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May 28, 2024

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

RE: Capacity and Energy Payments to Cogenerators Under PURPA;
Docket No. 4822

Dear Ms. Tanner:

Enclosed for filing is Georgia Power Company's Response to the Emergency Petition of RGP Bowman Solar, LLC for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for a Qualifying Facility. Please call me at (404) 885-3475 if you have any questions regarding this filing.

Sincerely,

Steven J. Hewitson

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In Re:	**)**	
	)	
Capacity and Energy Payments to Cogenerators Under PURPA	**)**	**Docket No. 4822**

GEORGIA POWER COMPANY'S RESPONSE TO THE EMERGENCY PETITION OF RGP BOWMAN SOLAR, LLC FOR EXTENSION OF TIME AND PETITION FOR DECLARATORY RULING ON INTERCONNECTION COSTS FOR A QUALIFYING FACILITY

COMES NOW Georgia Power Company ("Georgia Power" or the "Company") and hereby responds to RGP Bowman Solar, LLC's ("RGP Bowman") Emergency Petition for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for a Qualifying Facility (the "Petition") filed April 26, 2024. The Petition relies on a convoluted mixture of inapplicable precedents, misstates facts and the relevant law, seeks to relitigate settled interconnection cost allocation policy, and, at bottom, requests the Georgia Public Service Commission's ("Commission") help to circumvent approved Qualifying Facility ("QF") interconnection procedures. The Petition ultimately presents no legal basis for relief and should be denied without further proceedings. For the reasons set forth herein, the Commission should dismiss the Petition in its entirety.

I. BACKGROUND

RGP Bowman proposes to interconnect a 76.54 MW solar and battery storage project (the "Bowman Project") to the Company's transmission system pursuant to the Commission-approved Qualifying Facilities Transmission Generator Interconnection Procedures (the "Procedures") for purposes of selling its entire output to Georgia Power under a standard QF energy only power

purchase agreement. The Company processed RGP Bowman's interconnection request pursuant to the Procedures and the Southern Company State-Jurisdictional Qualifying Facility Transmission Generator Interconnection Study Process (the "Study Process").

Throughout the Study Process, the Company was forced to repeatedly request additional information about the Bowman Project (for purposes of proper study evaluation) as well as site control documentation (to demonstrate RGP Bowman's ability to ultimately construct the project and associated facilities). The Petition included a lengthy timeline of events (Petition at 6-10, para (a)-(t)), but missing from that timeline are numerous instances of RGP Bowman's non-responsiveness to the Company's reasonable requests for data and site control documentation. These delays stemming from RGP Bowman's non-responsiveness ran up to and included a delay in executing the Qualifying Facility Interconnection Agreement ("QFIA"). Given the sequential nature of the QF interconnection Study Process, RGP Bowman's continued failure to execute the QFIA is increasingly impacting the Company's ability to timely process other, later submitted, interconnection requests and conduct transmission screens for the numerous bids submitted as part of its RFP process.

Through its Petition, RGP Bowman seeks to further delay QFIA execution. In particular, RGP Bowman requests: (a) an "emergency" extension of time in which to execute a QFIA for the Bowman Project; (b) a declaratory ruling that Georgia Power's requirement that RGP Bowman provide $38,050,000 in financial security for affected system network upgrades is unreasonable and violates the Commission's Order issued on March 11, 2021 in this docket (the "March 2021

Order"),[1] the Procedures, and pertinent provisions of the QFIA; (c) a declaratory ruling that Georgia Power's requirement that RGP Bowman pay $38,560,000 for estimated installation costs for interconnection of the QF to the Company's electric system is unreasonable and violates the Commission's March 2021 Order, the Procedures, and pertinent provisions of the QFIA; (d) a declaratory ruling that the estimated operations and maintenance costs ("O&M Costs") are unreasonable, violate the Commission's March 2021 Order, the Procedures, and QFIA; (e) a declaratory ruling that RGP Bowman has provided the Company with acceptable interconnection facility ("ICF") site control documentation; and (f) a procedural and scheduling order by which the Commission will take evidence on the Petition and issue its final decision.

