BEFORE THE STATE OF GEORGIA
PUBLIC SERVICE COMMISSION

In Re:	)	
Georgia Power Company's	)	Docket No. 44280
2022 Rate Case	)	

POST-HEARING BRIEF OF THE SIERRA CLUB

INTRODUCTION

The testimony and evidence presented to the Georgia Public Service Commission ("Commission") over the course of these proceedings demonstrates that Georgia Power's expenditures in coal combustion residuals ("CCR") asset retirement obligations ("ARO") fails to meet the just, reasonable, and prudent standard. Therefore,the Commission should:

[A] the Commission should deny Georgia Power's request to recover from ratepayers CCR-ARO costs that do not comply with federal and state rules and therefore do not meet the "prudently incurred, reasonable and not unlawful" standard;

[B] the Commission should approve Georgia Power's proposed financial investments in the Make Ready and Community Charging Programs in order to meet Georgia's growing EV needs because they do meet the just, reasonable and prudent standard and are in the public interest.

ARGUMENT

I. Legal Standard

The Commission has "exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction." O.C.G.A. § 46-2-23. The utility must demonstrate that the costs it seeks to recover from ratepayers are "prudently incurred, reasonable and not unlawful." *Application of Ga. Power Co. for Auth. To Increase Retail Elec. Serv. Rates,* Docket No. 3673-U. Final Order at 108, Nov. 12, 1987, hereinafter "Georgia

Power 1987 Rate Case." In determining whether a cost was "prudently incurred," the Commission considers its "reasonableness under the circumstances, given what was known or should have been known at the time the decision was made or action taken." *Id.* at 108 (emphasis added). Therefore, costs that result from "imprudent action or inaction or are unreasonable, excessive or unlawful are disqualified from rate recognition" and should not be "passed on to the ratepayers." *Id.* at 108–109. Therefore, Georgia Power may only pass expenditures to ratepayers if it proves that the costs were "reasonable under the circumstances," and not excessive or unlawful. When "risk of harm to the public and ratepayer is greater, the standards of care expected from the reasonable person is higher." *Id.* at 108.

Additionally, the Commission may approve utility investments that are found to be in the public interest: "In determining what actions, if any, are to be taken . . . the [C]ommission shall consider . . . [s]uch other factors as the commission may determine are in the public interest." Ga. Code Ann. §46-2-23(c).

II. Leaving Coal Ash in Groundwater is Imprudent and Ratepayers Shouldn't Pay For It

The burden of establishing that costs are prudently incurred, reasonable and not unlawful—and thereby potentially recoverable—rests on Georgia Power. O.C.G.A. § 46-2-25. In the Commission's Stipulation for Docket Nos. 44160 and 44161 (Georgia Power's 2022 IRP), Georgia Power and PIA Staff agreed that while the Company's Environmental Compliance Strategy ("ECS") was approved, costs and the recovery of those costs would be addressed in the Company's 2022 rate case. Docket Nos. 44160 and 44161, Final Order at 21, ¶17 ("Staff reserved the right to challenge the Company's request for recovery, including the amount to be recovered as reasonable and prudent."); *see also* Direct Testimony of Mr. Smith and Mr. Trokey at 44 ("Staff reserved the

right to challenge the Company's request for recovery in the 2022 base rate case, including, but not limited to, the amount to be recovered as reasonable and prudent, the period over which costs are recovered and the method by which the costs are recovered."). Therefore, this rate case is the proper forum to discuss the reasonableness and prudence of coal ash pond closure costs. The ECS doesn't give GPC a green light to collect from ratepayers 100% of the costs to close its coal ash ponds. The PSC still has to determine if the coal ash closure costs are reasonable and prudent, and closure plans that violate federal and state law are not reasonable and prudent.

1. Georgia Power's CCR Closure Plans Violate Federal and State CCR Regulations

It is undisputed that Georgia Power will leave coal ash sitting in groundwater after closure in place is completed at the following unlined impoundments: Hammond AP-3, Yates Ash Management Area, McDonough AP-1, and Scherer AP-1. Yet state and federal regulations, and EPA's November 18, 2022 Final Decision regarding Plant Gavin, prevent Georgia Power from moving forward with capping in place its coal ash ponds when coal ash will remain saturated in groundwater post-closure. Georgia Power should not be allowed to recover dollars associated with closure plans that fail to comply with both federal and state CCR regulations.

