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Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334

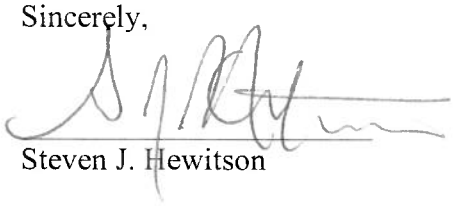
RE: Biomass Gas & Electric, LLC's Petition to Establish Docket Regarding Forsyth Renewable Energy Plant; Docket No. 19279 and Georgia Power Company's 2015 Request for Proposals; Docket No. 27488

Dear Ms. Tanner:

Enclosed for filing is Georgia Power Company's Response in Opposition to GRP Franklin, LLC and GRP Madison, LLC's Petition to Update and Modify the Commission's Final Order Establishing the Proxy Price Methodology.

Please call me at (404) 885-3475 if you have any questions.

Sincerely,



Steven J. Hewitson

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In Re: Biomass Gas & Electric, LLC's Petition to Establish Docket Regarding Forsyth Renewable Energy Plant	)	**Docket No. 19279**
In Re: Georgia Power Company's 2015 Request for Proposals	)	**Docket No. 27488**

GEORGIA POWER COMPANY'S RESPONSE IN OPPOSITION TO GRP FRANKLIN, LLC AND GRP MADISON, LLC'S PETITION TO UPDATE AND MODIFY THE COMMISSION'S FINAL ORDER ESTABLISHING THE PROXY PRICE METHODOLOGY

COMES NOW Georgia Power Company ("Georgia Power" or the "Company") and files this response in opposition to GRP Franklin, LLC ("GRP Franklin") and GRP Madison, LLC's ("GRP Madison") (collectively, "GRP") Petition to Update and Modify the Georgia Public Service Commission's ("Commission") Final Order Establishing the Proxy Price Methodology (the "Petition"). For the following reasons, GRP's Petition should be denied.

I. By law, Qualifying Facilities are to be paid avoided cost for their generation.

The Public Utility Regulatory Policies Act of 1978 ("PURPA") was enacted to encourage the development of renewable energy and cogeneration facilities. Under PURPA, utilities are obligated to purchase the output of Qualifying Facilities ("QFs") at a rate equal to the cost the utility would have otherwise incurred to generate the power itself or to purchase it from another source, known as the "avoided cost."[1] This provision ensures that QFs are compensated for their

[1] "Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." C.F.R. § 292.101(b)(6).

contribution to the electric grid, and it incentivizes the development of renewable energy resources by providing a guaranteed market for their output. Avoided cost rates are set by state utility commissions in accordance with FERC standards. The method used to compensate QFs in this case for the value of the capacity they provide to the system, in addition to the energy, is the proxy price methodology established by this Commission.

The Commission's proxy price methodology, which was established in 2006 in Docket Nos. 4822 and 19279 and reviewed again in 2021, is designed to project the avoided cost over the term of a power purchase agreement ("PPA").[2] By pegging the price of the energy and capacity of a proxy top-of-stack generating unit as the utility's avoided cost (the "Proxy Price"), the PPA ensures that the QF is compensated at the utility's projected avoided cost resulting from an actual solicitation, consistent with PURPA requirements. The Proxy Price PPA ensures that QFs are compensated at a rate that reflects the utility's avoided costs, and provides a predictable revenue stream for QFs, thereby aiding the facilitation of financing of these projects.[3]

II. The Commission intentionally left pricing to be determined by the market due to the difficulties of projecting avoided cost beyond 20 years.

Contrary to GRP's assertions, the proxy price established by the Commission is neither vague nor indefinite. Rather, it is the result of two years of litigation before the Commission, and offers a well-reasoned approach supported both by law and fact that establishes projected avoided cost based on the market value of capacity as identified through the Commission-approved RFP process. As such, the proxy price methodology provides a clear and definite framework for determining pricing, even if the exact amounts cannot be known until a later date.

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[2] "Final Order for the Resolution of Issues Related to a Pro Forma Purchased Power Agreement;" *In re: Biomass Gas & Electric, LLC's Petition to Establish Docket Regarding Forsyth Renewable Energy Plant*; Docket No. 19279; *In re: Capacity and Energy Payments to Cogenerators under PURPA*; Docket No. 4822 (June 28, 2006).

[3] *See* FERC Order 872-A at ¶ 154 ("QFs must accept the market risk associated with their projects by being paid no more than the purchasing utility's avoided cost, thereby preventing utility retail customers from subsidizing QFs.").