II. ARGUMENT

Prior to discussing the merits of RGP Bowman's Petition, the Company must first address the significant errors and misconceptions raised throughout the Petition. First, the Petition demonstrates a fundamental misunderstanding of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), the interconnection procedures at issue, the jurisdictional authority of the Commission, and, indeed, the Commission's own precedents regarding QF interconnection cost allocation.

PURPA and its underlying policies are essential to understanding why the Commission superseded its March 2021 Order with a May 24, 2022, ruling (the "2022 Order") that, among other things, mandated a different interconnection cost allocation outcome than what RGP Bowman seeks to relitigate here. Second, and relatedly, the Petition incorrectly relies on Federal

[1] "Order" In Re: Capacity and Energy Payments to Cogenerators under PURPA; Docket No. 4822 (March 11, 2021). As discussed herein, RGP Bowman ignores later, more applicable Commission authority governing Georgia Power QF interconnection costs and procedures.

Energy Regulatory Commission ("FERC") precedent, failing to recognize that PURPA places the procedures and costs in question exclusively within the jurisdiction of state regulatory bodies such as this Commission.[2] Accordingly, RGP Bowman's reliance on FERC decisions is misplaced. Moreover, the procedures and agreements that govern the complaints in the Petition have been reviewed and approved by this Commission, and the Petition raises no colorable issue justifying relief.

In addition to the flawed jurisdictional basis upon which the Petition is grounded, the Petition fails on multiple additional levels. RGP Bowman's own delays during the interconnection Study Process do not justify "emergency" action by this Commission, and an evidentiary hearing is not warranted, given the clear, Commission-approved Procedures governing the QF interconnection process and RGP Bowman's failure to present any factual or legal basis to justify its requested relief.

Further, regarding O&M costs, Commission Staff recently reviewed Georgia Power's methodology and found it to be reasonable, proposing no significant changes. Finally, despite unsupported claims to the contrary, the evidence is clear that RGP Bowman has yet to establish valid site control for the Bowman Project.

a. The Petition Relies on a Misunderstanding of PURPA and the Commission's Own PURPA Implementation

The Petition argues—without explanation—that Georgia Power's interconnection cost allocations violate both the Commission's March 2021 Order, (Petition at 2-3, para. b, c, d), as well as FERC interconnection precedent promulgated under the Federal Power Act ("FPA"). (*See* Petition at 14-15, 17, 19, and 24.) These assertions misunderstand the nature of the Commission's

[2] 16 USC § 824a–3(f). *See also generally* FERC PURPA implementing regulations in 18 C.F.R. Part 292.

jurisdiction in this proceeding, precedent regarding QF cost allocation, and, critically, PURPA's customer indifference principle that protects Georgia Power customers from unreasonable costs stemming from statutorily mandated QF power purchases and interconnections.

i. QF interconnection cost allocation is within the Commission's jurisdiction and is not subject to FERC precedent.

PURPA, and FERC's implementing regulations, enable the establishment of procedures for the interconnection of QFs, and delegate the sole authority to implement these procedures to state regulatory bodies.[3] Petitioner's reliance on FERC precedent under the FPA fails to recognize that the QF interconnection process and the state jurisdictional framework established under PURPA are separate and distinct from the FERC FPA-based interconnection process. The structure and procedures for QF interconnections under PURPA are determined by state regulatory authorities, such as this Commission, and this Commission's jurisdiction is exclusive and comprehensive, leaving no room for FERC's FPA-based precedent or rules regarding interconnection.

