# THE GEORGIA PUBLIC SERVICE COMMISSION

## REPORT OF THE INDEPENDENT EVALUATOR

**REGARDING**

**DRAFT DOCUMENTS FOR THE**
**Georgia Power Company– 2029-2031 ALL-SOURCE CAPACITY RFP**



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**REPORT OF THE INDEPENDENT EVALUATOR**

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**2029-2031 ALL-SOURCE CAPACITY RFP**

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## I. EXECUTIVE SUMMARY

Accion Group, LLC, serves as the Independent Evaluator ("IE") for the Georgia Power 2029-2031 All-Source Capacity Request for Proposals ("RFP") in close coordination with the Staff of the Georgia Public Service Commission ("Staff"). The RFP is being conducted pursuant to the rules of the Georgia Public Service Commission ("Commission" or "GPSC"). Georgia Power Company ("GPC" or "Company") is seeking market-based capacity resources to meet the capacity need identified in its 2022 Integrated Resource Plan ("IRP"). In the interest of simplicity, the Georgia Power Company Evaluation Team is also referred to as "GPC."

The IE and GPC personnel participated in numerous discussions for the purpose of reviewing the draft RFP and the associated pro-forma Power Purchase Agreements ("PPAs"), Asset Purchase Agreement ("APA"), and Build Transfer Agreement ("BTA"). These discussions were conducted at times with the three entities, and separate discussions were held between GPC personnel and Staff, GPC and the IE, and Staff and the IE. The Staff joined the IE in some of the direct discussions with GPC and there were numerous discussions between the Staff and IE regarding the draft documents. Collectively this Process provided for a robust review of the documents prior to GPC filing with the Commission for approval on May 23, 2024.

The intent of the review was to ensure fairness to the Bidders and that no undue preference is given to Company-owned proposals ("COP") and Affiliate Bids and that all terms are clear and unambiguous. This Process, followed by a public review by the Commission, is appropriate to confirm for the marketplace that the RFP would fairly and impartially consider all Bids and proposals, with the goal of attracting robust Bids that will benefit ratepayers with the least cost, most reliable generation options.

All comments provided by interested parties were reviewed by the IE and Staff. The Staff and IE reviewed each determination by GPC to determine whether a proposed change would result in an appropriate modification of the respective document. Where the IE and Staff believed clarification of the GPC position was needed, or a different determination would be appropriate, these observations were shared with GPC. As noted herein, comments were received for the draft RFP, each PPA, the APA and the BTA.

The IE believes the documents presented to the Commission for approval clearly identify the scope of the RFP, terms and conditions for Bidding and contracting, what technologies are eligible to be Bid into the RFP, and that the documents are devoid of ambiguity. The documents are clear and concise regarding the Process, acceptable technologies, schedule, and that Company Owned Proposals and Affiliate participation may occur. The RFP clearly identifies the scope of the capacity need identified in the most recently approved IRP and the Required Commercial Operation Date ("RCOD"); providing


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potential Bidders with full knowledge of when a project must be available to meet the identified need. Further, the RFP clearly identifies that greenfield projects as well as existing facilities are welcome to bid, provided the project can meet the RCOD and other criteria. In light of the significant system needs and limited flexibility in the in-service requirement, avoiding the possibility of confusion as to requirements and terms is critical. The IE believes there is no ambiguity in the RFP or contracts and expects the post-selection Process would be completed without delay. However, the IE continues to believe improvements in the RFP documents are appropriate.

The final round of comments from interested parties were for the APA and BTA draft contracts. GPC submitted the RFP documents to the Commission four days after receiving comments regarding the APA and BTA contracts. Accordingly, the comment review conducted by GPC, Staff, and the IE was incomplete on May 23, 2024, when GPC filed documents with the Commission and the review continued until the filing of this report. Those discussions resulted in refinements to the GPC disposition of comments, and certain aspects of the RFP. GPC provided revised RFP documents on June 6, 2024, and the IE undertook yet another review of the documents. The summary of changes alone was 14 pages in length, indicating the number of refinements proposed by GPC. Herein the IE discusses major components of the documents.

By providing for greenfield as well as existing facilities as appropriate Bids, the IE believes the RFP is designed to provide the opportunity for developers to directly compete with COP and its Affiliates' proposals. The RFP describes the evaluation Process in sufficient detail to assure Bidders that the same evaluation criteria will be applied for all Bids, including from COP and the Affiliate, and that the IE and Staff will be actively involved in the evaluation Process.

The IE believes the RFP is absent of overt bias towards or against any Bidder or acceptable technology. Likewise, the IE believes the RFP documents are devoid of bias in favor of COP or Affiliate submissions. The RFP, as originally submitted, included the prospect for forty four (44) persons who were available to assist the COP team prior to the Bid submission date being available to the Evaluation Team after Bids were received. Subsequent discussions with the IE, at the urging of the Staff, resulted in GPC agreeing to limit the number of persons who would interact with the COP team and then the Evaluation team to two (2 ) persons from the treasury department. The IE believes this change is appropriate, as discussed in more detail below.

The IE believes GPC respectfully reviewed and considered each observation from interested parties, and also gave full consideration to each observation of the IE and Staff. As demonstrated by the changes made last week, the RFP documents required extensive review and lingering concerns of the IE are identified herein. The IE understands the Staff will separately present areas of concern.

## II. ROLE OF THE IE

### A. About The Independent Evaluator

With more than 40 years of in-depth experience in electric, gas, water, and renewable utilities, Accion Group's diverse consortium of consultants provides insightful, candid, and practical advice to the

utility industry and their associated government regulatory bodies. Headquartered in Concord, New Hampshire with consulting affiliates nationwide, Accion's specialties range from competitive procurement and utility management to construction monitoring and nuclear decommissioning.

