

POWER SUPPLY AGREEMENT
BY AND BETWEEN
MISSISSIPPI POWER COMPANY
AND
GEORGIA POWER COMPANY

Dated as of October 11, 2023

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POWER SUPPLY SERVICE SCHEDULE

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**POWER SUPPLY AGREEMENT
BY AND BETWEEN
MISSISSIPPI POWER COMPANY
AND
GEORGIA POWER COMPANY**

This Power Supply Agreement (“Agreement”) is entered into and effective this 11th day of October, 2023 (“Effective Date”), by and between **MISSISSIPPI POWER COMPANY** (by and through its agent, Southern Company Services, Inc.), a corporation organized and existing under the laws of the State of Mississippi (“**MPC**” or “**Seller**”), and **GEORGIA POWER COMPANY** (“**GPC**”), a corporation organized under the laws of the State of Georgia (referred to herein as “**Buyer**”). Seller and Buyer may be individually referred to as a “Party” and collectively as the “Parties”.

W I T N E S S E T H:

WHEREAS, Seller is an electric utility operating company engaged in, among other things, the sale of electric power at wholesale and has received authorization from the Federal Energy Regulatory Commission to provide wholesale power supply services at market-based rates in accordance with the Tariff (as hereinafter defined); and

WHEREAS, Buyer is an electric utility operating company which, among other things, provides retail electric service to end-use customers in its franchise service territory in the State of Georgia and is authorized to purchase wholesale power supply services; and

WHEREAS, subject to the terms and condition of this Agreement, the Parties desire for Seller to supply capacity and associated energy to Buyer and for Buyer to purchase capacity and associated energy from Seller pursuant to this Agreement the principal purpose is to supply Buyer’s retail electric customers; provided, however, that if this Agreement is not approved

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through a Commission Certificate as provided in Section 9.4, then in such case Buyer agrees to utilize the capacity and energy supplied hereunder for the purpose of exclusively supplying Buyer's wholesale electric customers and not its retail electric customers.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Seller and Buyer, each intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions. All capitalized terms used herein and not otherwise defined, whether singular or plural, shall have the respective meanings set forth below:

"Affiliate" means, for any specified corporation, any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified corporation. For purposes of this definition, "control" when used with respect to any entity shall mean the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" means, as set forth in the preamble, this Power Supply Agreement, as may be amended from time to time.

"Arbitration Expenses" has the meaning set forth in Section 14.5.4.

"Arbitration Initiation Date" has the meaning set forth in Section 14.5.

"Arbitration Notice" has the meaning set forth in Section 14.5.

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“**Assignee**” has the meaning set forth in Section 17.1.2.

“**Assignment Conditions**” has the meaning set forth in Section 17.1.2.

“**Business Day**” means any Day other than a Saturday, Sunday or any Day that has been established as a NERC defined holiday.

“**Business Hour**” has the meaning set forth in Section 17.7.

“**Buyer**” means, as set forth in the preamble, Georgia Power Company, and its permitted successors and assigns.

“**Central Prevailing Time**” or “**CPT**” means the local time on a given Day in Birmingham, Alabama.

“**Confidential Information**” has the meaning set forth in Section 16.1.

“**CPR**” means the International Institute for Conflict Prevention & Resolution.

“**Day**” means a calendar day, commencing at one (1) minute prior to 12:01 a.m. CPT of each such calendar day and ending at one (1) minute after 11:59 p.m. CPT of such calendar day in Birmingham, Alabama.

“**Defaulting Party**” has the meaning set forth in Section 13.1.

“**Dispute Impasse Notice**” has the meaning set forth in Section 14.3.

“**Dispute Response**” has the meaning set forth in Section 14.2.

“**Disputed Amount**” has the meaning set forth in Section 7.2.1.

“**Disputing Party**” has the meaning set forth in Section 14.2.

“**Early Termination Notice**” has the meaning set forth in Section 2.4.3.

“**Early Termination Notice Deadline**” has the meaning set forth in Section 2.4.3.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

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“Event of Default” has the meaning set forth in Section 13.1.

“Federal Arbitration Act” means the United States Arbitration Act, 9 U.S.C.A. § 1 *et seq.*, as the same may hereafter be amended from time to time.

“Federal Power Act” means the Federal Power Act, 16 U.S.C.A. §§ 791a-828c, as the same may hereafter be amended from time to time.

“FERC” means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

“Firm and Native Load” shall mean the demands of wholesale and retail power customers for which the Seller, by statute, franchise, regulatory requirements, or contract, has undertaken the obligation to plan, construct and operate its system to provide reliable power supply services and meet the electric needs of such customers. For purposes of this Agreement, Firm and Native Load shall be defined as interruptible for reliability reasons only and shall not include loads associated with interruptible, curtailable, and other demand-side management programs.

“Governmental Authority” means any local, state, regional or federal administrative, legal, judicial, or executive agency, commission, department, or other such entity.

“GPSC” means the Georgia Public Service Commission.

“Hour” means one (1) of the twenty-four (24) clock-hours of a Day.

“Hourly” has a meaning correlative to that of Hour.

“IIC” means that certain Southern Company System Intercompany Interchange Contract, as filed pursuant to 119 FERC ¶ 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC No. 138, by and among Seller and certain of its Affiliates, including the IIC Manual, and excluding periodic informational filings, as the same may

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be amended and restated, or any successor contract filed with FERC among Seller and certain of its Affiliates for coordinated operations.

“IIC Manual” means the Allocation Methodology and Periodic Rate Computation Manual attached to, and incorporated in, the IIC as the same may be amended and restated from time to time, or any successor document serving the same purpose made a part of the IIC and filed with FERC, excluding periodic informational filings.

“Interest Rate” means the rate per annum equal to the lesser of: (i) the highest interest rate allowed by Law; or (ii) two percent (2%) plus the prime rate, as stated in the *Wall Street Journal* on the date payment is due.

“kW” means kilowatts.

“Law” means, whether in effect as of the Effective Date or at any time in the future, any act; statute; law; requirement; ordinance; order; ruling or rule; regulation; standards and/or criteria contained in any permit, license, or other approval; legislative or administrative action by any Governmental Authority; or a decree, judgment or order of any Governmental Authority.

“Mediation Election” has the meaning set forth in Section 14.4.

“Month” means a calendar month.

“Monthly” has a meaning correlative to that of Month.

“Monthly Capacity Payment” has the meaning set forth in Section 5.1 of the Service Schedule.

“Monthly Energy Payment” has the meaning set forth in Section 5.2 of the Service Schedule.

“MPSC” means the Mississippi Public Service Commission.

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“**MW**” means megawatts.

“**MWh**” means megawatt hours.

“**NERC**” means the North American Electric Reliability Corporation (and any successor thereto).

“**Non-Defaulting Party**” has the meaning set forth in Section 13.1.

“**Notice of Dispute**” has the meaning set forth in Section 14.2.

“**Operating Committee**” has the meaning set forth in Section 4.2.1.

“**Operating Representatives**” has the meaning set forth in Section 4.2.1.