Indeed, FERC itself underscored that when a QF interconnects pursuant to PURPA, as is the case here, "the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs." FERC Order No. 2003, P 813. The Petition conveniently ignores this clear and well-established jurisdictional line under PURPA and, to confuse matters further, quotes contextless FPA-based cost allocation policy that, seen in its proper light, is wholly

[3] *Id.*

irrelevant to the Commission's implementation of PURPA.[4] Petitioner's repeated reliance on FERC precedent is, therefore, misplaced and irrelevant to these proceedings.

For this reason, the Petition's sweeping assertion that it will "pay its share of the costs of each project through transmission rates," (Petition at 25-26), is wrong and grossly misleading. Unlike generators interconnecting under the FPA, QFs interconnecting under PURPA are not required to purchase transmission service to deliver their output to utility consumers; rather, the interconnecting utility is obligated to address transmission arrangements for such QF purchases. *Pioneer Wind Park I, LLC,* 145 FERC ¶ 61,215, PP 36-38 (2013). Accordingly, Georgia Power designates PURPA QF purchases as "native load resources" and the QF is not obligated to pay for transmission service within the Georgia Integrated Transmission System ("ITS").

The Petition's attempt to graft in inapplicable FERC precedent not only unnecessarily attempts to obscure the Commission's clear jurisdiction here, but it also ignores that the Commission already addressed QF interconnection cost allocation in this same docket in a manner consistent with PURPA's requirements.

ii. The Petition ignores that QF cost allocation is settled Commission precedent, firmly grounded in PURPA's key customer indifference principle.

PURPA was passed in 1978 with the goal of encouraging greater domestic development of renewable energy resources from cogeneration and small power production facilities, or QFs. That mandate, however, came with an important protection for utility customers. Congress did not

[4] Except for one case arising out of the Natural Gas Act, *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992), every FERC citation in the Petition is to a FERC or appellate decision grounded in the FPA, including references to FERC's Order No. 1000, which addresses interregional transmission planning. The FPA is an entirely different statute and includes different requirements, policy objectives, and importantly, establishes an entirely different approach to protecting customers from excessive costs: wholesale competition. In contrast, under PURPA, QFs can bypass the cost-containing effects of wholesale competition by forcing utilities to purchase their output. For this reason, the primary basis for protecting consumers under PURPA is through the statute's customer indifference principle, as explained further herein.

intend to support QF development at any cost, and certainly not at the expense of a utility's other customers. Indeed, alongside PURPA's mandatory purchase obligation on utilities is the requirement that rates for such purchases never exceed the costs that the utility would otherwise incur to purchase or generate the power itself—the so-called "avoided cost" of QF power.[5] Critically, this requirement ensures that retail customers must be held indifferent to the utility's mandatory purchase obligation.

The principle that utility customers must remain financially indifferent to a utility's purchase of QF power is embodied in PURPA itself,[6] its legislative history,[7] FERC's implementing regulations,[8] and FERC PURPA precedent.[9] As relevant to the Petition, states retain control over QF interconnection costs for PURPA-based interconnections.[10] Critically, not only are these costs squarely within the Commission's jurisdiction, but the Commission has already appropriately

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[5] 16 U.S.C. § 824a-3(b) (providing "[n]o such rule prescribed under [16 U.S.C. § 824a–3](a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy."); *id.* at § 824a-3(d) (defining "incremental cost of alternative electric energy" as "the cost to the electric utility of the electric energy which, ***but for*** the purchase from [the QF], such utility would generate or purchase from another source.") (emphasis added).

[6] *See, e.g.*, 16 U.S.C. §§ 824a-3(b), 824a-3(d) (2018).

[7] Conference Report on PURPA, H.R. Rep. No. 1750, 95th Cong., 2nd Sess. 97-98 ("The provisions of this section are not intended to require the rate payers of a utility to subsidize cogenerators or small power producers.").