Since its incorporation in 2001, Accion has been routinely involved in high-profile consulting engagements, thus securing a reputation as one of the premier firms providing independent review of utility procurement practices. Accion has served as Independent Evaluator, Independent Monitor, or Independent Observer to state commissions on over 135 competitive solicitations for energy and capacity supplies from a range of markets including California, Hawaii, Georgia, Colorado, Montana, North Carolina, South Carolina, Washington, Wyoming, North Dakota, Oregon, Florida, Arizona, Texas, New Mexico, Arkansas, Alabama, Louisiana, Canada, Mexico, the U.S. Virgin Islands, and Puerto Rico. Accion Group has also assisted utilities in the preparation for, and the conduct of, power supply solicitations in Maryland, Massachusetts, and Nevada. Having reviewed proposals for generation by renewable sources (including wind, solar, biomass, wave action, storage, low-head hydroelectric, geothermal, and methane capture), as well as for conventional generation by new-build facilities using nuclear power, natural gas, and coal fuels, Accion's consultants are well-versed in the subtleties of utility procurement practices. Accion's ultimate goal as IE is the same as state regulators: ensuring the solicitation obtains the best deal possible for ratepayers, given current market and regulatory conditions in terms of both price and non-price factors.

### B. Role of the IE

The Role of the IE is to oversee the RFP Process with Staff and to serve as the point of contact for all Participants. Pursuant to the requirements of the GPSC, the IE serves to maintain fairness, transparency, and consistency in the RFP Process and to encourage the receipt of robust submissions, and ensure an evaluation of responses without favoritism.

The IE also provides and operates the Website for receipt of Bids, which hosts and captures all RFP-related information, time and date-stamped, for review ("IE Website"). The IE Website facilitates all communications with Participants, including Questions and Answers and comments on the draft documents.

## III. DISCUSSION

### A. Overview

The 2029-2031 All Source Capacity RFP presents a system need of up to 8,500 MW of Capacity Resources and Georgia Power's IRP Update recognized a need of at least 6,600 MW, including Standalone Energy Storage Systems ("ESS") with grid charging capability, ESS with Renewable Resource and grid charging capability, and thermal generation including natural gas or oil-fired resources. The RFP permits Company-Owned Proposals as well as Bids from its Affiliates.

Members of the GPC Evaluation Team, COP team members, and affiliate personnel assigned to submit proposals are each subject to the Standards of Conduct approved by the GPSC. Members of each team are identified on Team lists filed with the Commission and posted on the IE Website, which is

updated periodically. The team lists are posted so interested parties are advised of the individuals who are not to be contacted regarding the RFP. Similarly, members of each team are on notice regarding the individuals with whom they are not permitted to discuss or share information about the RFP.

The review of draft documents was undertaken pursuant to the Commission's RFP Rule 515-3-4.04(3)(e)(1)(v) and this report is provided pursuant to Rule 515-3-4-.04(3)(e)(1)(vii). The draft RFP, PPA for a Combined Cycle Facility ("CC PPA"), PPA for a Combustion Turbine ("CT PPA"), PPA for an ESS paired with Renewable Resources ("ESS Renewable Resource PPA"), PPA for a Standalone ESS ("ESS Standalone PPA"), Asset Purchase Agreement ("APA") and a Build Transfer Agreement ("BTA") together ("RFP Documents") were each reviewed.

The discussions among the Staff, GPC Evaluation Team members, and the IE were conducted on the draft documents before and after the draft documents were released for public comment. The comments from interested parties were also discussed by the IE, GPC Evaluation Team members, and Staff, but complete agreement was not reached between GPC personnel, Staff, and the IE.

### B. Public Comments

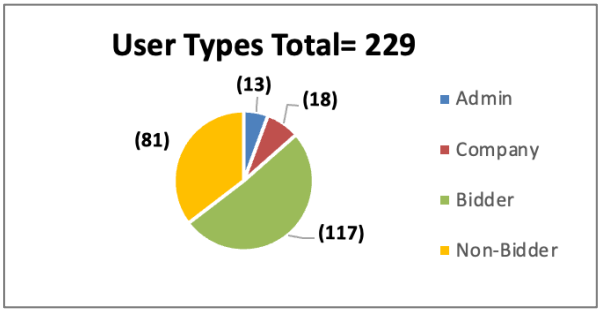
1. RFP Comments

As required by the Commission, the IE conducted the Comment Period during which interested persons were encouraged to review the draft RFP and RFP Documents, identify any point of confusion, and to offer suggestions for improving those documents. The comment Process was conducted using a unique application on the IE Website, where an interested individual could select each provision of each RFP document, provide "red-lined" suggestions, and provide guidance to GPC, Staff, and the IE concerning the intent of the suggested change. With this application each red-lined suggestion and comment was captured on the IE Website as a record, and the data was exported to GPC and Staff in excel format for easy reference and review. The initial Comment Period for the draft RFP ran from February 26, 2024, through March 29, 2024. That Comment Period was limited to the RFP and the draft PPAs. As noted below, there was a subsequent Comment Period regarding the APA and BTA drafts. There was no public Comment Period after GPC provided revised RFP documents on June 6, 2024, as those documents were intended to incorporate all the changes GPC accepted from earlier comments.

In effect, using the comment feature on the IE Website Participants and interested parties were invited to assist in drafting of the RFP and RFP Documents in order to improve their Submissions and solicit a robust response. The IE notes that as of May 20, 2024, when the first Comment Period concluded, 117 participants were registered as potential Bidders and another 81 were registered as non-Bidders. Comments were provided by nine (9) participants, which is 4% of those who have expressed interest in the RFP. Of those providing comments during the first Comment Period, seven (7) were registered as potential Bidders. As noted

**Chart 1**

**Registrants on the IE Website**





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below, a second Comment Period was conducted regarding the APA and BTA contracts. During that second Comment Period, one (1) additional registered bidder participated, resulting in a total of eight (8) registered bidders provided comments about the draft RFP and associated contracts.

