

1 **DIRECT TESTIMONY OF ACCION GROUP, LLC., INDEPENDENT**
2 **EVALUATORS FOR THE GEORGIA POWER COMPANY**
3 **ON BEHALF OF THE GEORGIA PUBLIC SERVICE COMMISSION**

4 **In Re: 2023 BIOMASS RFP**

5
6 **REQUEST FOR PROPOSALS**

7 **DOCKET NO. 44880**

8 **Q. Please state your name and business address.**

9 **A.**My name is Harold T. Judd. I am the President of Accion Group, LLC
10 (Accion Group). Accion Group served as the Independent Evaluator for the
11 2023 Biomass Request For Proposals (Biomass RFP). Accion Group’s
12 business address is 244 North Main Street, Concord, NH 03301.

13 **Q. Please discuss your educational background.**

14 **A. **Mr. Judd:**** I graduated from the University of Wisconsin at Madison in 1974
15 with a B.A. Degree. In 1978, I received a law degree from the University of
16 New Hampshire School of Law, formerly the Franklin Pierce Law Center.
17 Since then I have continued my education through professional education
18 courses.

19 **Please discuss your professional experience.**

20 **A. **Mr. Judd:**** I began my career in 1978 in New Hampshire as the Deputy
21 Consumer Advocate for the Legislative Utilities Consumer Counsel. I left
22 that office as Acting Consumer Advocate in 1979 to become the Deputy
23 General Counsel and Energy Advisor to the Special Assistant to President
24 Carter in the White House Office of Consumer Affairs. In 1981, I was
25 appointed an Assistant Solicitor for the Department of Energy. From 1985
26 through 1987, I served as the Economic Development Advisor to the

1 Congress of the Federated States of Micronesia (FSM), and as Special
2 Counsel to the President of the FSM. From September 1989 until January
3 1994, I served in the Office of the Attorney General for the State of New
4 Hampshire, first as an Assistant Attorney General and later as a Senior
5 Assistant Attorney General. Since then, I have represented regulators, and
6 utilities in the electric, telephone, and water utility industries, with issues
7 including utility deregulation, siting and decommissioning nuclear power
8 plants, utility bankruptcies. Since 2002 I have served as an Independent
9 Evaluator or Independent Monitor in over 135 competitive solicitations in
10 Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, New
11 Mexico, North Carolina, Mississippi, Louisiana, Montana, Oregon, Puerto
12 Rico, South Carolina, Texas, and the U.S. Virgin islands. I co-founded
13 Accion Group, LLC in 2001.

14 **Q. Have you ever testified before any regulatory agencies?**

15 **A. Mr. Judd:** Yes. I have testified before this Commission, the Arizona
16 Corporation Commission, the New Hampshire Public Utilities Commission,
17 the Vermont Public Service Board, the Oregon Public Utilities Commission,
18 The North Carolina Utilities Commission, the Public Service Commission of
19 South Carolina, the Public Service Commission of Montana and legislative
20 bodies or regulatory bodies in Maine, Massachusetts, New Hampshire, New
21 York, North Carolina, Pennsylvania, and South Carolina. I have also
22 presented reports to regulatory bodies in most of the states identified above,
23 including California, Hawaii, Colorado, and Florida for dockets where
24 testimony was not required.

25 **Q. Would you please describe your role in this proceeding?**

26 **A. Mr. Judd:** Accion Group was selected by the Commission to be the
27 Independent Evaluator for the Biomass RFP. Working closely with the

1 Commission Staff, we were involved in all major activities in the RFP,
2 including the development of the RFP process, the drafting of RFP related
3 documents, the receipt of bids, the evaluation of bids and post-selection
4 discussions with the successful Bidders. I participated in the Bidders
5 Conference and participated in all meetings between Georgia Power and
6 any Bidder, as required by the Rules of the Commission. In addition, Accion
7 Group created and maintained the website through which the RFP was
8 conducted. I directed the evaluation and analysis performed by Accion
9 consultants, which is documented in the report prepared for the
10 Commission.

11 **Q. What is the purpose of your testimony?**

12 **A. Mr. Judd:** The Final Report of the Independent Evaluator regarding the
13 Biomass RFP was prepared by me or under my direction. The Report was
14 prepared in two versions, the public version and the non-public, Trade
15 Secret version. The Trade Secret version was prepared for the Commission
16 and contains commercially sensitive or proprietary and confidential
17 information, as determined by Georgia Power. The public version is
18 Attachment 1 to this testimony. We appear to sponsor the report.

19 **Q. Does your report detail the activities and findings of the Independent**
20 **Evaluator?**

21 **A. Mr. Judd:** Yes it does.