[8] *See, e.g.*, 18 C.F.R. § 292.304(a)(2) (2023) ("Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases."); *id*. at § 292.101(b)(6) (defining "avoided costs" as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility…, such utility would generate itself or purchase from another source."); Order No. 69 at 45 (discussing industry comments on section 304(a) of the then-new regulations and noting arguments that utility customers would be kept whole, paying the same rates as they would have paid had the utility not purchased energy and capacity from the QF).

[9] *See, e.g.*, *S. Cal. Edison Co., San Diego Gas & Elec. Co.*, 71 FERC ¶ 61,269, 62,080 (1995) (discussing, *inter alia*, what state policies would violate PURPA by imposing costs on utilities in excess of avoided costs); Order No. 69 at 29 ("Under the definition of 'avoided costs' in this section, the purchasing utility must be in the same financial position it would have been had it not purchased the QF's output."); Order No. 872, P 12 (noting Congress structured PURPA to give effect to its intent that QFs not be subsidized).

[10] *See e.g.*, 18 C.F.R. §§ 292.303(c), 292.306 (2020); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128 (1993), *order on reh'g*, 64 FERC ¶ 61,139, 61,991 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993) (landmark order addressing various jurisdictional issues and reiterating previous FERC rulings that "the states have exclusive jurisdiction over direct interconnections between a QF and the public utility which purchases its power."); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 at PP 813-14 (2003) ("Order No. 2003") (subsequent history omitted).

determined that such costs must be allocated consistent with PURPA's customer indifference principle.

In challenging the basis for Georgia Power's cost allocations, the Petition not only relies on inapplicable FERC precedent, discussed above, but it also relies on outdated Commission precedent that has since been superseded by a cost allocation framework that is more in line with PURPA's customer indifference principle. Specifically, the Petition relies on a generic reimbursement mechanism articulated in the March 2021 Order and ignores the fact that *after* the March 2021 Order, the Commission issued the 2022 Order, accepting Georgia Power's Procedures that adopted an updated cost allocation policy that protects Georgia Power customers by imposing network upgrade reimbursement limits. (*See* Order Approving Qualifying Interconnection Procedures and Interconnection Agreement Documents, Commission Docket No. 4822, May 24, 2022, at 2.)

The 2022 Order's QF cost allocation rationale was consistent with PURPA's essential customer indifference requirement. Under the 2022 Order, except for network upgrades that are already planned by Georgia Power, QFs are otherwise obligated to bear the costs for their own interconnection decisions. RGP Bowman's Petition seeks to relitigate this issue and, in the process, force the consequences of its project and siting decisions—that is, millions in interconnection-related network upgrade costs—onto Georgia Power customers. The Commission should deny the Petition as it runs contrary to PURPA's customer indifference requirement and applicable Commission requirements related to QF cost allocation.

b. No Emergency Exists Except for One of RGP Bowman's Own Creation.

RGP Bowman seeks an emergency extension of time to execute a QFIA, filing the Petition on the day before the QFIA was to expire according to its terms. RGP Bowman created this

"emergency" of its own making, not Georgia Power. The Bowman Project has been pending since December 2022. (Petition at 6.) After working through several data and documentation issues with RGP Bowman, Georgia Power issued the Qualifying Facility Study – Phase II report on January 8, 2024. (Petition at 9.) That report identified the interconnection costs for which RGP Bowman is responsible if it wishes to interconnect to Georgia Power's system as a QF. RGP Bowman then waited 109 days to file its Petition, finally submitting its complaints only one day prior to the deadline to execute the QFIA.

RGP Bowman knew well in advance of receiving the QFIA both (1) its total costs for interconnection and (2) that it would have 30 days in which to execute the QFIA. Although RGP Bowman could have brought its complaints to the Commission any time after receipt of the Phase II study report, Petitioner chose to wait until the eve of expiration to file an "emergency" petition. Granting an emergency extension under these circumstances would set a concerning precedent, encouraging other QFs to circumvent applicable Procedures through non-responsiveness and other delay tactics, including filing "emergency" petitions that have no merit. Such actions undermine the Commission's authority to establish its own procedures and set deadlines and are fundamentally unfair to other QFs that are diligently adhering to the Procedures' requirements and who are being unduly impacted by RGP Bowman's unnecessary delay tactics. For these reasons alone, the Commission should deny RGP Bowman's request for an emergency extension.

c. An Evidentiary Hearing Would be Inappropriate and Contrary to Commission Rules.