40 C.F.R. § 257 Subpart D (the "CCR Rule") prevents a coal ash impoundment from being capped in place if coal ash is in groundwater or mixed with water of any kind. The CCR Rule sets national standards for management of CCRs and establishes minimum national criteria for closure of CCR units. Georgia regulations expressly incorporate those standards. *See* Ga. Comp. R & Regs. 391-3-4-.10, hereinafter "Georgia CCR Regulations." A core performance standard for closure in place under the CCR Rule is that the owner or operator of a CCR surface impoundment must eliminate free liquids prior to installing the final cover system:

> "The owner or operator of a CCR surface impoundment (…) must meet the requirements of paragraphs (d)(2)(i) and (ii) of this section prior to

> installing the final cover system (…) (i) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues."

40 C.F.R. § 257.102(d)(2) (emphasis added). The CCR Rule defines "free liquids" as "liquids that readily separate from the solid portion of a waste under ambient temperature and pressure." 40 C.F.R. § 257.53. Because water readily separates from coal ash under ambient temperature and pressure, groundwater is a free liquid.

The CCR Rule also requires that the owner or operator of a CCR unit ensure, at a minimum, that the CCR unit is closed in a manner that will preclude the probability of future impoundment of water, and in a way that will control, minimize, or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste. 40 C.F.R. § 257.102(d)(1). This provision also prevents Georgia Power from capping in place CCR surface impoundments if coal ash remains in groundwater post-closure. *Id*. Georgia Power, through its current closure plans, has not demonstrated it can prevent the vertical or horizontal infiltration of liquid into several of its ash ponds post-closure. Simply put, the CCR Rule and the Georgia CCR Regulations do not allow for a closure in place plan where CCRs will remain saturated and in contact with groundwater upon completion of the closure plan, and for this reason, the Commission should not allow GPC to recover costs from ratepayers to pay for a closure in place strategy that violates federal and state law.

2. EPA's Final Gavin Decision Applies to Georgia Power's Ash Pond Closures

Although Staff is not making a recommendation in this case to deny Georgia Power's CCR tariff request, Staff did state that "this should not be taken to mean Staff believes closure in place with ash in groundwater complies with EPA regulations," and mentioned it will reserve its recommendation on the prudence of CCR expenditures "until such time as EPA or the courts

determine whether Georgia Power's closure plans comply with CCR regulations." Shortly after Staff's testimony was filed on October 20, 2022, EPA issued the Final Gavin Decision, which concluded that surface impoundments cannot be closed with coal ash in contact with groundwater, unless the owner or operator demonstrates they have installed adequate engineering methods to prevent groundwater from infiltrating the pond.

On November 18, 2022, EPA published its Final Decision denying Gavin Power, LLC's request for an extension to close its unlined coal ash impoundment. In the Final Gavin Decision, EPA relied upon the CCR Rule and applied its provisions in situations where—as with Georgia Power—Gavin Power sought to cap in place CCRs in contact with groundwater. EPA's analysis, concluded that "EPA is confident, based on the information cited in the proposal as well as the additional data in the record, that a significant portion of the CCR in the unit remains in contact with groundwater," and for that reason "the closure plan would need to discuss the engineering measures taken to eliminate the groundwater that was migrating into the unit before installing the final cover system, as required by 40 C.F.R. § 257.102(d)(2)(i) (requiring that 'Free liquids must be eliminated')." Final Gavin Decision at 20, 24. EPA also stated that contact between CCRs and groundwater "provides a potential for waste constituents to be dissolved, suspended, or otherwise transported in the groundwater to migrate out of the closed unit." *Id.* at 28.

Despite Georgia Power's witnesses' statements that the Final Gavin Decision applies only to "a specific instance in Ohio," (Tr. at 4104), EPA's own determination states that

> EPA is unaware of a circumstance where these standards could be, or have been, met when the waste in a closed, unlined impoundment remains in contact with groundwater that freely migrates in and out of the CCR remaining in the closed unit.