“**Party**” or “**Parties**” has the meaning given such terms in the preamble of this Agreement.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association, or Governmental Authority.

“**Point(s) of Receipt**” means with respect to the various generating units on the Southern Electric System that are providing capacity and energy under this Agreement, the high voltage side of the generation step-up transformers of such units.

“**Principals**” means (i) with respect to Buyer, Buyer’s Vice President of Pricing and Planning or Chief Executive Officer, and (ii) with respect to Seller, Seller’s Chief Production Officer, Chief Executive Officer, or the Vice President of the Southern Wholesale Energy business unit.

“**Responding Party**” has the meaning set forth in Section 14.2.

“**SCS**” means Southern Company Services, Inc., an Alabama corporation.

“**SEC**” has the meaning set forth in Section 16.2.3.

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“Seller” means, as set forth in the preamble, Mississippi Power Company, by and through its wholesale services agent, Southern Wholesale Energy, a business unit of Southern Company Services, Inc., and its permitted successors and assigns.

“Senior Officer” means an individual, employed as a senior officer of a Party, designated by such Party as its representative in matters that are subject to Section 14.3 of this Agreement.

“Service Schedule” means the Power Supply Service Schedule, which is attached to this Agreement and incorporated into this Agreement by reference.

“Service Term” has the meaning set forth in Section 2.1.

“Southern Company” means The Southern Company, a Delaware corporation, or its successor(s).

“Southern Electric System” means the high voltage electric system on which transmission service is provided pursuant to the Southern OATT, as such system may be modified or expanded from time to time, as well as any successor in function.

“Southern OATT” means the Open Access Transmission Tariff of those Southern Operating Companies that own or control transmission facilities, or a successor tariff governing transmission on the Southern Electric System that has been accepted by FERC, as such tariffs may be changed or amended from time to time.

“Southern Operating Companies” means, collectively, the electric utility operating company Affiliates of Southern Company engaged in common dispatch and control of generating resources, currently including Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Southern Power Company.

“Standard Arbitration Process” means the process set forth in Section 14.5.1.

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“Streamlined Arbitration Process” means the process set forth in Section 14.5.2.

“Submission” means a precise statement of the issue(s) in dispute, a proposed resolution of the issue(s) in dispute, including a monetary amount and the supporting calculations if applicable, and the factual and/or legal support therefor; provided that any such monetary amount will be limited to the damages allowed pursuant to the Agreement.

“Tariff” means Southern Operating Companies’ Market Based Rate Tariff, Southern’s Tariff Volume No. 4, as superseded or amended from time to time.

“Taxes” means any or all ad valorem, property, occupational, severance, emissions, generation, conservation, transmission, utility, gross receipts, privilege, sales, transfer, use, excise and other taxes, fees, assessments, licenses, and any other charges imposed by a Governmental Authority, but excluding taxes based on net income or net worth.

“Term” has the meaning set forth in Section 2.1.

“Year” means a calendar year.

1.2 Interpretation. In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Any reference in this Agreement to “Section,” “Article,” “Appendix,” or “Service Schedule” shall be references

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to this Agreement unless otherwise stated, and all such Appendices, and the Service Schedule shall be incorporated in this Agreement by reference. In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented, and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.3 Construction. Each Party acknowledge that it was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor of or against either Party because one is deemed to be the author thereof.

ARTICLE 2**TERM OF THE AGREEMENT**

2.1 Term. The “Term” of this Agreement shall be the period beginning on the Effective Date and continuing inclusive through one (1) minute after 11:59 p.m. Central Prevailing Time on the Day on which the Service Term expires (as determined below), unless this Agreement is terminated earlier pursuant to other applicable provisions of this Agreement. Subject to the earlier

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termination of this Agreement pursuant to the provisions hereof, the “Service Term” shall be the period of time, commencing on January 1, 2024, and continuing through December 31, 2028.

2.2 Survival . All provisions of this Agreement that expressly come into or continue in force and effect following the termination or expiration of this Agreement shall remain in effect and be enforceable following such expiration or termination. In addition, the following provisions of this Agreement which by virtue of their purpose should continue in force and effect following the termination or expiration of this Agreement shall remain in effect and be enforceable following such expiration or termination until such purpose has been fulfilled: Article 6, Article 7, Article 9, Article 12, Section 13.2, Section 13.3, Article 14, Article 16 and Article 17, and any additional provisions hereof necessary to implement or interpret the foregoing.

ARTICLE 3

[RESERVED]

ARTICLE 4

SALE AND PURCHASE OF POWER SUPPLY;

OPERATING COMMITTEE

4.1 Sale and Purchase of Power Supply. Seller agrees to deliver and sell, and Buyer agrees to receive and purchase, electric power supply pursuant to the Service Schedule and the terms and conditions of this Agreement. All energy delivered by Seller shall meet applicable power quality standards of NERC and the Southern OATT. Such energy and capacity shall principally be used to supply Buyer’s retail electric customers; provided, however, that if this Agreement is not approved through a Commission Certificate as provided in Section 9.4, then in

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such event, Buyer agrees to utilize the capacity and energy supplied hereunder for the purpose of exclusively supplying Buyer's wholesale electric customers and not its retail electric customers.

4.2 Operating Committee.

4.2.1 Buyer and Seller shall each designate one representative and one alternate ("Operating Representatives") who shall act for the respective Parties in matters pertaining to detailed operating arrangements for service hereunder. The Operating Representatives, or their alternates, shall comprise and be referred to as the "Operating Committee".

4.2.2 The Operating Committee shall have responsibility for the following:

- (a) Establishment of arrangements such as metering, telemetering, telecommunications and data acquisition associated with the delivery and receipt of energy hereunder to the extent not provided for by this Agreement or the applicable transmission service arrangements.
- (b) Communications regarding methods and procedures for accounting and billing hereunder.
- (c) Establishment of day-to-day operating procedures.
- (d) Such other duties as may be conferred upon it by mutual agreement of Buyer and Seller.

Both Buyer and Seller shall cooperate in providing to the Operating Committee all information required in the performance of its duties. If the Operating Committee is unable to agree on any matter falling under its jurisdiction, such matter shall be referred by the Operating Representatives to their Principals for a decision. Failure of the Principals to agree on any matter referred to them shall not constitute a basis for termination of this

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Agreement, provided, however, that any such unresolved matter may be subject to further process in accordance with the terms of Article 14 of this Agreement. All decisions or agreements made by the Operating Committee shall be evidenced in writing.

4.2.3 Unless otherwise agreed, the Operating Committee shall hold an annual meeting at a mutually convenient time and place to review the duties set forth herein. The first such meeting shall take place no later than December 1, 2023, to permit adequate time for implementation. When requested by either Buyer or Seller, the Operating Committee shall also meet at the earliest opportunity for consideration of matters under its jurisdiction.

4.2.4 In no event shall any operating procedures under this Agreement modify (or be construed as modifying) any of the terms or conditions of this Agreement. In the event of a conflict or inconsistency between this Agreement and any operating procedures, the terms of this Agreement shall govern to the extent of the conflict or inconsistency.