The Petition presents no factual or legal basis for which relief could be granted. Commission Rule 515-2-1-.12 clearly states that evidentiary hearings are not to be held unless there exists a dispute with respect to material facts and the Commission requires such a hearing. In this proceeding, Petitioner has failed to establish a prima facie case for any of the allegations

raised in the Petition, instead relying on conclusory assertions that the costs are per se "unreasonable" where they amount to "61% of total project costs." (Petition at 23, 28.) While these claims may demonstrate the financial impact of poor siting decisions that would never have survived a competitive bidding process, they fall well below the threshold of substantive evidence warranting further inquiry. While Petitioner asserts the upgrades identified in the Phase II study report are not required and the costs are "unreasonable," Petitioner presents no basis upon which the Commission could decide in its favor. To the contrary, the only evidence in the record – the Phase II study report itself – supports Georgia Power's identification of these costs. In accepting Georgia Power's Procedures, the Commission did not impose heightened evidentiary requirements for standard interconnection studies that are otherwise performed consistent with good utility practice and sound engineering judgment. Petitioner identifies no material fact that can or should be disputed under the applicable procedures.

The absence of contestable material facts, combined with the inability to substantiate the claims with preliminary evidence, aligns with the Commission's rules that favor efficiency and direct resolution of matters where the factual framework is undisputed and clear. Proceeding with an evidentiary hearing would not only be unnecessary but would also disregard the procedural norms intended to avoid undue burdens on the resources of this Commission. Therefore, the Commission should deny the request for an evidentiary hearing on this Petition.

d. The Commission-Approved Procedures Require RGP Bowman to Make Payment or Provide Security for the Interconnection Costs of the Qualifying Facility.

The approved Procedures establish a clear method for determining interconnection costs and allocating those costs to the responsible parties. Upon receipt of a QF Interconnection Request, Southern Company Services ("SCS"), as agent for Georgia Power, conducts a QF Interconnection Study to identify Affected Systems and the Interconnection Upgrades that must be completed

before the QF can be declared ready for commercial operation under the terms of the QFIA.[11] The Procedures explain that the QF Interconnection Study Report may identify certain upgrades that are necessary for interconnected operations of the QF with the ITS, including additions, modifications, or upgrades to the electric system of an Affected System-Interconnection Utility. The procedures also specifically state:

> **If the GPC Study Report identifies the necessity of Interconnection Facilities on an Affected System's Electric System**, GPC will contact the Affected System utility to determine what modifications to its Electric System would be necessary and to obtain a cost estimate and projected schedule for such upgrades. The QFIA Exhibit A will include those estimates and Generator will make payment or provide security as provided in QFIA Exhibit A. GPC will arrange with the Affected System for performance of the necessary project engineering, procurement, construction, and testing.[12]

In accordance with the Commission-approved Procedures, SCS conducted the QF Interconnection Study for the Bowman Project, which identified multiple Affected System Transmission System Upgrades, totaling over $76 million ($38 million for upgrades on a portion of the ITS owned by the Georgia Transmission Corporation ("GTC") and $38.6 million for upgrades on Georgia Power's system). Consistent with Paragraph 16 of the Procedures, the financial security for these projects remains the obligation of the QF, to protect customers from paying for costs caused by the QF interconnection. Petitioner attempts to justify delaying financial security by arguing that RGP Bowman should coordinate directly with GTC, and generally attempting to distinguish between network upgrades on Georgia Power's system versus on GTC's system, which fundamentally ignores the integrated nature of the ITS and Georgia Power's

[11] Procedures, Section III, para. 6-10.