(Final Gavin Decision at 33.) Simply put, closure in place performance standards require that free liquids be eliminated *before* the final cover is installed throughout the United States, not just Ohio. As EPA stated in the Final Gavin Decision,

> [a]ny reading that ignores or contravenes the purpose of the regulations is not reasonable and cannot be legitimately considered a realistic alternative reading. . . . [I]t is not reasonable to interpret the regulations to allow such a closure because it would permit the indefinite continuation of conditions that present unacceptable risks to human health and the environment, when the primary purpose of the closure requirements is to eliminate such releases 'to the maximum extent feasible.'

(Final Gavin Decision at 91.) Because EPA's position has been consistent since the promulgation of the CCR Rule, the Company's statements that the Final Gavin Decision applies only to a plant in Ohio are unfounded. Despite the plain language in the CCR rule and the unequivocal Final Gavin Decision, Georgia Power plans to leave coal ash saturated in groundwater, which means that coal ash, complete with its heavy metal contaminants, will continue to leach into and contaminate groundwater in perpetuity. *See* Georgia Power 2022 IRP April 5, 2022, Hearing Trans. at 872:16-19 ("A. (Witness Mitchell) We have ten ponds scheduled to be closed in place. It is true that some of those ponds will continue to have saturated ash after the closure has been completed"). This Commission cannot allow the Company to recover money from ratepayers that has been or will be spent on closure plans that continue to ignore the minimum closure performance standards.

3. Georgia Power Should Close Its Ash Ponds Once and Close Them Right

The Commission should deny recovery of any costs associated with Georgia Power's switching from one closure method to another. Any already incurred costs associated with a cap-in-place closure strategy that will now be switched to excavation should be covered by the Company, not ratepayers. This is consistent with Commission precedent:

> It may be proper and prudent for utility management to select a particular vendor to perform a task. If the vendor performs the particular task in a deficient manner **or is required to duplicate the effort of another vendor, the costs for this deficient or duplicative work should not be passed along to the ratepayers**. Therefore, it is only appropriate that such excessive or unreasonable costs become the responsibility of the utility and not the ratepayer. (...) [D]uplicative and redundant activities and should not be borne by the ratepayers.

Georgia Power 1987 Rate Case, Docket No. 3673, Final Order at 109 (emphasis added). If the Company decides, or if state or federal authorities order it, to excavate ash ponds that do not comply with CCR regulations, ratepayers should not be required to pay for that switch because Georgia Power failed to comply with the CCR Rule and took imprudent decisions that have led, or could lead to double costs.

This kind of switch is imminent at Hammond AP-3, an ash pond that Georgia Power has already capped in place without the EPD's issuance of a final permit. Georgia Power's public disclosure response to STF-PIA-10-13 stated that the costs of closing Hammond AP-3 is $25.8 million, *see* SC-Exhibit 1, Attachment to STF-PIA-10-13, and Georgia Power's witnesses testified that those costs will be fully recovered from ratepayers by 2023. Given that the Company is not accounting for the risk of having to switch to excavating this ash pond, the costs to ratepayers will increase significantly if and when Georgia Power has to, or chooses to, excavate Hammond AP-3 in order to be in compliance with state and federal CCR regulations. The Commission should consider that EPD has not issued a final permit (a *draft* permit was issued in July, 2021) and therefore may still order the Company to excavate, after it reviews the Final Gavin Decision.

Apart from the traditional rate base increase, the CCR tariff is the highest increase that Georgia Power is requesting in this docket, and those costs may skyrocket in the future, as they already have over the last 3 years ($7.5 billion to $9 billion). As the Georgia Association of

Manufacturers noted in their cross examination of Georgia Power's witnesses, Georgia Power has already spent an amount comparable to Vogtle in their ash pond closures:

> Q [Clay Jones: T]he total costs of your coal ash cleanup program are very significant; would you agree? (...)
> A (Witness Abramovitz) Yes, the costs are substantial.
> Q Is it somewhere around $10 billion? Am I in the ballpark?
> A (Witness Abramovitz) Subject to check, that sounds about right.
> Q Not unlike, say, building another nuclear plant almost?
> A (Witness Abramovitz) It's a little different. (...) But the amounts are similar.