The draft RFP was posted on the IE Website on February 26, 2024. The initial Comment Period concluded on March 29, 2024. Five (5) participants made a total of 26 comments on the draft RFP. Of those comments, one participant submitted half of the comments, as can be seen in Table 1, and two persons offered one comment each.

**Table 1**

**Comments Received – Draft RFP**

| RFP Comments by User | | |
|---|---|---|
| **User Code** | **# of Comments** | **Percent of Total Received** |
| **A** | 1 | 3.8% |
| **B** | 2 | 7.6% |
| **C** | 13 | 50% |
| **D** | 1 | 3.8% |
| **E** | 9 | 34.6% |
| **TOTAL** | **26** | **100** |

Table 2 identifies participant areas of interest, based on the number of comments received by Section of the draft RFP.

**Table 2**

**Summary of RFP Comment Areas**

| Draft RFP– Comments by Section | | |
|---|---|---|
| **Section** | **Comments** | **Percent** |
| Definitions and Rules of Construction | 5 | 19.2% |
| 1.1 RFP Solicitation Schedule | 1 | 3.8% |
| 2.1 Products Sought | 1 | 3.8% |
| 2.4 ESS Submissions | 1 | 3.8% |
| 3.2 Facility Size and Output | 1 | 3.8% |
| 3.5 Dispatchability | 1 | 3.8% |
| 3.6 Availability | 1 | 3.8% |
| 3.13 Station Service; Retail Electric Service | 1 | 3.8% |
| 4.7 Bid Security | 3 | 11.5% |
| 7.15 Bid Withdrawal | 1 | 3.8% |
| EXHIBIT B - INTERCONNECTION AND DELIVERY REQUIREMENTS | 1 | 3.8% |
| EXHIBIT E - ATTACHMENT 1 - PERFORMANCE SECURITY AND TERMINATION LIQUIDATED | 3 | 11.5% |
| EXHIBIT J - VIE CERTIFICATION | 2 | 7.6% |
| EXHIBIT K - FINANCE LEASE CERTIFICATION CHECKLIST | 3 | 11.5% |
| EXHIBIT L- ADDITIONAL GUIDANCE FOR ESS SUBMISSIONS | 1 | 3.8% |

2. PPA Comments

In addition to the RFP, the pro-forma PPAs were prepared for public comment and posted on the IE Website on March 8, 2024. Because of the different Bidding options there were four types of PPAs: (i) CC PPA; (ii) CT PPA; (iii) ESS with Renewable Resource PPA; and (iv) ESS Standalone PPA. Comments and responses on the common terms in the CC and CT PPAs, ("CC-CT PPAs") and in the ESS Renewable Resource and Standalone PPAs ("ESS PPAs") were consolidated. A total of 208 comments were received on the draft PPAs.

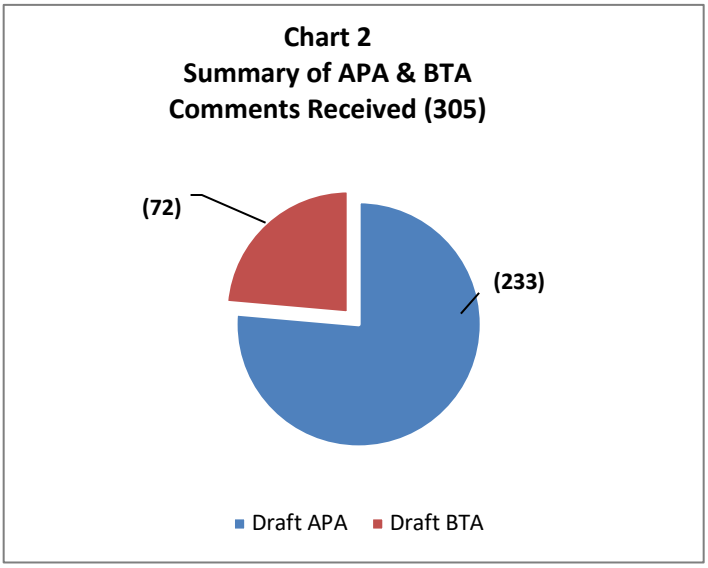
**Table 3**

**Summary of PPA Comments**

| Documents | Comments |
|---|---|
| Pro-Forma ESS PPAs | 83 |
| Pro Forma CT – CC PPAs | 125 |

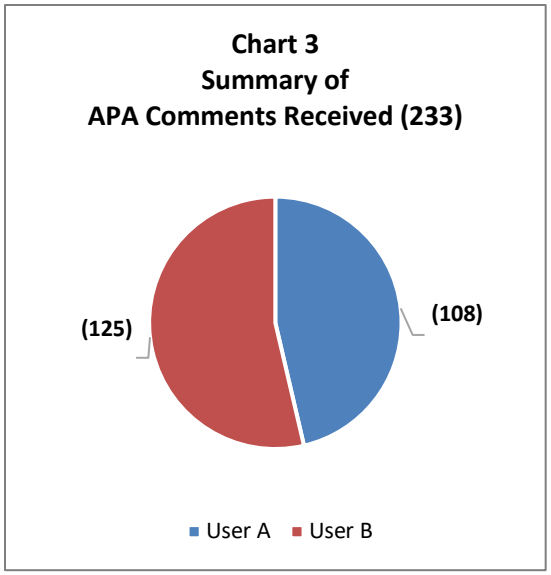
3. APA and BTA Comments

The Comment Period for APA and BTA draft contracts was conducted separately from the Comment Period for the draft RFP and PPA contracts. The APA and BTA Comment Period opened on May 10, 2024, and closed on May 20, 2024. As discussed below, initially GPC intended to provide those draft contracts after the Competitive Tier was established, which was strenuously opposed by the IE and Staff. GPC reconsidered its position and made the APA and BTA available in May.