The Commission's proxy price methodology is both logical and necessary to ensure the most accurate and fair pricing possible, while protecting customers from additional costs caused by the addition of the QF to the system. As confirmed though recent capacity RFPs, market capacity purchases are procured through PPAs with term lengths ranging from 7 to 20 years. As a point of reference, the most recent 2022-2028 Capacity RFP resulted in the certification of five PPAs with 10-year terms and a sixth with a 15-year term. Additionally, the 2015 RFP, through which the GRP Proxy QF PPAs originated, resulted in four PPAs each of 15-year terms, even though the RFP allowed for resources of up to a 30-year term.

The purchased conventional resources table (A.4) in Technical Appendix I from the 2022 IRP shows that all current capacity PPAs are for terms of 10-20 years, with one unique exception. So, while the Commission approved the Proxy PPA terms for up to 30 years for GRP, as that was the longest term available through the RFP, neither the Commission nor the Company was comfortable projecting avoided cost beyond 20 years since no PPAs were selected with a term longer than 20 years. The Commission approved a reasonable compromise, allowing proxy QFs like GRP to have the certainty of a 30-year term, while protecting Georgia Power customers through the commitment to set the value of the capacity for the final 10 years much closer to that time, in year 19.

III. GRP selected its pricing structure when it executed the PPAs.

Each eligible QF selects how it wants to structure its revenue stream and whether it will be a dispatchable or non-dispatchable resource. GRP opted at the time of contracting to be a non-dispatchable resource and to take 100% of its revenue through an energy payment. GRP knowingly

executed PPAs explicitly stating that pricing for the last years of the PPAs would be determined by the market price in year 19.[4]

At the time GRP executed the PPAs, the base case established an avoided cost of $85.24/MWh for non-dispatchable facilities. GRP capitalized on the proxy pricing by opting to structure its revenue stream so that it included 1.51% per year escalation of that price for over two-thirds of the PPAs' terms.[5] GRP has and will continue to greatly benefit from its selected pricing structure for the first 21 years of the PPAs as compared to the value of the energy and capacity under current market conditions, as today's avoided cost is lower.

GRP knew and agreed in writing when it executed the PPAs in 2015 that pricing for the final nine years would be established near the end of PPA year 19, when avoided costs could be more accurately projected. GRP's unsupported assertions regarding the need for "financial certainty" ignore the fact that the pricing structure and proxy pricing methodology it complains about were known to GRP when it executed the PPAs. In seeking to retroactively revise the proxy price methodology, this QF introduces a self-serving solution to a problem of its own creation.

Further, GRP's contention that the absence of a definitive price during a portion of the PPAs' terms constitutes a missing essential contract term wholly ignores its own previous role in entering the PPAs and the lengthy proceeding before the Commission during which any such concern could have been raised. This "missing" essential contract term was "missing" when GRP

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[4] "Final Order for the Resolution of Issues Related to a Pro Forma Purchased Power Agreement;" *In re: Biomass Gas & Electric, LLC's Petition to Establish Docket Regarding Forsyth Renewable Energy Plant*; Docket 19279; *In re: Capacity and Energy Payments to Cogenerators under PURPA*; Docket 4822 (June 28, 2006); see also "Contract for the Purchase of Firm Capacity and Energy from a Renewable Qualifying Facility Utilizing the Proxy Unit Methodology between GRP Madison, LLC and Georgia Power Company," Appendix B (Nov. 23, 2015) (attached as Exhibit A) and "Contract for the Purchase of Firm Capacity and Energy from a Renewable Qualifying Facility Utilizing the Proxy Unit Methodology between GRP Franklin, LLC and Georgia Power Company," Appendix B (June 15, 2015) (attached as Exhibit B).

[5] "Order Approving Consolidation and Amendment of Proxy Price Purchase Agreements;" Docket No. 27488 (April 15, 2015).

acquired all the megawatts from various contracts that combined to create the proxy price PPAs that GRP eventually executed.[6] Notably, GRP never raised a concern regarding any "missing" essential contract term, and GRP supported the Commission's approval of the PPAs as filed. GRP's agreement to the pricing structure, together with the inclusion in the PPAs of GRP's requested revenue stream design (*e.g.*, no capacity payment, and an energy payment with % escalator), clearly demonstrates that the pricing terms were not only understood and accepted, but specifically sought by GRP when it entered the PPAs. Several years into performance under those PPAs, GRP should not now be allowed to question the fundamental lawfulness of the PPAs they executed without concern.

IV. The Commission's Order provides a clear methodology for determining avoided cost based on current market pricing, which leaves no uncertainty for customers, the Company, or QFs.

a. Both the Commission's Order and the respective PPAs provide the methodology for how price would be determined – "current market pricing."