Tr. at 476-7. To prevent another Vogtle splurge, at the very least, the Commission should deny recovery of any costs associated with capping in place ash ponds where CCRs are in contact with groundwater. The plain language of the CCR Rule and the straightforward application of such rule in the Final Gavin Decision, make clear that the CCR Rule does not allow owners or operators of surface impoundments to leave coal ash sitting in groundwater. These standards have not changed since the CCR Rule was promulgated in 2015, and yet Georgia Power admitted three times during the IRP and once in this rate case that it plans to leave coal ash sitting in groundwater after closing several of its CCR impoundments. The Company has had years of notice of these closure requirements, but nonetheless asks this Commission to approve a CCR tariff that places billions of dollars of ratepayer money in legal jeopardy. Georgia Power has enough information to decide now, and not later, to excavate ash ponds instead of continuing pouring ratepayer dollars into closure plans that will need to be altered to comply with the CCR rules and the Final Gavin Decision. Failing to do so now is imprudent.

If Georgia Power were to be found not in compliance with CCR rules, or if for any reason the Company switches closure methods in the future, ratepayers should not be on the hook for this uncertainty. Further, the Commission should reserve a decision on the Hammond AP-3 costs until a final permit is issued.

III. Georgia Power's EV Request is in the Public Interest and Should be Approved

Georgia Power's investment in EV charging infrastructure is just, reasonable and prudent, and in the public interest, and therefore should be approved by the Commission. *See* Ga. Code Ann. §46-2-23. Georgia Power seeks approval to invest in utility infrastructure upgrades necessary to support EV charging by investing $81 million in its Make Ready Program over the next three years and $3 million per year between 2023-2025 on its Community Charging Program. As Mr. Womack explained in his testimony, Georgia Power's objective is to "support the growing EV ecosystem" in response to "increasing customer interest and market demand." Direct Testimony of Mr. Womack at 10.

Staff's testimony does not dispute that the EV ecosystem in Georgia is growing rapidly, and recognizes that there is a "growing need for EV infrastructure across the state." Summary of Mr. Deitchman's Testimony, Tr. at 2211. According to Bloomberg New Energy Finance, national EV sales are expected to hit 52% by 2030, due to the incentives in the Inflation Reduction Act. Direct Testimony of C. Nicholas Deffley and David Nifong on behalf of the Georgia Coalition of Local Governments at 7. As the Direct Testimony of EVgo noted, "[a]s of June 2022, Georgia ranked number ten out of all states for most registered EVs," and "the Georgia Department of Transportation (GDOT) note[d] Georgia is the leader in the Southeast with 4.4 EV registrations per 1,000 registered vehicles, and the market continues to grow." Direct Testimony of Colin Murchie on behalf of EVgo at 7-8. Sierra Club agrees that sufficient public charging infrastructure will support the growing demand for EVs in Georgia. Georgia Power will need to play a critical role in ensuring that the generation, distribution, make-ready infrastructure, and rate structures are in place to adequately serve EVs. Doing so properly will ensure that Georgia Power's customers, not just EV drivers, benefit significantly.

1. Georgia Power's EV Programs Are in the Public Interest and Should Be Approved

Georgia Power's Make Ready Program

No party opposes Georgia Power's Make Ready Program, except for PIA Staff, and none of the concerns articulated in PIA Staff's testimony preclude cost recovery under the reasonable, just and prudent standard. Contrary to Staff's testimony, the Company's Make Ready Program will benefit all ratepayers —not just EV drivers—, will not be met by the private market or the federal government, and is in the public interest. First, PIA Staff asserted that "[t]he Company has not demonstrated that revenue collected through the Make Ready program will offset costs to ratepayers." Direct Testimony of Mr. Smith and Mr. Trokey at 77. This concern, however, considers costs and revenues from only one piece of Georgia Power's proposed EV investment in isolation. Staff's critique did not consider utility revenues from increased charging that are *also* facilitated through Georgia Power's Make Ready Program, nor did it consider the ratepayer benefits of properly managing increased EV charging:

> Q But, did you calculate how much revenue the company will make as a result of increased sales of electricity associated with EV charging?
> A (Witness Trokey) No. . . .