ARTICLE 5**TRANSMISSION SERVICE****5.1 Buyer Obligations.**

5.1.1 Buyer shall have the sole and exclusive responsibility at all times to make arrangements for, obtain, contract and pay for any and all transmission service and ancillary services required (including service under any applicable transmission tariff) in order to receive energy provided under this Agreement at the Point(s) of Receipt and in order to deliver such energy beyond the Point(s) of Receipt on the Southern Electric System to transmit or deliver energy provided hereunder. Buyer assumes the risk associated with the availability, adequacy and cost of such transmission service and ancillary services. In the

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event that Buyer is unable to obtain or maintain such transmission service for any period during the Service Term of this Agreement for any reason, except as otherwise provided in this Agreement, Buyer shall not be relieved of the obligation to pay Seller the Monthly Capacity Payments and Monthly Energy Payments applicable to such period, each as calculated under the Service Schedule.

5.1.2 Buyer shall be responsible for complying with any scheduling and tagging requirements associated with energy provided hereunder.

5.2 Seller Obligations. Seller, or its designee, shall have the sole and exclusive responsibility at all times to make arrangements for, obtain, contract and pay for any and all transmission service and ancillary services required (including any service under any applicable transmission tariff) to deliver energy provided under this Agreement to the Point(s) of Receipt. Seller assumes all risk associated with the availability, adequacy and cost of such transmission service and ancillary services.

5.3 Regional Transmission Organizations. In the event that a Regional Transmission Organization(s) or similar organization is formed to which one or both of the Parties becomes a participant and such participation in that organization has, or is reasonably expected to (i) have a material adverse effect upon a Party's ability to perform its obligations under, or to realize the material, direct economic benefits of this Agreement, including but not limited to material changes in the scheduling requirements, costs associated with the delivery of energy to and/or from the Point(s) of Receipt, and/or costs associated with or resulting from any auction or other market structure or design, or (ii) render the performance of a Party's obligations under this Agreement illegal or unenforceable, then the Parties shall negotiate an amendment of this Agreement in good

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faith to reallocate the responsibilities to reflect the benefits and burdens of this Agreement as of the date of this Agreement consistent with the Parties intentions. If the Parties fail to agree on such an amendment, then the Party affected by such changes may terminate this Agreement upon no less than one-hundred twenty (120) days prior written notice to the other Party.

ARTICLE 6**PAYMENTS**

6.1 Monthly Capacity Payments. For each Month of the Service Term, Buyer shall pay to Seller the Monthly Capacity Payment, as determined pursuant to Section 5.1 of the Service Schedule.

6.2 Monthly Energy Payments. For each Month of the Service Term, Buyer shall pay to Seller the Monthly Energy Payment, as determined pursuant to Section 5.2 of the Service Schedule.

6.3 Additional Payments. In addition to the payments specified in this Article 6, each Party shall pay to the other Party all other amounts due pursuant to the other provisions of this Agreement.

6.4 Netting of Payments The Parties hereby agree that, to the extent applicable, they shall discharge mutual debts and payment obligations due and owing to each other pursuant to this Agreement through netting, in which case all amounts owed by each Party pursuant to this Agreement, including any related damages, interest, and payments or credits, shall be shown on the Monthly invoice prepared pursuant to Section 7.1, if applicable, and netted so that only the net amount remaining due shall be paid by the Party who owes it.

*Execution Version***ARTICLE 7****BILLING AND PAYMENT****7.1 Billing and Payment.**

7.1.1 As promptly as practicable after the end of each Month during the Service Term, Seller shall send Buyer an invoice stating the payments and any other amounts required to be paid by Buyer to Seller, including the following adjustments from prior Monthly invoices (if applicable): (a) any billing true-ups or corrections, including charges or credits, identified by either Party subsequent to the last Monthly invoice, which shall not be subject to interest; (b) any billing corrections, including charges or credits, that the Parties have mutually agreed upon or otherwise resolved in accordance with Section 7.2 subsequent to the last Monthly invoice, which shall be subject to interest in accordance with Section 7.2; (c) any billing corrections, including charges or credits, that have been resolved pursuant to Article 14 subsequent to the last Monthly invoice, which shall be subject to interest in accordance with Section 7.2; and (d) any overdue amounts, excluding properly withheld Disputed Amounts, which shall be subject to interest in accordance with Section 7.2.

7.1.2 Each such Monthly payment shall be due and payable on or before the tenth (10th) Day after Buyer's receipt of such invoice. If such tenth (10th) Day after Buyer's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Buyer shall make payment to Seller in accordance with such invoices on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to Seller. If Buyer does not make a payment on or before such tenth (10th) Day,

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then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded Monthly at the Interest Rate.

7.2 Billing Disputes and Final Accounting.

7.2.1 If Buyer questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed to be due pursuant to this Agreement, then Buyer shall provide written notice to Seller which (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute (the “Disputed Amount”), if any, and (iii) provides documentation reasonably supporting the determination of the Disputed Amount.

7.2.2 Buyer shall make payment to Seller of the Disputed Amount under protest and, if Buyer is thereafter determined to be entitled to reimbursement, Buyer shall be reimbursed by Seller for any amount in error after the settlement of such question or contest, in accordance with this Section 7.2.

7.2.3 In the event that Buyer, by timely notice to Seller in accordance with Section 7.2.1, questions or contests the correctness of any charge or credit, Seller shall review within a reasonable time frame the questioned charge or credit and shall notify Buyer of the amount of any error and the amount of any payment or reimbursement that Buyer is required to make or is entitled to receive in respect of such alleged error. Reimbursements determined to be due from Seller under this Section 7.2.3 shall be included on the next Monthly invoice with interest, calculated from the date such payment was made by Buyer. Interest shall be compounded Monthly at the Interest Rate.

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7.2.4 Buyer shall have until one (1) year after receipt of an invoice to question or contest the correctness of any charge or credit set forth in such invoice pursuant to Section 7.1 or 7.2. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

7.3 Availability of Records. At any time prior to the end of the one (1) year period set forth in Section 7.2.4, Seller and Buyer, or any third party representative of such Party reasonably acceptable to the other Party, shall have the right upon reasonable notice, at such Party's sole expense and during normal working hours, to examine original records or copies of the records, as appropriate, of the other Party to the extent reasonably necessary to verify the accuracy of any Monthly invoice, charge or computation made pursuant to this Agreement. Each Party shall keep such records as may be reasonably necessary to afford a clear and complete history of the transactions hereunder for such one (1) year period or, in the event that a Party questions or contests the correctness of any charge or credit, until such question or contest is finally resolved; provided that, if a Party initiates an audit through a written notice to the other Party within the time period the records and documents relating to such audit are required to be maintained under this Section 7.3, then the other Party will retain such records and documents for at least two (2) years after receipt of such notice. If an audit is requested by either Party with respect to such records and those records cannot be disclosed to such requesting Party as a result of a confidentiality obligation, then to the extent legally permissible, the Parties shall select an independent auditor to perform the audit consistent with the Parties' rights under this Agreement and with such confidentiality arrangements as may be required by the confidentiality obligation in question. No payment made pursuant to the provisions of this Article 7 shall constitute a waiver of any right of Buyer under

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Section 7.2 to question or contest the correctness of any charge or credit by Seller or to dispute Seller's resolution of any such question or contest. The Party requesting the audit shall pay all of its own costs associated with the audit, including those of any independent auditor associated with the audit.