22 **Q. Does this conclude your testimony?**

23 **A. Mr. Judd:** Yes it does.

ATTACHMENT 1

NON-TRADE SECRET VERSION



FINAL REPORT OF THE INDEPENDENT EVALUATOR

GEORGIA POWER COMPANY (“GPC”)

2023 BIOMASS RFP



August 13, 2024

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I. EXECUTIVE SUMMARY

Accion Group, LLC, served as the Independent Evaluator (“Accion” or “IE”), for Georgia Power Company's (“GPC,” “Georgia Power,” or “the Company”) 2023 Request for Proposal (“RFP”) seeking up to 140 MW of new Biomass generation, as defined in the RFP, that can be in service between June 2025 and no later than 2029. The RFP was conducted pursuant to the rules of the Georgia Public Service Commission (“Commission” or “GPSC”). This RFP followed an earlier unsuccessful attempt to procure Biomass generation as part of the 2022-2028 Capacity RFP.

The RFP was open to new Biomass generation. To qualify as “new” Biomass a facility could be either entirely new construction (“greenfield”) or an addition to existing Biomass Facilities. The RFP was limited to proposals for Power Purchase Agreements (“PPA”). Stated differently, proposals for asset transfers to GPC and proposals for company-owned bids were not accepted.

Consistent with the standards used for other solicitations, before the RFP and PPA were finalized, prospective bidders were invited to provide comments and identify terms and conditions they would need to provide conforming bids. In the RFP and during the bidders’ conference potential bidders were advised that, once approved by the Commission, the PPA would be a pro forma, non-negotiable contract. Notwithstanding adherence to the GPSC competitive process requirements, only four (4) bids from (3) bidders were received. The IE believes this reflects the limited number of Biomass developers willing to supply GPC from compliant facilities.

Of the 4 submitted bids, 3 bids from 2 bidders advanced to the short list. To fulfill the Commission’s policy goals articulated in the 2022 Integrated Resource Plan Order, (“2022 IRP Order”)¹ GPC executed contracts for each of those three bids. Two bids for small additions to existing Biomass plants totaling 7.9 MW were contracted for 10 years, and one 70 MW greenfield plant was contracted for 30 years.

The prices of the contracted Biomass are exceptionally high when compared to the Company’s avoided cost. The calculation of the cost to ratepayers above avoided

¹ Final 2022 IRP Order, Document 191010 in Dockets 44160 and 44161, Order Adopting Stipulation, dated July 29, 2022.



cost in the first year and over the full term of the PPAs is provided in Confidential Appendix A.

In order to meet the Commission's goal of including Biomass generation in the GPC portfolio, Georgia Power deviated from established practice in two ways. The first was permitting a bidder that had withdrawn from the RFP to rejuvenate a bid. The second was to engage in lengthy negotiations over contract terms with that bidder, beyond the established GPC practice of only clarifying PPA terms.

Working closely with the Staff of the GPSC ("Staff") the IE coordinated all aspects of the RFP with GPC to ensure conformity to the requirements of the Commission. The RFP documents were thorough, unambiguous, and comprehensive. The IE believes that the RFP was conducted fairly and is unaware of any bias for or against any participant. The IE is unaware of any violations of the standards of conduct by any GPC personnel. While one bidder repeatedly violated the standards, GPC personnel declined to engage the individual, referred each incident to the IE, and the IE confirmed that the bidder's actions did not warrant disqualification of bids. Accordingly, the IE believes the only issue about the RFP that is before the Commission will be the benefit of the contracts.

II. BACKGROUND

The RFP was designed to procure up to 140 MW of new Biomass generation. The solicitation was conducted through the IE Website. The IE Website was opened for registration on December 15, 2022. Participants in the prior Biomass RFP were advised of this RFP and as a courtesy their prior registrations and submitted bids were carried over to the website for this RFP. Release of the RFP was also sent to registrants on the IE's proprietary distribution list. After approval by the GPSC, the initial RFP was released on the IE Website on April 28, 2023. The RFP was revised to exclude tire-derived fuel and posted on the IE Website on June 16, 2023. The bid period opened on May 3, 2023, and closed on July 14, 2023; approximately one month after the revised RFP was available to bidders.

Acceptable PPA terms of 10, 15, 20, 25, and 30 Annual Periods were available to bidders. Individual Biomass projects up to 80 MW were acceptable.

To be eligible, energy produced by a Facility had to be fueled by Biomass and include all Environmental Attributes and all Electrical Products as part of a bid. The RFP provided that natural gas could only be used for the limited purpose of startup and



shutdown of a Facility. For purposes of the RFP, Biomass was defined as “Biomass material” as contemplated by Georgia law, O.C.G.A. § 48-8-3(83)(B) ² or “woody Biomass.”