A total of 233 comments regarding the APA were submitted from 2 interested persons, and a total of 72 comments regarding the BTA were submitted from 1 interested person.

As noted above, particpants were requested to redline each section of the draft RFP and RFP Documents that they suggested should be changed, and were encouraged to provide comments explaining the intent of the proposed revisions. For the seven documents (the RFP, four PPAs, a BTA and APA) a total of 539 comments were submitted. The following Charts show the breakdown of comments received.



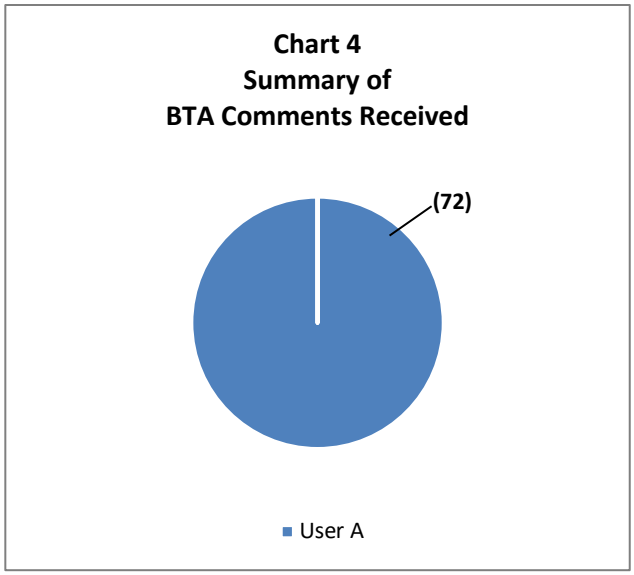




**Table 4**

**Summary of All Comments**

| Document Name | Number of Comments Received | Number of participants | Percent |
|---|---|---|---|
| Draft RFP | 26 | 5 | 4.82% |
| Draft PPAs ESS with Renewable and Standalone | 83 | 4 | 15.40% |
| Draft PPAs CC-CT | 125 | 3 | 23.19% |
| Draft APA | 233 | 2 | 43.23% |
| Draft BTA | 72 | 1 | 13.36% |
| **TOTAL** | **539** | **9** | **100** |

At the conclusion of each Comment Period the IE provided copies of all comments, including suggested red-line changes and, when provided, explanations for the requested changes, to GPC and the Staff. The comments were provided without the identity of the source. GPC provided a proposed response to each comment and reviewed those responses with Staff and the IE. Staff and the IE agreed with most of GPC's responses with exceptions noted in the IE Recommendations below. The extent of comments confirms interested persons were aware of the comment opportunity, and that there is significant interest in this RFP.

### C. Evaluation Team Membership

The RFP, as submitted to the Commission, includes "Evaluation Team," "Primary Evaluation Team," and "Specialized Technical Support Personnel" as defined terms. Specialized Technical Support Personnel are defined as individuals who have specialized knowledge and can be used to support the Evaluation Team and the COP Team. The purpose of these designations was, essentially, to reserve the option for having individuals who provided unique technical services to the COP team, prior to the COP submission date, available to assist the Evaluation Team during the evaluation phase. GPC made full disclosure of the individuals identified on the COP Team list from which the Evaluation Team would like to draw if confronted with unique evaluation challenges. Originally, there were a total of 44 individuals identified as Specialized Technical Support Personnel, of which 16 were in the transmission field. The individuals were included on the team lists filed with the Commission and posted on the IE Website. The IE was advised the disclosure was done so there would be no question regarding which of the individuals listed on the COP Team list might be requested to withdraw from the COP Team, after the proposal date, and be available to the Evaluation Team. The concept was to identify the personnel with unique skills that might be needed during the evaluation Process, even if they had participated in the preparation of a COP proposal. From the initiation of the RFP Process there have been three team lists available on the IE Website: the Evaluation Team, the COP Team, and the Affiliate Bid Team. It should be noted that there was no consideration of having any individuals who supported the Affiliate Bid Team also be available to the Evaluation Team at any point in the Process. This is confirmed by the fact there is no overlap of personnel identified on the Affiliate Bid Team roster and either the COP or Evaluation Team rosters.

In recognition of the concerns of the Staff and IE, GPC Evaluation Team members suggested to the IE that there would be no movement of personnel without prior review with Staff and the IE, and the agreement of both the IE and Staff would be sought before any transfer occurred. Notwithstanding these proposed "guardrails," the IE, with the support of Staff, declined to support the reservation of highly skilled individuals for future support of the Evaluation Team.

From the outset, the IE and Staff opposed the transfer of personnel from supporting the COP Team, even after the proposal period ended, due to concern that the separation protocols could be breached and an apparent bias in favor of a COP proposal would occur. The IE insisted that the prospect for support personnel working with both teams, regardless of how skilled their unique expertise and their personal integrity, could be perceived as unfair and thereby limit third party participation in the RFP. This, of course, would be contrary to the goal of encouraging a robust response to meet the significant system needs.

The disagreement between GPC, the IE, and Staff continued until after GPC submitted RFP documents to the Commission on May 23, 2024, with the IE and Staff continuing to insist upon total separation of personnel throughout the RFP Process. Through further discussions between the IE and GPC, it was agreed that 42 of the highly skilled individuals initially identified on both Teams would be separated to remain with only one teams throughout the remainder of the RFP Process and there would be no request to transfer individuals from one roster to another. Further, GPC would retain the services of an outside engineering firm to advise the Evaluation Team during the evaluation process to the extent additional resources are needed to support the evaluation. However, two Georgia Power employees from

Southern Company Treasury are identified as available to COP Team and the Evaluation Team prior to the Submission Due Date. Having Treasury Department personnel in this dual role is consistent with past RFPs approved by the Commission. This is consistent with industry practice in other jurisdictions where the IE conducts RFPs and self-build proposals are accepted. To date, the IE has not identified any inappropriate activity or adverse impact on bidders, in Georgia or other jurisdictions, because the Evaluation Team responsibilities are focused and limited to confirming the Creditworthiness requirements of Bidders and calculating the potential balance sheet impact for GPC, and the Southern Company, if a COP is selected in the portfolio of successful proposals.