As noted by GRP, the Staff Report's recommendation for payments under a proxy price contract with a term longer than 20 years was as follows:

> If the QF or renewable desires a contract length longer than 20 years and there is no 30 year offer to set the price, the QF or renewable may contract for more than 20 years with prices for the first 20 years set as stated above. Near the end of the 20 year period, the QF or renewable would re-register for current market pricing to take effect at the culmination of the full term of the price schedule.[7]

Staff's recommendation on contract length was adopted by the Commission.[8] Similarly, Appendix B of the respective PPAs indicates that for years 22-30, "[p]rice to be determined when QF re-

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[6] "Order Approving Consolidation and Amendment of Proxy Price Purchase Agreements;" Docket No. 27488 (April 15, 2015).

[7] "Final Staff Report to the Georgia Public Service Commission;" *In re: Biomass Gas & Electric, LLC's Petition to Establish Docket Regarding Forsyth Renewable Energy Plant*; Docket No. 19279; *In re: Capacity and Energy Payments to Cogenerators under PURPA*; Docket No. 4822 (May 27, 2005) at 7.

[8] "Supplemental Order," Docket Nos. 19279 and 4822 (June 10, 2005) at 5.

registers for current market pricing in effect at the culmination of the full term of the price schedule."[9] GRP's assertion that the pricing methodology for Y22-30 is "totally unknown" fails to recognize that the methodology applied to identify current market pricing at a later date would be the same as identified initially – through a proxy process driven by the winning bids of a competitive RFP. The Commission Order and the PPA language GRP agreed to in 2015 are clear, and there is no reason to modify the PPA terms after the fact.

b. There is no uncertainty for the Company or customers – QFs should only be paid avoided cost.

GRP's assertion that the proxy price methodology creates financial uncertainty for the Company or its customers is without merit. Customers will pay the avoided cost, as required by federal law (PURPA) and established by the Commission. GRP has acknowledged that "[t]he Company cannot project its costs from the purchase of electricity from GRP Franklin and GRP Madison in Y22-30," thus acknowledging the need to delay the Commission's determination of avoided cost, as provided by the proxy pricing methodology. It is also important to ensure customers only pay avoided cost. Market dynamics, technological advancements, policy changes, and a multitude of other factors could influence the future price of electricity, making it impossible to accurately predict the "market price" at this juncture.

This reasoning underlies the Commission's original decision to delay the determination of the pricing until near the end of the PPA term. By waiting until year 19 of the PPA, the Commission adopted an approach that ensures the prices for years 22-30 are fair, reasonable, and closely aligned with the actual avoided cost at that time.

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[9] *See* "Contract for the Purchase of Firm Capacity and Energy from a Renewable Qualifying Facility Utilizing the Proxy Unit Methodology between GRP Madison, LLC and Georgia Power Company," Appendix B (Nov. 23, 2015) (attached as Exhibit A) and "Contract for the Purchase of Firm Capacity and Energy from a Renewable Qualifying Facility Utilizing the Proxy Unit Methodology between GRP Franklin, LLC and Georgia Power Company," Appendix B (June 15, 2015) (attached as Exhibit B).

V. The proxy price methodology approved by the Commission does not need modification and the revisions proposed by GRP would harm customers.

The Commission's proxy price methodology is designed to ensure a fair and equitable pricing system. GRP's proposal to modify the Commission's pricing methodology merely seeks more favorable QF pricing under the guise of "financial certainty." Notably, establishing economic certainty for a QF is not a consideration for setting avoided costs.[10] There are multiple avenues for setting avoided cost based on current market data, and the exorbitant premium that would be shouldered by customers under GRP's proposed continuation of escalating pricing should be rejected as harmful to customers.

a. *Georgia Power presented a side letter agreement to GRP in 2021 offering to pay the established 2022-2028 RFP proxy price for the latter years of the PPA term, with the Commission's approval. GRP declined the offer, claiming the 2022-2028 proxy price was too low.*

If GRP was really seeking the financial certainty it alleges, it could have accepted Georgia Power's reasonable offer to pay the Proxy Price established by the most recent capacity RFP. On September 8, 2021, in response to GRP's request to set pricing for the final nine years of the PPAs, Georgia Power offered to "amend Appendices A and B of the Proxy PPAs to reflect the most current Proxy Price established through Georgia Power Company's 2022-2028 Capacity Request for Proposals for Annual Payment Periods 22 through 30."[11] GRP rejected this offer, stating that the price was too low, thus demonstrating that Petitioner's intent is not to ascertain financial certainty, but rather to increase the pricing for its own pecuniary gain.

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[10] 18 CFR § 292.304.