III. STANDARDS OF CONDUCT

To avoid any conflict of interest, perceived or otherwise, GPC published the names of individuals designated to evaluate the RFP on December 14, 2022. Each Evaluation Team member, in compliance with the Commission’s Rules (Commission Rule 515-3-4-.04(3)), acknowledged in writing the member’s adherence to the Standards of Conduct governing the implementation of the RFP. The Evaluation Team list was updated periodically as necessary.

One bidder was reminded on several occasions not to contact GPC personnel directly about its bids. For example, on March 6, 2024, the IE cautioned that bidder:

It has come to my attention that you have once again ignored the rules of the Georgia Public Service Commission, and the explicit standards set forth in the RFP by contacting Georgia Power Company personnel about your project. As you have been reminded in the past, ALL communications are to occur through the RFP website message board. The Commission requires a thorough and accurate record of all exchanges between GPC and bidders until the RFP is completed. As you have been advised in the past, repeated violation of the Commission's rules can result in a bid being removed from further consideration.

² As per the statute, “the term ‘Biomass material’ means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers.”

IV. PROCUREMENT WEBSITE

A. Website Launch

On December 15, 2022, the solicitation website for the 2023 Biomass RFP was launched and made accessible to the public. On December 19, 2022, the following message was delivered to 5,681 potential market participants encouraging them to register on the website and partake in the upcoming RFP:

12/19/2022 11:33:20 AM

Georgia Power Company is pleased to present the 2023 Biomass Request for Proposals. This RFP seeks to procure up to 140 MW of new Biomass generation from projects as reflected in the 2022 Integrated Resource Plan approved by the Georgia Public Service Commission in July 2022. Interested parties are encouraged to become familiar with the IE Website found at <https://gpcBiomass.accionpower.com>. Registration is required through the website as it will be the means of communication between Georgia Power and interested participants.

B. List of Potential Bidders – Rule 515-3-4-.04 (3) (e) i

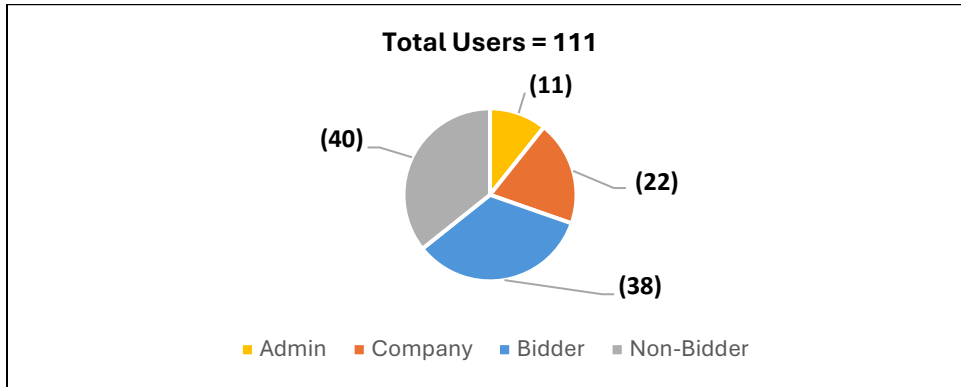
Information about this RFP was widely disseminated. When the IE Website was released, an announcement was sent to all individuals who previously registered with GPC as desiring to receive notice of RFPs; individuals previously registered for other GPC competitive solicitations including the 2022-2028 Capacity RFP, and Biomass developers who submitted bids in that RFP, and to an RFP “contact list” of individuals who registered on the Accion Power Website for notification of procurement RFPs. As a courtesy to developers who participated in the earlier Biomass RFP, their bids were carried over to the new IE Website and available to them for revision and submission.



C. Website Registration

Since the 2023 Biomass RFP website was launched, 111 individuals registered on the site. Of those, as reflected in Figure 1, 38 are bidders, 40 are non-bidders, 11 are Accion personnel and 22 are Company and Staff Personnel.