Tr. at 1451. Although PIA Staff admitted that EV charging overnight provides greater grid efficiency and puts downward pressure on rates in response to Commissioner Echols's questioning, during cross examination, Staff stated that such downward pressure on rates would not be enough to support EV charging infrastructure. While Staff admits that an increase in overnight EV charging puts downward pressure on all rates, it ignores its public interest nature.

PIA Staff's position similarly fails to account for Georgia Power's Ratepayer Impact Measure ("RIM") analysis results. *See* Georgia Power's response to STF-HR-1-4 ("As an overall program, the average RIM value taking into account all scenarios and tariffs is positive, which

creates downward pressure on rates for all customers."). As Jason Frost of Synapse Energy Economics testified in the 2022 Georgia Power IRP, EV adoption, if properly integrated into the grid, can result in downward rate pressure benefiting all ratepayers due to the increased amount of electricity sold to EV users. *See* Georgia Power's 2022 IRP, Docket Nos. 44160 and 44161, Direct Testimony of Mr. Frost on Behalf of Sierra Club at 21.

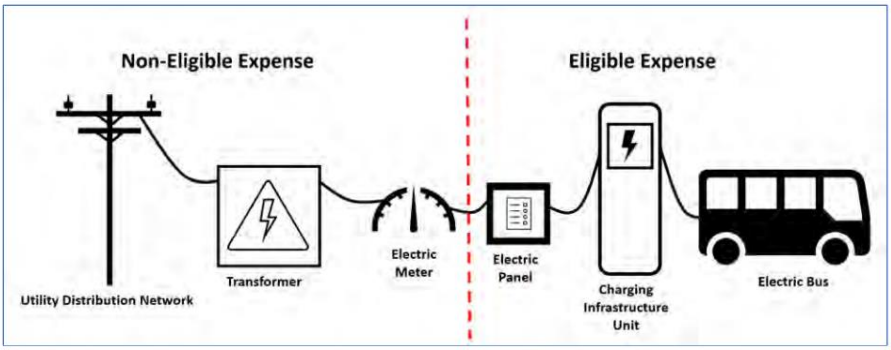
Second, PIA Staff asserted that non-EV ratepayers should not "subsidize" the Make Ready Program where private charging providers also participate in the marketplace. Direct Testimony of Mr. Smith and Mr. Trokey at 79 ("The long-term success of the electric vehicle charging market depends on making it a competitive free market."). This testimony, however, fails to acknowledge that the Make Ready Program may fill a gap not adequately served by the existing private market. In stark contrast to Staff's position, all parties that represent the private market in this proceeding support Georgia Power's Make Ready Program in some form. EVgo's testimony stated, "[Make Ready] investments will enable the growth of the competitive EV charging market in Georgia Power's service territory by reducing the upfront cost of installing charging stations. I strongly support the Company's proposed expansion of its make-ready program." *See* Direct Testimony of Colin Murchie on behalf of EVgo at 11. Similarly, ChargePoint recommended "that the Commission [a]pprove Georgia Power's proposed investments in (...) EV charging infrastructure upgrades across the state." Direct Testimony of Justin Wilson on behalf of ChargePoint at 3. Finally, AACE's testimony noted that "[p]rovided the goals and requirements of the program are clearly defined, there is a role for a program like Make Ready until the EV market is more developed. We support it and would participate in it." Direct Testimony of Joseph Akers, Ron Nelson and Barry Selvidge on behalf of AACE at 18.

PIA Staff also claimed that "the competitive market is expected to provide, with assistance from federal funding and grants, a significant number of new charging stations throughout the state." Direct Testimony of Mr. Smith and Mr. Trokey at 84. However, the record shows that the federal grants that Staff refers to do not provide adequate funding for charging infrastructure or may be insufficient. Indeed, Aretta Baldon, Vice Chair of the Atlanta Board of Education, commented,

> The EPA's Clean School Bus Program is disbursing $5 billion over the next five years for public schools to buy clean buses. This Program allows rural and low income public school districts to receive up to $375,000 per EV school bus, and up to 25 school buses; however, the Clean School Bus Program provides very limited funding for charging infrastructure and this money must be spent entirely behind the meter and is scaled only to the initial number of buses awarded.