The revised RFP prepared by GPC continues to lack specificity regarding which personnel would interface with both the Evaluation Team and the COP Team. RFP Section 1.3.2 C provides:

> **Company-Owned Proposal Team and Specialized Technical Support Personnel**. The COP Team will develop any Company-Owned Proposal in a manner that preserves the integrity and fairness of the RFP Process for all participants. Due to their functional expertise and breadth of job responsibilities, *limited Specialized Technical Support Personnel may need to be involved both with development of a Company-Owned Proposal and with certain aspects of this All-Source RFP.* The RFP information provided to Specialized Technical Support Personnel is limited to the scope of their job responsibilities. Specialized Technical Support Personnel serving as members of both the Evaluation Team and the COP Team will not be allowed to determine the total economic benefit of Submissions. GPC voluntarily posted a list of the COP Team members on the IE Website, and the Evaluation Team and the COP Team lists will separately identify any Specialized Technical Support Personnel who serve on both teams.
>
> Emphasis added.

The IE believes this is unnecessarily vague and should be modified to reflect the understanding set forth above, ergo, only two employees from the Treasury department will be involved with both the Evaluation Team and the COP Team, and their role will be restricted to reviewing the Credit worthiness of Bidders and determining the financial impact on the Company of each Bid or proposal.

**D. Draft APA and BTA Documents**

The original RFP schedule called for the draft APA and BTA to be shared with Bidders after the Competitive Tier was established. The IE and Staff firmly advanced the position that Bidders competing with COP proposals for acquisitions by GPC, whether greenfield or existing, should know all of the expected terms before Bidding. Otherwise, contracts produced after Submissions were evaluated and ranked, including COP proposals, would rightly raise the specter of being biased by the review of Submissions. GPC acknowledged the validity of the concerns expressed by Staff and the IE and on May 10, 2024, draft APA and BTA contracts were provided for review by Staff and the IE. The documents were posted on the IE Website for comments from May 10, 2024, through May 20, 2024.

As noted above, a total of 305 comments were received regarding the proposed terms contained in these two documents, as compared to 208 for the PPAs. The IE believes this validates the concern of Staff and the IE that Bidders must have the ability to understand the terms and conditions for an acquisition *before* submitting a Bid. In light of the interest in the documents, the IE believes the position

advanced by Staff and the IE was appropriate and should confirm with the marketplace that the RFP will be fairly conducted. Due to the late Comment Period, GPC provided initial responses to Staff and the IE on the same day the RFP documents were submitted to the Commission. Subsequently GPC and the IE reviewed the initial GPC responses and GPC provided clarification on a number of responses to the proffered comments before the responses were made available for review by interested parties. The IE had a number of "page turn" sessions with GPC reviewing both the APA and BTA draft contracts. The June 7, 2024, versions of those documents are, in the view of the IE, the product of careful consideration of the comments received from Bidders, interested parties and those from the Staff and IE.

In the recommendations below the IE identifies a short list of additional changes that would be appropriate. In total, the IE did not find provisions in either the APA or BTA that should be a "deal breaker" for developers. While the risk allocation that results from some provisions in both the APA and BTA may result in a risk premium in pricing, the terms are unambiguous, and any Bidder will have a full understanding of their obligations. However, it should be noted that unlike the non-negotiable pro-forma PPAs, the Commission should expect that contracts with successful APA and BTA Bidders will require in-depth discussions before contracts are finalized. The IE hastens to note that discussions to clarify contract terms should not lead to negotiation of prices, or a shifting of risk to GPC and its ratepayers, which would be tantamount to a price increase.

**E. Draft Minimum Technical Requirements ("MTRs")**

Because of the prospect for COP Proposals and Affiliate Bids, the IE and Staff worked to ensure that the Bidders would be fully informed of the technical requirements of conforming Bids. In particular, the major components, design specifications, and cyber security standards that would be applied when reviewing all proposals – third party and self-build – must be clearly identified for all interested parties. Stated differently, the COP Team or the Affiliate team with their knowledge of requirements for turbines, etc., acceptable for inclusion in the GPC generation fleet should not have an advantage when proposing a project for acquisition. In particular, the IE and Staff paid particular attention to the MTRs for greenfield projects.

The MTRs are made available on the Confidential Documents page of the IE Website to individuals who execute a Non-disclosure Agreement ("NDA") with GPC. To avoid GPC personnel knowing the identity of potential Bidders, the IE manages the screening of all NDA applications to confirm the entity seeking access to the confidential documents is (a) a real person (Mickey Mouse need not apply), and (b) the entity seeking access to the confidential information is a U.S. domiciled firm with development or operational experience. The MTRs for BESS were available in the Confidential Documents as of April 29, 2024. The MTRs for CC and CT projects were provided to the IE and Staff for review on May 29, 2024. The IE engineering team reviewed the MTRs for clarity and completeness. In particular, the IE's team reviewed the MTRs based on the experience of overseeing the construction and operation of energy production facilities. The review was focused on confirming that the MTRs were sufficiently detailed so 'inside information,' that is what would be known by Southern Company personnel about the operation of company facilities, could not be a factor in the quality and detail of conforming proposals. The CC and CT MTRs are similar in detail to the specifications provided to Bidders in the last GPC capacity RFP. The CT MTRs are set forth in 799 pages and provide great detail for a project acceptable to GPC standards. The

CC MTRs provide 815 pages of detail and are similarly expansive in providing a full presentation of the requirements for a conforming project. The BESS MTRs include 340 pages of detail. Like the other MTRs, GPC provided detailed specifications of the requirements for a conforming project.