[12] Procedures, Section V, para 15 (emphasis added).

delivery obligations, not to mention Commission precedent and PURPA's customer indifference principle, as discussed above.

By failing to provide the financial security required by the Procedures, RGP Bowman seeks to shift the responsibility for over $76 million of interconnection and network upgrade costs to Georgia Power's customers. RGP Bowman's attempt to avoid its responsibility to pay the costs it will create by interconnecting to Georgia Power's system should be denied.

e. The Company's Methodology for Calculating O&M Costs is Fair and Reasonable.

RGP Bowman contends, with no evidentiary support, that the O&M Costs assigned to its QF facility are unreasonable. This assertion relies solely on the notion that a perceived lack of transparency would automatically make the assigned O&M Costs unreasonable and completely ignores the recent evaluation of the Company's methodology in this very docket reaching the opposite conclusion. Following a review of the workbooks demonstrating Georgia Power's derivation of its methodology and calculations, Commission Staff recommended that the Commission should ***not*** change Georgia Power's methodology of estimating future O&M Costs (other than a minor computational edit to which the Company agreed).[13] That recommendation was recently approved by the Commission.[14]

Contrary to RGP Bowman's claims, the methodology *bolsters* financial predictability and fairness. The Company's methodology uses historical transmission and distribution investments compared to transmission and distribution expenses. Requiring QFs to pay these costs based on the same methodology safeguards customer interests by preventing the unfair transfer of costs, and

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[13] Energy Committee Meeting, *Georgia Public Service Commission* (May 2, 2024) (24:38).

[14] Administrative Session, *Georgia Public Service Commission* (May 21, 2024) (6:20). Note that, because the Bowman Project QFIA was issued prior to the Commission's decision on May 21, 2024, Georgia Power will re-estimate the O&M expenses for the Bowman Project in accordance with that decision.

results in the equitable treatment of all QFs by applying a consistent formula for O&M cost calculations. This approach ensures that QFs contribute their fair share towards the maintenance of interconnection facilities and prevents a cost shift to the Company or its customers, neither of whom sought the construction of the Bowman Project to begin with.

The Company's methodology is both fair and reasonable, offering mechanisms that protect customer interests and ensure equitable treatment of all parties involved. As such, the Commission should find that the Company's O&M Costs assigned to RGP Bowman's QF facility are fair and reasonable.

f. RGP Bowman has yet to Provide Acceptable Site Control Documentation as Required by the QFIA.

The documentation provided by RGP Bowman fails to demonstrate that it has established full site control. Specifically, it has yet to demonstrate sufficient property rights for an approximately five-mile "collector line" connecting the project site to the interconnection location, which includes portions of property in two counties.

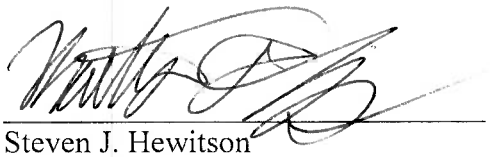
To date, including in its Petition, RGP Bowman relies on vague descriptions of documents and their contents to demonstrate full site control. For example, RGP Bowman submitted documentation noting only that one of the relevant counties "is working with [the project company] to determine the best route possible," for the line. To ensure that the Commission has complete information in considering RGP Bowman's request, the Company includes the site control documents described on pages 29-30 of the Petition as Exhibit A. A plain review of the documents reveals that RGP Bowman has yet to demonstrate sufficient property rights to locate this line.

For these reasons, the Commission should find that RGP Bowman has not provided acceptable documentation establishing site control.

III. CONCLUSION

For the reasons set forth above, Georgia Power requests that the Commission dismiss RGP Bowman's Petition and deny its requests for declaratory relief and an evidentiary hearing.

Respectfully submitted, this 28th day of May, 2024.



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