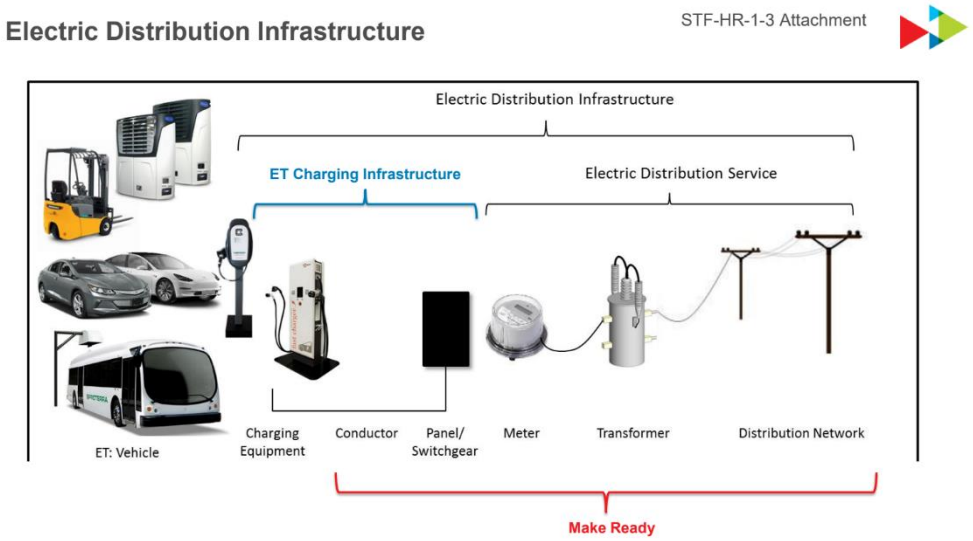
Tr. at 3910 (emphasis added). The Clean School Bus Program's funding structure is depicted in Figure 1:

Figure 1: Clean School Bus Program Eligible and Non-Eligible Expenses



Conveniently for schools, Georgia Power's Make Ready Program supplies the infrastructure that the Clean School Bus Program does not cover (or provides limited funding for), as depicted in Figure 2:

Figure 2: Types of Equipment and Costs that Can Be Part of Georgia Power's Make Ready Program



Similarly, with regard to the federal National Electric Vehicle Infrastructure (NEVI) Program, as ChargePoint explained in its testimony, "Georgia is expected to receive $135 million over 5 years to support the expansion of EV charging; Georgia will also have the opportunity to apply for $2.5 billion in grant funding dedicated to EV charging." Direct Testimony of Justin D. Wilson on behalf of ChargePoint, at 10. However, under the NEVI Program, "major grid upgrades, such as longer line extensions or upgrades, improvements to offsite power generation, bulk power transmission, or substations are ineligible [for funding]," and "State DOTs are encouraged to consider the magnitude of these costs and explore whether they could be covered by the electric utility or programs other than the NEVI Formula Program so as to minimize use of NEVI Formula funds for grid upgrades where possible." As Georgia DOT advised and as AACE's expert witnesses admitted, there are a number of roles Georgia Power should play under NEVI, including through its Make Ready Program. The same can be said about federal grant programs that can be

used for the acquisition of medium and heavy duty transportation electrification. As MARTA's expert witness explained:

> Q On page 8, starting in line 171 of your testimony, you discuss that MARTA was awarded federal funds to electrify your fleet; correct? (...)
> A Yes. That's correct.
> Q Do those awards include some, but very limited, funds for the actual charging infrastructure?
> A Yes, ma'am, it does.