While the Staff review of the MTRs is ongoing and the Commission has yet to consider whether the documents are sufficient, the IE requested agreement from GPC to post the MTRs for CC and CT projects on the Confidential Documents section of the IE Website so prospective Bidders would have additional time to review the requirements. To date no questions were received on the IE Website Q&A page or the confidential message board regarding the MTRs. Because these were not available during the Comment Period, the IE anticipates questions may be posed before the bid submission date as developers refine Bids. Given the comprehensive scope of the MTRs provided to Staff and IE, it is the IE's understanding and expectation that any changes to the MTRs would be minimal, if any.

The IE is satisfied that the MTRs provide a thorough description of the requirements for each respective technology. During the evaluation phase all proposals will be reviewed to confirm adherence to the identified requirements, with the same standards being applied to self-build and affiliate Bids as will apply to third party Bidders.

**F. Price Re-fresh**

GPC proposed providing an opportunity for a re-pricing of Bids and Proposals 27 weeks after Bids are received. GPC explained the reason for the re-fresh as responding to market uncertainty due to the changing situation with tariffs on Chinese goods and the duration between the Bid submission date and final selection.

Permitting a re-pricing of Submissions has been done in prior GPC RFPs where unusual circumstances have arisen. For example, there will now be a re-fresh of Bid prices in the CARES 2023 RFP due to the tariff situation. Similarly, a recent Biomass RFP was prolonged, then reissued due to cost uncertainties. The IE has conducted a number of RFPs where re-pricing was permitted. In some instances, re-pricing was not a part of the initial RFP design but added due to unforeseen circumstances. In others, uncertainty about matters that could have a significant cost impact were known, but remained unresolved at the time the RFP was released. Examples of the latter include potential carbon taxation, a volatile fuel market, carbon sequestration legislation, and tariff wars with China. Indeed, the most recent tariff on Chinese solar equipment was initiated over two years ago and caused disruption in a number of RFPs. It was then suspended only to be recently activated.

In this RFP, the earliest in-service date is 17 months after the Bid due date, and the latest date is up to six (6) years after the Bid due date. With the exception of existing projects, the carrying cost of construction, and a significant contingency component to mitigate cost uncertainty, may well result in higher than necessary Submission prices.

Any re-pricing continues the balancing act to get the least cost, most reliable supply for ratepayers. The IE believes that there are pros and cons to any approach. We explore some of those here to assist in establishing a record of full consideration of the available options and consequences.

When considering the option of refreshing Submission prices fairness to all Bidders is always a goal, and avoiding providing an advantage to any participant, including self-build and affiliate projects is an equally important goal. Likewise, it is imperative to maintain a competitive Process throughout the RFP Process, even if there is a re-pricing opportunity. Fairness includes considering whether large developers are advantaged by requiring fixed prices years before going into service. Large developers have the resources to have firm prices on components, including the option of pre-purchasing major components. The smaller developers, typically, will only have firm commitments for equipment once a PPA is proffered.

On the other hand, it is necessary to avoid incentivizing Bidders to "low ball" Bids to be included as finalists, and then dramatically increase prices during a price re-fresh after competitors have been eliminated. If a re-pricing is only available to the finalists, other Bidders who could have "sharpened their pencil" and provided preferable prices would be eliminated.

If the Commission permits re-pricing in this RFP, the IE recommends the following:

1. Participants should be provided with the relative ranking of their Submissions, relative to other Submissions. This information should be provided "blinded," so that the identity of other Participants are not disclosed. While this ranking should be based on the total cost analysis at that stage in evaluation, the cost information should not be disclosed.
2. The date for a re-price submission should be part of the established schedule before the Submission date and remain fixed. This will advise Participants from the outset of when to be ready to submit revised prices, and thereby avoid delays later as Participants request extensions on the submission date.
3. The re-fresh should be limited to price only. Changes to the size, technology, etc., which impact pricing and/or facility output, should not be permitted as part of a revised Submission. Change to the COD of a project should not be permitted.
4. A re-price opportunity should be available to all conforming Submissions. That is, Submissions eliminated during the cure period or otherwise to be non-conforming should be excluded from a price re-fresh process. Weeks before the re-price submission date Participants should be advised, with "blinded" data, of the ranking of their projects. That ranking information should include the imputed cost impact of transmission.
5. Regarding whether refreshed prices could be increased or only decreased, the IE has found that so long as the competitive evaluation Process remains in effect, and all conforming Submissions are permitted to re-price, the re-fresh option has not been abused. Indeed, in the majority of RFPs we have conducted where re-pricing was permitted, Submission prices did not increase, even when that was an option.

### G. APA/BTA Due Diligence

Due diligence of existing projects offered for acquisition will be conducted in much the same manner as was done in the last capacity RFP. That is, there will be two phases with fees to be paid for each phase. The scope of each phase and associated fees are set forth in Exhibit A to the RFP. This Process worked well in the past and the IE agrees this Process and fee structure is appropriate for this RFP. In summary, the Process provides for full due diligence review of all APA and BTA proposals by

recognizing a progression in the level of detail that will be reviewed. The fee structure reflects the scope of review and has Bidders only reimbursing for the actual due diligence that is performed.