ARTICLE 8**[RESERVED]****ARTICLE 9****REGULATORY**

9.1 Service Rendered. This Agreement is intended as a service agreement pursuant to the Tariff. Seller shall provide and Buyer shall receive and pay for power supplied under this Agreement pursuant to the terms and conditions of the Tariff and of this Agreement. To the extent the terms and conditions of the Tariff are inconsistent with those set forth in this Agreement, the provisions of this Agreement shall control.

9.2 Market Rate Tariff.

9.2.1 It is the expressed intent of the Parties that this Agreement be a sale pursuant to the Tariff without any modifications of this Agreement's charges, terms and conditions and without additional filing requirements. If, at any time as a result of such proceedings (or any other proceeding), FERC does not allow this Agreement to function pursuant to the Tariff or requires any cost of service support for any charges hereunder, Buyer agrees to take reasonable steps, as requested by Seller, to cooperate with and assist Seller in securing acceptance by the FERC of all charges and terms as stated in this Agreement. If, at any

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time as a result of such proceedings (or any other proceeding), FERC orders any changes to any charges or terms hereunder or any refunds, including interest or penalties, Buyer agrees that Seller shall have the right to file one or more unilateral changes to the charges and terms hereunder to recover the revenues, as closely as practicable, intended by this Agreement in its original form. Seller agrees that Buyer shall not be precluded from participating in any related FERC proceeding, pursuant to applicable FERC procedures and consistent with this Section 9.2

9.2.2 Buyer agrees to take reasonable steps, including filing a motion to intervene and supporting comments, as requested by Seller in securing acceptance by the FERC of any and all such changes, in as expeditious a manner as is practicable, to the extent such changes, in Buyer's sole discretion, do not result in: (i) higher aggregate charges to Buyer than the aggregate charges intended by this Agreement in its original form, or (ii) changes in the terms and conditions of service intended by this Agreement in its original form which are materially adverse to Buyer.

9.2.3 Seller and Buyer each agree that, except as expressly permitted under Section 9.2.1, it shall not seek to modify this Agreement under Sections 205 or 206 of the Federal Power Act or any other provision of Law, and will take reasonable steps (including the submission or support of filings) to oppose any such modification, except to the extent such modification is agreed by the Parties.

9.2.4 The Parties agree and intend that, with respect to any change to a term or condition under this Agreement that is proposed or sought by a third party or FERC (acting *sua sponte*), the standard of review shall be the "public interest" standard of review set

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forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

9.3 Character of Transactions. The sale by Seller to Buyer of capacity and energy under this Agreement shall not constitute either: (i) a sale, lease, transfer or conveyance of an ownership interest or contractual right in or to any specific generation facility or resource; or (ii) a dedication of ownership or an entitlement to the capacity or output of any specific generation facility or resource. Furthermore, Buyer acknowledges and agrees that Seller, or its agent, shall have the sole authority, which Seller or its agent may exercise in its sole discretion, to manage, control, operate and maintain the generating resources used to supply Buyer under this Agreement. Seller may serve Buyer with energy under this Agreement from any resource available to Seller, in Seller's sole and absolute discretion.

9.4 Regulatory Condition. (a) Buyer will use reasonable efforts to obtain a certificate from the Georgia Public Service Commission (the "**Commission**" and such granted certificate the "**Commission Certificate**") approving this Agreement without material qualifications or conditions that adversely affect the Buyer or Seller, and in furtherance thereof, to target a filing of the application as soon as reasonably practicable after execution of this Agreement. Seller agrees to assist and support the Buyer in a timely manner and to the extent reasonably requested by Buyer in obtaining the Commission Certificate.

(b) If: (i) the Commission issues a Commission Certificate that is subject to material qualifications or conditions that adversely affect Buyer or Seller; (ii) the Commission has not approved this Agreement through the granting of a Commission Certificate for the recovery in retail rates; or (iii) the Commission fails to issue a Commission Certificate by the date required in

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Commission Rule 515-3-4-.07(1)(e)(5) or by a later date that is otherwise acceptable to Buyer, but no later than 180 days after that first date, then Buyer agrees to utilize the capacity and energy supplied under this Agreement, without modification, for the purpose of exclusively serving its wholesale electric customers and not its retail electric customers; provided, that with respect to subsection (b)(i) above, Buyer will have the option to continue to use the capacity and energy supplied hereunder if Buyer assumes the cost and risk associated with such material qualifications and conditions established in such amended Commission Certificate subject to the agreement of Seller if Seller would be adversely affected.

(c) Notwithstanding the provisions of Section 9.4(b), if at any time during the Term the Commission revokes or issues an amended Commission Certificate that imposes material qualifications or conditions that adversely affect Buyer or Seller, unless Buyer assumes the cost and risk associated with such material qualifications and conditions established in such amended Commission Certificate subject to the agreement of Seller if Seller would be adversely affected, then Buyer agrees to utilize the capacity and energy supplied under this Agreement, without modification, for the purpose of exclusively serving its wholesale electric customers and not its retail electric customers.

ARTICLE 10

[RESERVED]

ARTICLE 11

[RESERVED]

ARTICLE 12

*Execution Version***LIABILITY ALLOCATION; LIMITATIONS ON LIABILITY****12.1 Taxes.**

12.1.1 Seller shall be responsible for all Taxes imposed by any Governmental Authority on or with respect to the capacity and energy supplied under this Agreement that arise prior to the Point(s) of Receipt. By way of example, such Taxes for which Seller is responsible shall include all ad valorem Taxes with respect to the generating units utilized by Seller to supply power under this Agreement. Buyer shall be responsible for all Taxes imposed by any Governmental Authority on or with respect to the capacity and energy supplied under this Agreement that arise at and from the Point(s) of Receipt. By way of example, such Taxes for which Buyer is responsible shall include Taxes that are the result of the sale or transfer to Buyer of the capacity and energy supplied under this Agreement, or the use of capacity and energy supplied under this Agreement. Buyer will provide Seller with appropriate resale or other exemption certificate(s) with respect to any sales, use and/or gross receipts Taxes that could be based upon the sale or use of capacity and energy supplied under this Agreement.

12.1.2 In the event Seller is required by Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the amounts due to Seller under Article 6 of this Agreement. If the amount of any such Taxes paid by Buyer that are Seller's responsibility hereunder exceed the amounts due under Article 6 of this Agreement, then Seller shall promptly reimburse Buyer for the excess amount. Each Party shall use

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reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes so long as neither Party is materially adversely affected by such efforts.