[11] Letter from A. Wilson Mallard, Re: Annual Payment Period Pricing and Amendments for the Contract for the Purchase of Firm Capacity and Energy from a Renewable Qualifying facility Utilizing Proxy Methodology, dated Sept. 8, 2021 (attached as Exhibit C).

b. *If GRP is allowed to lock in pricing based on its escalation request, Georgia Power customers will pay an estimated $552M more than if "current market pricing" is used, as directed by the Commission's order.*

GRP's proposal to continue pricing escalation for the duration of the PPA is estimated to impose on customers additional costs of more than $500 million. Table 1 compares escalating pricing to two alternative means for establishing avoided cost based on Commission-approved and PURPA-compliant means – the 2019 RFP results and the B2023 avoided cost. As depicted in Table 1, continuing the escalating pricing would set the avoided cost for Y22 at $116.78/MWh, rising to $133.64/MWh in Y30. This is despite current market data that shows avoided costs are approximately half of those proposed by GRP. Granting such pricing to GRP would subject customers to a premium cost of almost $224 million *per facility*. Using the most recent avoided cost projections (B2023), the premium paid above avoided cost for GRP's generation would be over $276 million per facility, or over $552 million for both GRP facilities.

Table 1

GRP Franklin/GRP Madison (58 MW)
Base Case: $85.24/MWh for non-dispatchable facility escalating at 1.51% per year

Calendar Year	Annual Payment Period	Energy @ 89% C.F. (MWh)	Contracted Payment ($/MWh)	Years (22-30) Escalating Annually @1.51%	Years (22-30) Based on Results from 2019 RFP	Years (22-30) Based on B2023 Avoided Cost	Premium for 1.51% Escalation vs. 2019 RFP	Premium for 1.51% Escalation vs. B2023
2038	22	452,191.2	TBD	$116.78	$67.46	$52.52	$22,300,760.44	$29,056,496.97
2039	23	452,191.2	TBD	$118.54	$68.47	$53.27	$22,641,411.57	$29,514,717.81
2040	24	452,191.2	TBD	$120.33	$69.51	$54.51	$22,980,537.16	$29,763,405.16
2041	25	452,191.2	TBD	$122.15	$70.56	$58.07	$23,327,362.84	$28,975,230.93
2042	26	452,191.2	TBD	$123.99	$71.62	$59.59	$23,682,073.18	$29,121,933.31
2043	27	452,191.2	TBD	$125.86	$72.70	$61.37	$24,040,333.59	$29,163,659.88
2044	28	452,191.2	TBD	$127.76	$73.80	$64.06	$24,402,334.24	$28,806,676.53
2045	29	452,191.2	TBD	$129.69	$74.91	$64.51	$24,772,790.08	$29,475,578.56
2046	30	452,191.2	TBD	$131.65	$76.04	$65.65	$25,147,375.16	$29,845,641.73
2047	31	188,413.0	TBD	$133.64	$77.19	$67.54	$10,635,953.50	$12,454,138.95
						Premium to Ratepayers per facility on GRP's Pricing Request =	**$223,930,931.75**	**$276,177,479.83**
						Total Potential Impact to Ratepayers =	***$447,861,863.51***	***$552,354,959.65***

As a QF, GRP is entitled under PURPA to be compensated for its generation at avoided cost. It is not entitled to over $500 million in additional compensation at the expense of the Company's customers as the result of strategic litigation, especially where there are no missing

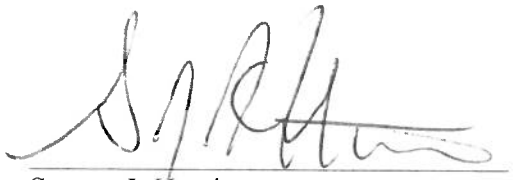
material terms in the contract and GRP knew and accepted the terms at the time of contracting. As such, GRP's Petition should be denied.

VI. Conclusion.

The proxy price methodology established by the Commission is a well-reasoned approach that was thoughtfully developed and is supported by law. GRP's Petition urging modification rests on so-called "flaws" that were known to GRP at the time it executed the PPAs in 2015, and the QF now seeks to increase its PPA revenue to well above current projected avoided costs as determined by the Commission's approved RFP processes. Customers should not be forced to pay a premium of more than $500 million to a QF simply because that QF does not think the current proxy price is high enough.

Georgia Power respectfully requests that the Commission reject GRP's Petition and allow the avoided cost pricing to be set for the remainder of the PPAs' terms near the end of the 20-year period, as previously agreed to by GRP and as previously ordered by this Commission.

Respectfully submitted, this 16th day of November, 2023.



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