5701.

In addition, each applicant shall submit a copy of their application to the Georgia Power Company, and all other parties who have applied to intervene, and submit a Certificate of Service to the Commission certifying that these copies have been served on the other parties. To obtain a list of other applicants to intervene, contact Ms. Quawanda Boyer, Assistant to Utility Division Director, Georgia Public Service Commission, 244 Washington St., S.W., Atlanta, Georgia 30334-5701, (Telephone Number: (404) 463-2893).

## Rights of Parties

The parties have the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;
(2) To be represented by counsel at its expense;
(3) To subpoena witnesses through the Commission by filing requests with the Executive Secretary of the Commission; and
(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

*WHEREFORE, it is*

**ORDERED FURTHER,** that the procedures and schedule contained within this Procedural and Scheduling Order are hereby adopted by the Commission to govern these hearings.

**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 this matter is expressly retained for the purpose of entering such further Order or Orders as the Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 20th day of September, 2022.

Sallie Tanner
**Sallie Tanner**
**EXECUTIVE SECRETARY**

10-4-22
**DATE**

**Tricia Pridemore**
**CHAIRMAN**

10/4/22
**DATE**