Tr. at 3364. Finally, PIA Staff expressed that the Make Ready Program is not in the public interest. *See* Direct Testimony of Mr. Smith and Mr. Trokey at 74. But public entities in this proceeding testified that the general public would greatly benefit from Georgia Power's Make Ready Program. The Georgia Coalition of Local Governments stated, "[t]his program has been a tremendous benefit to our member governments as we seek to transition our fleets, and it has also supported our efforts to provide public charging for our citizens." Direct Testimony of C. Nicholas Deffley and David Nifong at 4. The Vice Chair of the Atlanta Board of Education also commented on the "many reasons why fully funding Georgia Power" to support schools' transition to clean buses is in the public interest:

> To deny utility investments in these areas could effectively deny rural schools and schools located in lower-income areas the chance of transitioning to clean school buses. Students, drivers, and members of the community would continue to be exposed to significant amounts of harmful diesel emissions like PM and NOx that cause asthma and other health problems. The air inside diesel fueled school buses is worse than the air outside of it, which means millions of children in Georgia are breathing in large doses of toxic pollution on their commute to and from school. School districts need to be shielded, and children, protected, from gas price volatility. School districts should not have to choose between educating students and fueling buses when fuel prices spike. Now that the price of diesel fuel is up 50% from a year ago, schools have had to combine routes and kids are spending more time commuting to and from school than learning as they face commutes with longer times. EPA's program prioritizes school districts that, among other things, have higher rates of poverty, are rural, and/or are on tribal lands. Nearly 150 school districts in Georgia will be prioritized to receive Clean School Bus Program funding because they're located in low-income areas where 20% or more students are living in poverty.

Tr. at 3911-2. If, as Mr. Womack suggested during cross examination, Georgia Power couples its Make Ready Program with Vehicle 2 Grid rate structures, the benefits to the public may be even greater.

Georgia Power's Community Charging Program

In reference to Georgia Power's Community Charging Program, PIA Staff asserted, "the current and future charging stations will not generate enough revenue to cover O&M expense and depreciation" and that allowing rate recovery would mean non-EV drivers are subsidizing investments that only benefit EV-driving ratepayers. Direct Testimony of Mr. Smith and Mr. Trokey at 83-4. Again, as with the Make Ready Program, this concern looks at costs and revenues from only one segment of Georgia Power's proposed EV investment in isolation.

Parties like EVgo, ChargePoint, and even AACE acknowledged that there are many instances in which the private market simply cannot make a business case to install a charger in a remote area that will rarely be used. EVgo's expert witness stated the following with respect to the Community Charging Program: "we feel that there is, in fact, likely a role for the investor-owned utility in expanding, you know, provider/resort-type service to parts of Georgia that might otherwise go unserved." Tr. at 2540. Georgia Power should be allowed and encouraged to own and operate chargers in those rural, remote, or underserved areas to encourage EV adoption and make sure that access to charging is equitable and not limited to those places in which the private market can make a profit.

Unlike other industries, such as telecommunications, the utility's early investment in infrastructure is crucial in ensuring that the state is adequately and timely responding to the coming wave of EVs, and their planned involvement is essential to assuage potential EV drivers' range anxiety. One of the largest barriers to greater EV adoption is range anxiety, exacerbated by a "chicken-and-egg" problem, where the private sector has not made a business case to install public

charging infrastructure without a critical mass of EVs on the road, but there will not be a critical mass of EVs on the road until there is sufficient charging infrastructure to eliminate range anxiety. As AACE's witness Mr. Nelson explained,

> Q Would you briefly describe what, in your view, is the chicken and egg problem in the EV market.
> A (Witness Nelson) Yeah. I think there's -- part of the problem is that there is not sufficient charging available to give people confidence into entering the EV market is kind of the chicken and the egg issue here.

Tr. at 2388. And, as AACE's witness Mr. Selvidge admitted,

> Q (...) Mr. Selvidge, there was no similar problem [in the telecommunications industry] because, if you delayed pay phone deployment, pay phone adoption was not going to be delayed, was it?
> A (Witness Selvidge) If you delayed deployment? I'm sorry.
> Q Yeah, if you delayed deployment of pay phones, as if you delayed deployment of charging stations, pay phone adoption wouldn't be delayed as EV adoption would?
> A (Witness Selvidge) That's probably correct, yes.

Id. Reliable access to charging at home, the workplace, and travel corridors, is essential, not accessory, in the transition to transportation electrification.

For the reasons stated above, Georgia Power's Make Ready and Community Charging Programs meet the just, reasonable and prudent standard, are in the public interest and should therefore be approved by the Commission.