**H. Change of Law**

Several Bidders identified the risk associated with Change of Law that occurs between the time Bids are submitted and contract execution that would increase required capital expenditures. Thermal resource providers highlighted the recent U.S. Environmental Protection Agency ("EPA") final rule designed to ensure new combustion turbines are built to minimize greenhouse gas emissions, which would certainly increase costs above those included in a fixed-price offered before such a rule took effect. GPC proposed to incorporate a Change of Law framework that would allow Participants to include such increased costs in refreshed pricing and permit participants to request adjustment of the fixed-cost pricing if a Change of Law results in increased capital expenditures before the contract is executed. The issue of re-pricing of Bids is discussed elsewhere in this report. If the Commission accepts the price refresh proposed by GPC, the risk of a change in law after the initial bid date is reduced and, in the view of the IE, is not a barrier to participation.

**I. Minimum Facility Size Requirements**

The draft RFP proposed a minimum facility size of at least 100 MW. Comments received suggested the minimum facility size should be reduced to allow larger Qualifying Facilities ("QFs") to participate (30 MW – 80 MW). As QFs offering less than 30 MW are not required to compete, GPC proposed to reduce the minimum facility size to 80 MW to possibly attract more responses from smaller facilities, but declined to accept even smaller capacity facilities due to the large amount of capacity it is soliciting.

Staff found a minimum facility size of 80 MW acceptable for this RFP. The IE agrees with Staff that a minimum facility size of 80 MW is reasonable.

**J. DERs and Third-Party Aggregators**

Staff advocated that Distributed Energy Resources ("DERs") and third-party aggregated resources be included in this All-Source solicitation. GPC disagreed with such inclusion as it is soliciting firm, dispatchable capacity in this RFP. GPC has other programs available for such non-dispatchable, demand side resources and does not have applicable pro-forma contracts. Staff believes the RFP is therefore not a true All-Source RFP and that GPC could have developed applicable pro-forma contracts.

The IE Website provides the opportunity for Potential Bidders to identify technologies and services not anticipated by the draft RFP. That feature is often used to test market interest in providing resources not specifically being solicited. For example, we routinely list geo-thermal and (for coastal utilities) wave-action to determine if any developer could provide that response. The Bid form also has the "other" option where developers can identify technologies not listed on the "Start Here" Bid form. When a technology other than one identified on the Bid form is proposed, it is vetted by the IE, Staff, and the utility before the Bid date to determine if it can meet the program requirements and goals, and if so, an addition is made to the pro-forma PPA to accommodate it.

In the All-Source RFP, the IE could, in effect, conduct a mini-Request for Information ("RFI") by listing an option on the "Start Here" page. For example, an option inviting developers to select "interested

in Bidding DER" would facilitate learning the marketplace interest in offering DER and aggregation. The Bid form could easily be modified to elicit RFI information to assist in fashioning a further RFP. This would, in effect, conduct the RFI under the existing RFP without additional cost and delay in trying to understand what the market might supply.

## IV. RECOMMENDATIONS

The IE participated in multiple discussions with GPC and Staff, individually and collectively, during the development of this RFP. These parties shared the goal of crafting RFP documents that are comprehensive, thorough, free of ambiguity and provide prospective Participants with all the details needed to participate and thereby encourage a robust number of responses. Particular attention was paid to identifying, and then eliminating, any provision that could be construed as providing a bias for COP proposals. To that end, the IE supports allowing a price re-fresh. If the Commission approves a bid refresh option, the IE and Staff will work with GPC to design the re-fresh Process and provide Participants, if approved by the Commission, well before the Bid submission date, with full disclosure of when and how the option will be available.

As discussed herein, the IE and GPC resolved the issue of COP Team members being available to be called upon by the Evaluation Team after the Bid submission period closes. The IE believes it is appropriate for two persons from Southern Company Treasury be available to review the financial impact of any COP as it is prepared and also advise the Evaluation Team regarding creditworthiness requirements in the development of the RFP documents, review of the Creditworthiness of Bidders, and the financial impact of portfolios of projects.

On June 6, 2024, GPC provided updated RFP documents addressing concerns raised by the IE and by the Staff. After reviewing the revised documents, the IE provides the following recommendations. These recommendations include concerns that, notwithstanding discussions with GPC, the IE believes have not been fully addressed and therefore need further revision.

- 3.16.2- The pro forma APA assumes that all Sellers will require a Seller Guarantor. In rejecting Seller's comments regarding a Creditworthy Seller in the All-Source RFP for 2029-2031 Comments and Responses document dated May 30, 2024, GPC comments on Section 3.16.2 (Page 188) stating that "GPC further notes that the pro forma APA assumes that Seller is a special purpose entity. If Seller is not a special purpose entity the APA will be conformed accordingly. However, this does not address the credit worthiness issue directly. If a Seller is credit worthy, requiring that Seller to have a Seller Guarantor in place seems unnecessary and that requirement should be removed.
- Creditworthy – In comments to the definition of Creditworthy in the RFP, CC PPA, CT PPA, BTA and APA proforma contracts, comments were made asking for a "Net Worth" standard to determine creditworthiness rather than requiring a credit rating and GPC's "sole discretion." Allowing Sellers to establish their creditworthiness by applying a Net Worth standard seems to be reasonable especially for privately held companies who do not have publicly disclosed financials and may not have a credit rating or whose credit rating may not be a true indicator of the credit worthiness of the company due to the lack of publicly available data. If a Seller can establish a Net Worth of several billion dollars or

whatever number the Commission deems reasonable for the size of the project, that should give GPC more comfort that Sellers will perform their obligations under the contract than Seller's credit rating. Accion has seen this approach used in several different jurisdictions. Net Worth should be defined in each of the contracts to remove all doubt.