12.2 Indemnification.

12.2.1 Unless otherwise agreed in writing by the Parties, each Party shall defend, indemnify and save harmless the other Party and its officers, directors, trustees, agents, employees and representatives from and against any and all claims, demands, costs or expenses (including reasonable attorneys' fees) for loss, damage or injury to any person or property arising out of or in any way related to this Agreement to the extent such loss, damage or injury occurs on the Indemnifying Party's own side of the Point(s) of Receipt; provided, however, that the Indemnifying Party shall have no indemnification obligation hereunder in respect of any claim, loss, liability, damage, cost or expense to the extent caused by the negligence, wantonness, fraud or willful misconduct of the non-Indemnifying Party.

12.2.2 Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

12.3 Limitation of Liability.

12.3.1 EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, SELLER, ON BEHALF OF ITSELF, EACH OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUCCESSORS AND ASSIGNS, HEREBY DISCLAIMS ANY AND ALL EXPRESS,

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IMPLIED OR STATUTORY WARRANTIES CONCERNING EITHER OR BOTH THE CAPACITY OR ENERGY TO BE SOLD BY SELLER HEREUNDER, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, QUALITY, QUANTITY OR OTHERWISE.

12.3.2 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OF THAT PARTY, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR CONTRACT, UNDER ANY PROVISION OF INDEMNITY OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

12.3.3 In the event that any provision of this Section 12.3 is held to be invalid or unenforceable, this Section shall be void and of no effect solely to the extent of such invalidity or unenforceability, and no claim arising out of such invalidity or lack of enforceability shall be made by one Party against the other or its officers, agents, or employees. Notwithstanding the foregoing, this Section 12.3 shall not limit or negate the

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right of either Party to be fully indemnified as provided in Section 12.2 or limit the remedies set forth in this Agreement for an Event of Default.

12.3.4 Neither any Affiliate of a Party nor any stockholder, officer, director or employee of a Party or of any Affiliate of a Party shall have any liability to the other Party for the payment of any sums now or hereafter owing by such Party or for the performance of any of the obligations of such Party contained herein, and each of the Parties hereto agrees that all of the obligations of the other Party under this Agreement shall be obligations solely of such other Party and recourse in enforcing said obligations shall only be had against the assets of such other Party; provided that the foregoing provision shall not constitute a waiver, release or discharge of any of the terms, covenants or conditions of this Agreement, and the same shall continue until fully paid, discharged, observed or performed.

ARTICLE 13**EVENT OF DEFAULT AND TERMINATION**

13.1 Event of Default. “Event of Default” shall mean the occurrence of any of the following events with respect to a Party (the “Defaulting Party,” the other Party being the “Non-Defaulting Party”):

13.1.1 the failure by the Defaulting Party to make, when due, payment of any amount required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Defaulting Party by the Non-Defaulting Party;

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13.1.2 any material representation or warranty of the Defaulting Party pursuant to this Agreement shall prove to have been false or misleading in any material respect when made or deemed made unless: (i) the fact, circumstances or condition that is the subject of such representation or warranty is made true within twenty (20) Days after notice thereof has been given to the Defaulting Party; and (ii) such cure removes any adverse effect on the Non-Defaulting Party of such fact, circumstance or condition being otherwise than as first represented;

13.1.3 the Defaulting Party:

- (i) makes a general assignment or arrangement for the benefit of its creditors;

- (ii) (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar Law for the protection of creditors or (b) has such petition filed or proceeding commenced against it and, in the case of a petition filed or proceeding commenced against it, such petition or proceeding results in a judgment of insolvency or bankruptcy or the entry of any order for relief or the making of an order for the winding-up or liquidation of such entity, or is not dismissed, discharged, stayed or restrained within five (5) Business Days of the filing or commencement thereof;

- (iii) otherwise becomes bankrupt or insolvent;

- (iv) fails or is unable or admits in writing its inability generally to pay its debts as they become due;

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(v) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger);

(vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger);

(vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of its assets;

(viii) causes or is subject to any event with respect to which it, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in Section 13.1.3 clauses (i) through (vii) (inclusive);

(ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(x) merges with any other entity and the surviving entity does not assume the Defaulting Party's obligations under this Agreement;

13.1.4 the material failure by Defaulting Party to perform any of its material obligations under this Agreement (other than obligations which are otherwise specifically covered in this Section 13.1 as a separate Event of Default) if such failure is not otherwise excused in accordance with this Agreement, which such failure materially and adversely affects the ability of such Defaulting Party to continue to perform its obligations under this Agreement and such failure continues uncured for sixty (60) Days after notice thereof from the other Party; provided, however, if such failure is not capable of being cured within such

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period of sixty (60) Days with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time (not to exceed one hundred twenty (120) Days), so long as the Party is exercising reasonable diligence to cure such failure;

13.1.5 the Defaulting Party defaults on obligations under one or more agreements or instruments in respect of debt and such default continues after the applicable grace period, if any, specified in such agreement or instrument if the principal amount of such agreement or instrument equals or exceeds ten percent (10%) of the Defaulting Party's equity, and such default results in such debt becoming, or becoming capable at such time of being declared, due and payable prior to its stated maturity, whether or not such debt is in fact declared due and payable; or

13.1.6 the failure of a Party to comply with the requirements of Section 17.1.

13.2 Rights Under Agreement. Except as otherwise provided herein, each Party reserves to itself all rights, counterclaims, and other defenses which it is or may be entitled to arising from or out of this Agreement.

13.3 Remedies Upon Default. Upon the occurrence of an Event of Default that is not cured within the applicable cure period identified in this Agreement, the Non-Defaulting Party shall have the right to terminate this Agreement upon written notice to the Defaulting Party in addition to any other right or remedy the Non-Defaulting Party may have under this Agreement or at law or equity, except as otherwise limited by this Agreement.

ARTICLE 14**DISPUTE RESOLUTION**

14.1 Applicability. Except for matters requiring immediate injunctive relief and matters addressed in Section 6 of the Service Schedule, any dispute or claim between the Parties arising out of or relating in any way to this Agreement will be resolved in accordance with the dispute resolution process set forth in this Article 14.

14.2 Notice of Dispute. In the event any dispute or claim arises between the Parties, a Party (the “Disputing Party”) must provide the other Party (the “Responding Party”) with a notice of each issue in dispute (which notice must be provided in accordance with Section 17.7), a proposed means for resolving each such issue in dispute, and support for such position (including copies of supporting documentation or other information) (the “Notice of Dispute”). Within fifteen (15) Days after receiving a Notice of Dispute, the Responding Party will provide the Disputing Party with a notice acknowledging receipt of the Notice of Dispute, identifying each additional issue (if any) with respect to the disputed issue (or issues) raised by the Notice of Dispute, a proposed means for resolving each issue in dispute, and support for such position (including copies of supporting documentation or other information) (the “Dispute Response”).

14.3 Dispute Resolution by Senior Officers. Each Party shall designate its Senior Officer to meet, in person, to discuss the matter and employ good faith efforts to promptly reach a resolution of each such issue in dispute. Each such Senior Officer will have authorization, subject to any necessary Board approval, to resolve any issue in dispute. The Senior Officers will meet, in person or by telephone, not later than ten (10) Days after the date the Dispute Response is received by the Party submitting the Notice of Dispute and as mutually agreed thereafter. If after

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thirty (30) Days from such initial meeting by the Senior Officers, the dispute is not resolved to the mutual satisfaction of the Parties, then either Party may seek remedies at law or in equity.