2. In Addition to Approving Georgia Power's EV Programs, the Commission Should Open An EV Investigatory Docket

The Commission received evidence from numerous parties expressing support for Georgia Power's EV Programs, but requesting greater detail, information and guardrails to ensure there is no anti-competitive behavior so that the private third party charging market can take root and grow. The Commission also received evidence demonstrating that federal funds under the Infrastructure Investment and Jobs Act of 2021 are driving public fleets' acquisition of EVs. *See* Sierra Club

Exhibit 2: EPA Clean School Bus Awards; *see also* Direct Testimony of Kevin L. Hurley on behalf of MARTA at 8-9 ("MARTA was awarded (...) a $19.3 million Federal Transit Administration Low and No Emission Bus grant to further advance the fleet transition to electric. Further, all future Bus Rapid Transit projects are expected to utilize electric buses."); *see also* the Georgia Coalition of Local Governments' cross examination, Tr. at 2813 ("Q. Are the current vehicles that are being served by that Make Ready infrastructure the only electric vehicles you expect to have in your fleet? A (Witness Deffley) No, absolutely not. I mean, this is falling into our plan to really grow that fleet conversion but also use those same chargers for public use as well."). Finally, the Commission is also aware that the state legislature is currently conducting its own investigation to decide upon high level Georgia policies regarding EVs and EV infrastructure.

In light of this developing EV ecosystem, the Commission should approve Georgia Power's request for funds and authorize the Company to continue the EV-related services they are providing their customers without a harmful disruption. At the same time, the Commission should open an EV investigatory docket to better understand the novel issues that transportation electrification raises, and to ensure that Georgia Power's EV programs are structured in ways that continue to respond to those issues and provide the guardrails that the nascent third party charging market needs, while incorporating the directives that the Georgia legislature will provide. Many public service commissions around the country have taken this approach, and several parties showed support for this EV investigatory docket, including AACE:

> Q. Mr. Nelson, on page 5, lines 21 through 23, you mention that recently you testified before the Massachusetts Department of Public Utilities (...) Given your expertise, do you see any benefit to this Public Service Commission opening a docket similar to that one?
>
> A. (Witness Nelson) I do think there would be benefit from additional conversation on Make Ready and EV rate design. I think there could be progress made in the current docket as well, because I think there's going

> to be -- there's going to be -- things are going to start to move faster, I think, in the EV industry with many of the announcements that have been made. And so trying to take a phased approach with how we deal with these programs is important.

Tr. at 2384. Many of the parties' concerns with Georgia Power's EV programs can be addressed in an EV docket, including Staff's concern that the Make Ready Program is primarily serving "private golf clubs, private schools, luxury condominiums, and multinational corporations with annual revenues well over a billion dollars." Direct Testimony of Mr. Smith and Mr. Trokey at 78. Further, Staff's doubts with respect to Georgia Power's RIM test could also be addressed in such docket, as well as EVgo's concern regarding the lack of information provided by Georgia Power in the rate case about their Community Charging Program: "[t]he Company has provided no information regarding the pricing it expects to set for charging stations developed under the Community Charging program, nor has it provided any information on how the pricing for current Company-owned stations is set." Direct Testimony of Colin Murchi on behalf of EVgo at 20. Finally, an EV docket would help define and clarify prioritization criteria discussed by parties like EVgo and AACE, and might serve as an avenue to flesh out Staff's recommendations related to the Make Ready Program's transparency requirements.

CONCLUSION

For the foregoing reasons, Georgia Power has not met its burden to show that its CCR costs are just, reasonable and prudent. Accordingly, the Commission should deny Georgia Power's CCR tariff request. At the very least, the Commission should deny recovery of any costs associated with capping in place ash ponds where CCRs will remain saturated in groundwater after closure. In addition, because Georgia Power's investment in EV charging infrastructure meets the just, reasonable, and prudent standard, it should be approved.

Respectfully submitted this 8th day of December 2022.



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CERTIFICATE OF SERVICE

I hereby certify that I have served the following parties via email with the foregoing ***POST-HEARING BRIEF OF THE SIERRA CLUB,*** filed in the above-styled matter:

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