- 3.18 (ii) of the APA – Requires all Tax Returns required to be filed by the Facility be provided to GPC. Depending on the age of the project, this could be overly burdensome and unnecessary. Requiring tax returns from 10 years ago or more seems to serve little purpose, e.g., the Internal Revenue Service record retention standard is 7 years. The IE recommends requiring no more than 7 years of tax returns be required and believes as few as 3 would be appropriate.
- 5.10 of the APA requires Sellers to maintain insurance past the Closing Date. After discussion, GPC agreed to revise this Section. The revisions obligate Seller to maintain insurance on any Facility Insurance Policies not transferred to GPC and that are "claims made" policies. Accion is struggling to understand what policies would not be transferred to GPC under this Agreement that Seller's required continued payment on would be necessary. This is one of the provisions that the IE discussed with GPC and remains ill defined. The IE recommends GPC be required to refine this provision well in advance of the bid submission date.
- 7.4 allows GPC to have exclusive control over any income tax audit, litigation, or other proceeding with respect to the facility. This seems unreasonable for an audit on returns filed by Seller and that are solely Seller's responsibility. Seller would likely want to be, and should be, involved as the outcome would directly affect Seller. After this was raised to GPC, changes were made but the changes do not change Seller's inability to control past tax return audits. The IE believes this provision should be revised to clarify that the Seller, not GPC, will be responsible for any past tax return audits.
- The RFP should be revised to commit GPC to having only two persons from Southern Company Treasury available to advise the COP Team before the proposal Submission date, and also be available to the Evaluation Team to determine the creditworthiness of Bidders and the financial impact of Bids and proposals. Further, while the identity of the two individuals is included in the updated team lists, the IE recommends the Commission direct GPC to identify to the Staff and IE the roles and responsibilities of the individuals who will interact with the COP and the Evaluation Team and not substitute personnel without first consulting with the IE and Staff.
- The Process of producing the RFP, four (4) separate PPAs, a contract for APA another contract for BTA, and MTRs for CC and CT projects was torturous and unreasonably protracted. GPC knew in July 2022 with the 2022 IRP order that a 2029 – 2031 All Source RFP would be conducted and should have had preliminary drafts of the documents available for Staff and IE review within year (July 2023) rather than spring of 2024. While discussions about the scope and schedule of the RFP began in the first quarter of 2023, Staff and the IE first received draft documents to review in March 2024. As noted herein, the draft contracts for BTA and APA were not provided for review until May 2024. The result of this tardiness is evident in the fact GPC needed to file revised RFP documents. Had GPC been more receptive to working with the IE and Staff far earlier, the IE firmly believes the drafting of acceptable RFP documents would have been completed in an orderly fashion, and the RFP released for Bids months ago. The ship has sailed for the drafting Process of this RFP, but the IE strongly recommends the Commission direct GPC to engage with Staff and the IE in a more timely manner in all future RFPs.

- Regarding the BTA, Part 14 contains extended warranty obligations that will be reflected in the price bid by a developer. These obligations, like other provisions in the draft contract, should be imposed on GPC for any COP proposal that is identified as a finalist so the Company will be held to the same standards and costs imposed on third-party developers. Should any COP proposal be identified as a finalist, GPC should provide a cross-reference to the BTA identifying each provision the Company believes is not applicable to a self-build proposal.
- Before any APA or BTA is finalized, there will need to be detailed discussions between the contract counterparties. The Staff and IE should be involved in all discussions to ensure there are no negotiation of terms and conditions that would change the direct costs or risk allocation from the draft contracts. Also, the RFP requires all communications, other than monitored meetings, must be conducted through the IE Website should be strictly enforced throughout the procurement Process.
- The IE's recommendations regarding re-pricing of Bids are set forth above, should the Commission determine that re-pricing is in the best interest of ratepayers.

## V. CONCLUSIONS

The IE's recommendations identify improvements and conditions the IE believes are appropriate and urges the Commission to adopt them. The IE believes adoption of the above recommendations would improve the RFP, however, rejection of the recommendations by the Commission would not fatally flaw the RFP.

The IE found the RFP to be clear and without ambiguity and providing the detail needed for a developer to fully understand the scope of the RFP, the desired technologies, and the fact that GPC self-build projects may be proposed, as well as bids from GPC affiliates. The RFP clearly states that all Submissions from the COP Team, Affiliate Bid Team and from third-party Bidders will be held to the same requirements and evaluated using the same modeling and standards. The proposed schedule establishes the expected completion of key milestones, including that any COP and Affiliate bids be submitted no later than 24 hours before the submission deadline for third-party bidders.

The IE found the pro-forma PPAs to be consistent with contracts previously approved by the GPSC. The IE understands that combined with the text in the RFP, Bidders should understand that the contracts are non-negotiable and that, once approved by the Commission, material changes will not be accepted.

The BTA and APA contracts are detailed and, if approved by the GPSC, will unambiguously inform Bidders offering projects for acquisition of the terms and conditions acceptable to GPC and the Commission. The IE anticipates that proponents of any acquisition project selected as a finalist will request additional clarification of contract terms. Consideration of all requested deviation from the APA and BTA will require careful monitoring by the IE and Staff. Further, the IE would expect that should any COP project be selected as a finalist, GPC will commit to the same terms and conditions as a third-party proponent regarding firm pricing, warranty obligations, and standards.

The MTRs are extensive and detailed. Accordingly, any third-party Bidder will know the extent of requirements when developing the components of a Bid. At the same time, it is understood that all COP Proposals and Affiliate Bids will be required to meet the requirements set forth in the MTRs. The IE and

the Staff will closely compare the proposals of all projects advanced to the Competitive Tier to confirm that the requirements of the MTRs are satisfied.

The schedule is ambitious, but the system capacity needs confirmed in the most recent IRP Update are significant. The service date for the RFP was December 14, 2023. If the Bid submission date is approved as July 19, 2024, third-party Bidders will have had seven (7) months to prepare a conforming Bid. The IE believes this is sufficient time for the development of Bids and notes that the comments of interested parties did not suggest otherwise.

For the reasons presented in this report, the Independent Evaluator recommends the Commission approve the RFP documents, with the adoption of the IE recommendations.