ARTICLE 15**REPRESENTATIONS AND WARRANTIES**

15.1 Execution. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate and legal power and authority and has been duly authorized by all necessary corporate action to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the Laws of the state of its formation and is, to the extent required, qualified to do business in the state where it is organized.

15.2 Binding Obligations. Each Party represents and warrants to the other Party that as of the Effective Date that this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting enforcement generally, and by equitable principles regardless of whether such principles are considered in a proceeding at law or in equity.

15.3 Execution and Consummation. Each Party represents and warrants to the other Party that as of the Effective Date the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any Law applicable to it or result in a breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which

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it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

15.4 Actions and Proceedings. Each Party represents and warrants to the other that as of the Effective Date there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Governmental Authority that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

15.5 Absence of Certain Events. Each Party represents and warrants to the other Party that as of the Effective Date no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

ARTICLE 16**CONFIDENTIALITY**

16.1 Confidential Information. “Confidential Information” means business or technical information of a Party rightfully in the possession of such Party, which information derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by Persons who can obtain economic value from its disclosure and use, and which information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Each page of Confidential

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Information shall be stamped or marked as such prior to transmittal to the receiving party. Confidential Information consists of information designated as confidential and furnished by a Party to another Party in discussions leading up to execution of this Agreement (including in Seller's proposals to Buyer) and during the Term of this Agreement, and the terms, conditions and pricing information contained in this Agreement.

16.2 Disclosure of Confidential Information.

16.2.1 Each Party agrees that during the Term of this Agreement and for a period of three (3) years from the date of termination of this Agreement it will not, without the written consent of the other Party or as otherwise provided herein, disclose Confidential Information of another Party to any other party; provided, however, each Party shall be entitled to disclose Confidential Information to its (or its Affiliates') agents, employees, officers, directors, trustees, representatives, contractors, attorneys, advisors, lenders, accountants, rating agencies, underwriters, consultants and advisors who need to know such information in connection with the performance of their duties or services for such Party or Affiliates or in connection with the analysis, issuance or rating of any debt or equity securities or financial activities of such Party or Affiliates; provided, further, that such parties shall be bound by an obligation to maintain the confidentiality of such Confidential Information and such Party shall be responsible for any use or disclosure by such parties of any Confidential Information inconsistent with this Article 16.

16.2.2 To the extent Seller is required to provide Confidential Information in this Agreement to FERC, Seller shall seek confidential treatment of such Confidential Information from FERC, and Buyer will provide reasonable cooperation in connection with

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such request. Notwithstanding the foregoing, the Parties acknowledge that certain Confidential Information may need to be disclosed in filings with FERC which may become publicly available. In the event this Agreement becomes publicly available, Seller will promptly notify Buyer once Seller learns of this fact; provided, however, that regardless of whether such notification is provided, the provisions of this Article 16 shall no longer apply to this Agreement if this Agreement becomes publicly available as a result of filings with FERC or otherwise.

16.2.3 Either Party may file this Agreement and Confidential Information with the Securities and Exchange Commission (“SEC”) as may be necessary under Laws in connection with such Party’s application to the SEC for such orders and approvals as may be required for financing and/or the issuance and sale of interests in or debt issued or to be issued by such Party and/or its Affiliates. The filing Party shall request confidential treatment of this Agreement and Confidential Information in connection with such filing; however, the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the SEC to such information. In addition, each Party may disclose Confidential Information as required by the SEC pursuant to the Securities and Exchange Act of 1934, as amended, and any rule or regulation promulgated thereunder.

16.2.4 Buyer may file this Agreement and Confidential Information with the GPSC and Seller with the MPSC, as applicable, as may be necessary under Laws, including without limitation, in connection with any application (if any) to the GPSC and MPSC, as applicable, for such orders and approvals as may be required in connection with such

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Party's respective obligations under this Agreement, and/or the issuance and sale of interests in or debt issued or to be issued by such Party, and/or state regulatory cost treatment of such Party's respective obligations under this Agreement. Buyer and Seller, as applicable, shall request confidential treatment of this Agreement and Confidential Information in connection with such filing; however, the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded by the GPSC or the MPSC, as applicable, to such information.

16.2.5 Nothing in this Section 16.2 shall prohibit or otherwise limit the use or disclosure of Confidential Information if such Confidential Information: (a) was previously known to the disclosing or using Party unrelated to this Agreement without an obligation of confidentiality; (b) was developed by or for the disclosing or using Party unrelated to this Agreement using non-confidential information; (c) was acquired by the disclosing or using Party from a third Person which is not, to the disclosing or using Party's knowledge, under an obligation of confidentiality with respect to such information; or (d) is or becomes publicly available other than through a manner inconsistent with this Article 16.

16.2.6 Notwithstanding anything in this Article 16 to the contrary, if a Party is required by applicable Law or in the course of administrative or judicial proceedings or investigations, to disclose to third parties, Confidential Information of the other Party or this Agreement, such required Party may make disclosure of such information; provided, however, that all reasonable steps are taken by such Party to assure continued confidential treatment by the relevant administrative, regulatory or judicial agencies or other recipient and provided further that as soon as such Party learns of the disclosure request or

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requirement or otherwise intends to disclose any such Confidential Information pursuant hereto and prior to making disclosure, such Party, to the extent permitted by Law, notifies the other Party of the requirement, request or intention and the terms thereof and such other Party may challenge the disclosure requirement, request or intention or seek a protective order or other appropriate remedy. The Party required to disclose Confidential Information, at the expense of the Party whose Confidential Information would be disclosed, shall attempt to minimize the disclosure of such Confidential Information consistent with applicable Law and attempt to obtain proprietary or confidential treatment of such Confidential Information by the Person to whom such Confidential Information will be disclosed (and if practicable, reasonably prior to any such disclosure). If, in the absence of a protective order or other appropriate remedy, the Party required to disclose Confidential Information is nonetheless, in the written opinion of counsel, legally compelled to disclose such Confidential Information or otherwise may become subject to contempt or other censure or penalty, such Party required to disclose may, in such instance but not otherwise, without liability hereunder, disclose that portion of such Confidential Information which and to whom such counsel advises the required Party is legally required to be disclosed (but none other).

16.3 Remedies. A breach of the confidentiality obligations of Section 16.2 by any Person with whom the receiving Party has shared Confidential Information of the disclosing Party shall be deemed a breach of this Article by the receiving Party. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided that all monetary damages shall be limited to actual direct

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damages and that a breach of the confidentiality obligations of Section 16.2, notwithstanding anything to the contrary in this Agreement, shall not give rise to a right to suspend or terminate any ongoing transaction under this Agreement or result in an Event of Default hereunder.

16.4 Return of Confidential Information. Except as specifically required otherwise by Law, upon the request of a disclosing Party, the receiving Party shall return or destroy all written Confidential Information (including written confirmation of oral communications) provided by the disclosing Party which was stamped “CONFIDENTIAL INFORMATION” and shall not retain any copies of such written Confidential Information. In the event of such request (but except as required otherwise by Law), all copies, documents, analyses, compilations, studies or other materials prepared by the returning Party or its representatives that contain or reflect Confidential Information shall be destroyed and no copy thereof shall be retained (such destruction to be confirmed in writing by a duly authorized officer of the returning Party). Notwithstanding the foregoing provisions of this Article 16, the Parties agree that neither Party shall be required to return or destroy such Party’s execution copy of this Agreement or those materials that such Party maintains in the ordinary course of business as the basis for the decision to enter into the Agreement, provided that all such Confidential Information so retained will continue to be maintained as confidential.

ARTICLE 17**MISCELLANEOUS PROVISIONS****17.1 Assignment.**

17.1.1 Except as provided in this Section 17.1.1, neither Party may assign outright or collaterally or pledge or grant a security interest in this Agreement or its rights or

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obligations under this Agreement without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed). No assignment by a Party of this Agreement or its rights or obligations under this Agreement shall relieve the assigning Party of liability for its obligations under this Agreement without the written release of the other Party. Such release shall not be withheld or unreasonably delayed if the Assignment Conditions (defined below) are satisfied.

17.1.2 The non-assigning Party's obligation to recognize or perform for any Person claiming or otherwise holding rights in or under this Agreement by outright assignment or through a foreclosure or other exercise of rights pursuant to a collateral assignment, pledge of or grant of security interest in this Agreement (or any related rights) permitted by this Agreement (an "Assignee") shall be subject to such Assignee: (i) establishing that it has the legal power and authority to perform and satisfy the obligations then and thereafter to become due to the non-assigning Party under this Agreement; (ii) having cured all existing Events of Default (other than Events of Default with respect to which the non-assigning Party is the Defaulting Party) under this Agreement; and (iii) having executed and delivered to the non-assigning Party and being in compliance with an assignment and assumption agreement whereby the Assignee assumes and agrees to satisfy all conditions and pay and perform all obligations in favor of the non-assigning Party then existing and/or thereafter arising under this Agreement ("Assignment Conditions"). Any attempted assignment, whether outright, by way of foreclosure or exercise of any rights pursuant to a collateral assignment, pledge or grant of security interest in this Agreement or any related rights or

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otherwise, which is not in compliance with the terms of this Agreement shall be voidable and ineffective, at the option of the non-assigning Party.

17.2 No Partnership. The Parties do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

17.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and assigns of the Parties.

17.4 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Seller or Buyer to any Person not a Party to this Agreement, including any customer of Buyer.

17.5 No Waiver. The failure of Seller or Buyer to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Seller or Buyer of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver. No waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, expressly states that the Parties agree to such waiver, and is duly executed by the Parties.

17.6 Amendments. This Agreement may be amended only by a written instrument, duly executed by each of the Parties, which has received all approvals of Governmental Authorities with competent jurisdiction necessary for the effectiveness thereof.

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17.7 Notice. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other in connection with this Agreement, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by hand delivery, first-class mail, facsimile, or by overnight delivery, at the address(es) and to the attention of the person(s) listed below. However, if actual delivery occurs at a time other than between the Hours of 0800 and 1700 Central Prevailing Time on a Business Day (each a “Business Hour”), delivery shall be deemed to have occurred in the next Business Hour after actual delivery. Each Party may designate a different person and address by sending written notice to the other Party, to be effective no sooner than ten (10) days after the date of notice.

If given to Seller, it shall be addressed to:

Mississippi Power Company
2992 West Beach Blvd
PO Box 4079
Gulfport, MS 39502
Attn: Vice President, General Counsel, Corp Sec & CCO

with a copy to:

Mississippi Power Company
2992 West Beach Blvd
PO Box 4079
Gulfport, MS 39502
Attn: Vice President, Treasurer & CFO

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Southern Company Services, Inc.
600 North 18th Street
BIN 15N-8230
Birmingham, Alabama 35203
Attn: Vice President, Southern Wholesale Energy
Facsimile: (205) 257-1872

and

Southern Company Services, Inc.
3535 Colonnade Parkway
BIN EC S-400
Birmingham, Alabama 35243
Attn: Financial and Contract Services Manager
Facsimile: (205) 257-5777

and, if given to Buyer, it shall be addressed to:

Georgia Power Company
241 Ralph McGill Blvd
BIN 10221
Atlanta, Georgia 30308
Attn: Vice President, Pricing and Planning

with a copy to:

Georgia Power Company
241 Ralph McGill Blvd
BIN 10180
Atlanta, Georgia 30308
Attn: Deputy General Counsel, Legal Department

17.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17.9 Articles and Sections Headings. The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

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17.10 Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the Laws of the State of New York (without giving effect to the principles of conflict of laws).

17.11 Severability. In the event any provision of this Agreement is declared invalid or unenforceable by a final, non-appealable order of any Governmental Authority, the Parties shall promptly renegotiate to restore this Agreement as near as possible to its original intent and effect.

17.12 Further Assurances. If either Party reasonably determines or is reasonably advised that any further instruments or any other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Agreement.

17.13 Entire Agreement. This Agreement and the schedule and appendices attached hereto constitute the entire agreement between the Parties as of the time of execution relating to the subject matter contemplated by this Agreement and supersedes all prior agreements, whether oral or written.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

“Seller”

MISSISSIPPI POWER COMPANY


By: 

Name: Matthew P. Grice

Title: Vice President, Treasurer & CFO

“Buyer”

GEORGIA POWER COMPANY

By: 

Name: Roderick W. Anderson

Title: Senior Vice President & SPO

POWER SUPPLY SERVICE SCHEDULE

1. Definitions.

The capitalized terms set forth in this Power Supply Service Schedule shall have the meanings given to them in the Agreement and this Power Supply Service Schedule. The following terms shall have the respective meanings set forth as follows:

“**AIER**” means the Associated Interchange Energy Rate as such term is defined in the IIC, as may be modified or amended from time to time.

“**Agreement**” means that certain Power Supply Agreement between Buyer and Seller to which this Service Schedule is attached.

“**Balancing Authority**” means any NERC recognized entity responsible for ensuring generating resources and loads are in balance within an applicable Balancing Authority Area and supporting interconnection frequency in real time.

“**Balancing Authority Area**” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority.

“**Buyer Contract Capacity Ratio**” means, for a given Year during the Service Term, the result of: (a) the Contract Capacity amount; divided by (b) the Seller Generating Resources Capacity Rating.

“**Contract Capacity**” means, for the applicable period during the Service Term, the electric generating capacity in the amount specified in Section 2.5 of this Service Schedule.

“**Energy**” means, during a given Hour, the electric energy associated with the Contract Capacity to be delivered by Seller pursuant to the Agreement, including this Service Schedule.

“**NERC**” means the North American Electric Reliability Corporation, a not-for-profit international regulatory authority designated by FERC as the Electric Reliability Organization whose mission is to assure the reliability and security of the bulk power system in North America, or any other regulatory authority succeeding to the powers and functions thereof.

“**Seller Generating Resources**” means, at any given time, mean, the electric generating units owned or controlled by Seller that are (i) in commercial operation and (ii) are submitted to Southern Dispatch.

“**Seller Generating Resources Capacity Rating**” means, at any given time, the net summer capacity rating, in MW, of the Seller Generating Resources, as determined in accordance with the IIC.

“**Southern Dispatch**” means the process by which the Southern Operating Companies schedule and control, manually or automatically, the energy utilized from a portfolio of resources,

in accordance with the IIC, in order to increase or decrease the electric energy delivered from such resources into the Balancing Authority Control Area to reliably meet the load obligations of the Balancing Authority Control Area.

“**Transmission Risk**” means the ramifications (performance, economic or otherwise) resulting from the unavailability of transmission service, including an interruption or curtailment of transmission service.

2. **Sale and Delivery of Energy.**

2.1 Commencing on January 1, 2024, and continuing through the end of the Service Term, subject to the terms and conditions of the Agreement, including this Service Schedule, Seller shall provide the Energy associated with and up to the Contract Capacity, in accordance with and as specified in accordance with Section 3 of this Service Schedule. Buyer shall receive and purchase such Energy pursuant to the terms of the Agreement and this Service Schedule.

2.2 Seller shall deliver the Energy to Buyer at the Point(s) of Receipt. Title, custody, and control of such Energy shall pass to Buyer at the Point(s) of Receipt.

2.3 Buyer shall have the Transmission Risk and risk of loss for all Energy delivered to Buyer under this Agreement at and after the Point(s) of Receipt.

2.4 Seller shall be entitled to supply the Contract Capacity and the Energy provided under this Service Schedule from any generating units to which Seller is entitled by ownership, contract or otherwise to the output.

2.5 The Contract Capacity available to the Buyer for the applicable period during the Service Term is as specified below:

Year	Contract Capacity (MW)
2024	750
2025	750
2026	750
2027	750
2028	750

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3. **Energy Utilization.**

For each Hour of the Service Term, Buyer shall be entitled to and shall receive the Energy associated with its Contract Capacity up to the Contract Capacity amount determined in such Hour in accordance with Southern Dispatch.

4. **Availability of Supply.**

4.1 The Contract Capacity shall be available for energy utilization pursuant to Section 3 above, except as set forth in Section 4.2 below.

4.2 In the event that Seller or its agent determines that adequate resources are not reasonably available with which to serve Seller's Firm and Native Load requirements (including the energy requirements of Buyer under the Agreement and this Service Schedule) or that it is necessary or appropriate for Seller to shed, interrupt or curtail such Firm and Native Load requirements, then Seller shall be entitled to shed, curtail and interrupt the delivery of Energy pursuant to this Service Schedule in the same proportion that Seller's own Firm and Native Load requirements are shed, curtailed or interrupted. Seller shall resume deliveries of Energy under this Agreement consistent with the restoration of service to Seller's own Firm and Native Load.

4.3 Nothing in this Section 4 is intended to contravene any provision of the Southern OATT pertaining to the curtailment of transmission service.

5. **Calculation of Monthly Payments.**

For each Month of the Service Term, Buyer shall pay to Seller the Monthly Capacity Payment and the Monthly Energy Payment as described below.

5.1 **Monthly Capacity Payment.**

For each Month of the Service Term, the Monthly Capacity Payment ("MCP") shall be determined as follows:

$$\text{MCP} = \text{CC} * \text{CCP} * 1000$$

Where:

CC = the Contract Capacity for such Month of the applicable Year; and

CCP = the Contract Capacity Price for such Month of the applicable Year, as stated in Table 1 below.

Except in the event Seller reduces the Contract Capacity amount as envisioned under Section 2.6 above, the Monthly Capacity Payment shall not be reduced for any reason, including for the circumstance of a shedding or curtailment deliveries under Section 4 of

6.2 Change in Law Notice. In the event either Party determines a Change in Law has occurred, such Party (the “CIL Initiating Party”) may initiate discussions with the other Party (the “CIL Responding Party”) to determine the appropriate adjustment to the billing or amendment to the Agreement as described in this Section 6 by delivering written notice to the Affected Party of such Change in Law event (each, a “Change in Law Notice”).

6.2.1 The Change in Law Notice will include applicable information reasonably available to the CIL Initiating Party supporting its Change in Law determination, including the CIL Initiating Party’s calculation of the projected change in the Seller Generating Resources costs (either increase or decrease) used to provide the power supply service under this Agreement resulting from the Change in Law.

6.2.2 Upon delivery of the Change in Law Notice, Seller will initiate a request with SCS to prepare a good faith calculation of the effect of such purported Change in Law. The Parties agree to reasonably cooperate and provide relevant information to SCS as requested to permit SCS to prepare a cost impact calculation and a proposed billing adjustment under this Agreement and/or a proposed amendment to this Agreement to allocate the cost impact of such purported Change in Law between the Parties (the “Proposed CIL Adjustment”).

6.2.3 Upon receipt by the Parties of the Proposed CIL Adjustment from SCS, the Parties shall engage in discussions for a period of up to ninety (90) Days (the “CIL Resolution Period”) to resolve any differences with respect to the calculation, cost information supporting the calculation or the Proposed CIL Adjustment.

6.3 Change in Law Dispute Resolution Process. If the Parties have not agreed upon a proposed billing adjustment under this Agreement and/or a proposed amendment to this Agreement to allocate the cost impact of such purported Change in Law between the Parties by the expiration of the CIL Resolution Period, then either Party has the right to initiate a dispute resolution process by engaging a nationally recognized accounting firm that is not then the independent auditor for either Party and is selected by the mutual agreement of the Parties (the “Neutral Auditors”).

6.3.1 Each Party agrees to execute, if requested by the Neutral Auditors, a reasonable engagement letter, including customary indemnities. All fees and expenses related to the work to be performed by the Neutral Auditors shall be borne equally by each Party. All fees and expenses related to the work to be performed by the Neutral Auditors shall be borne equally between the Parties.

6.3.2 The Neutral Auditors shall review the purported Change in Law and the calculation and supporting cost information used to develop the Proposed CIL Adjustment. The Neutral Auditors shall act as an arbitrator to make an independent decision as to whether a Change in Law has occurred and, if so, whether the Proposed CIL Adjustment has been determined correctly and allocated appropriately between Seller and Buyer.

6.3.3 Each Party shall submit its proposed resolution, including its calculation

and supporting information, regarding the amount by which Seller's costs for providing service under the Agreement have changed or will change as a result of the Change in Law and the date upon which Seller will begin to recover such amount from or credit such amount to Buyer.

6.3.4 If the Neutral Auditors conclude that a Change in Law has occurred, the Neutral Auditors will either (i) accept the Proposed CIL Adjustment or (ii) provide an alternate billing adjustment under this Agreement and/or a amendment to the Agreement to allocate the cost impact of such Change in Law between the Parties. The Neutral Auditors' determination shall be set forth in a written statement delivered to both Parties and shall be final, binding and conclusive.

6.3.5 Invoices to Buyer will be adjusted accordingly within thirty (30) Days of the Neutral Auditors' notification to the Parties.