**Figure 1
Website Registrants**



The registrants are comprised of domestic entities and their locations are provided in the table below:

Table 1

State or Territory	Number of Registrants
Alabama	15
Arizona	1
California	4
Colorado	3
Florida	5
Georgia	45
Idaho	1
Illinois	1
Louisiana	1
Massachusetts	4
Mississippi	1
New Hampshire	11
New Jersey	1
New York	3
North Carolina	4
Ohio	1
Oregon	1
Pennsylvania	1
Tennessee	3
Texas	4
Vermont	1

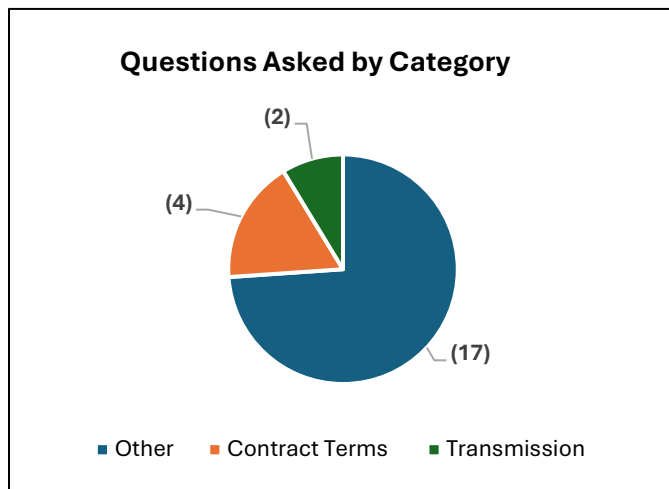


D. Questions and Answers

Prior to and during the bid period, one of the primary means of communication was through the Question-and-Answer (“Q&A”) page on the website. Registrants were able to submit a question to the IE and receive a response. To preserve the anonymity of bidders before the bid submission date, the IE “blinded” questions and shared them with the GPC Evaluation Team to answer. Once an answer was provided the question and answer were posted on the IE Website and became viewable to all registered users of the site. The Q&A was meant to provide non-project specific information and to ensure all market participants were given the same information at the same time. The compendium of information created by the Q&A served as a resource for market participants prior to contacting the IE.

Figure 2

The Q&A feature for the Biomass RFP was opened on December 15, 2022. A total of twenty-three (23) questions from 6 unique registrants were answered. The questions covered several topics including clarifications of requirements in the RFP and terms in the PPA, transmission, and use of the IE website. Upon completion of the bidding period on July 14, 2023, the Q&A feature was disabled so that new questions could not be submitted. Previously posted Q&A, however, remained available for reference.



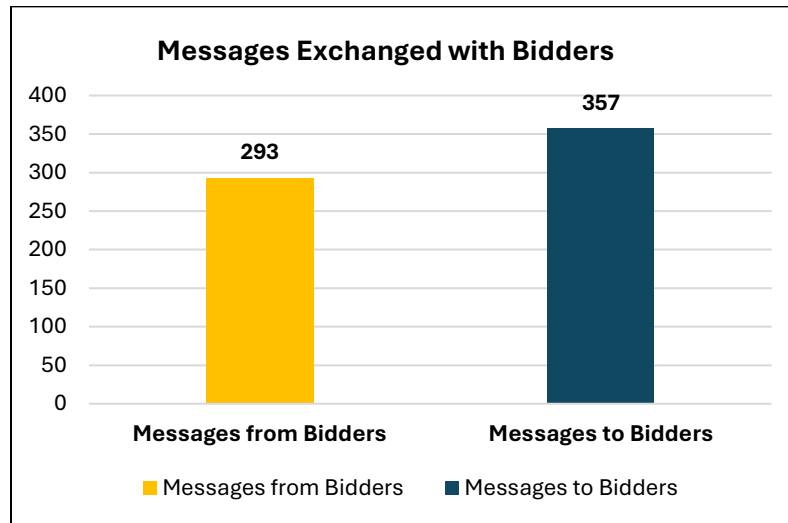
E. Message Boards

The confidential message board (“Message Board”) on the IE website provided a messaging platform for exchanges between bidders and the IE or GPC. The Message Board was accessible throughout the bidding, confirmation, and evaluation processes. The message board allowed bidders to communicate directly with the IE prior to the bid submission date regarding project-specific questions, and with GPC during the evaluation phase. Due to the confidential nature of those communications, each bidder was allowed to see only their own exchanges. Prior to the evaluation phase, the IE

shared each project-specific Message Board inquiry with the GPC Evaluation Team, blinded as to the source, and relayed responses via the Message Board. Participants used the message board to inquire about the specific needs or limitations of their projects, to ask clarifying questions about how the RFP and supporting documents may relate to their project, and to answer questions from the Evaluation Team or IE during the evaluation phase. Questions asked on the message board before bids were submitted that were not project specific and confidential in nature, were transferred to the Q&A by the IE to allow the answer to benefit all potential participants.

The message board became available for bidders on February 16, 2023. As of July 31, 2024, 293 messages from 3 bidders were received and the IE and GPC sent 357 messages to bidders asking for information or answering messages.

Figure 3



In addition to the bidder message boards, the website also provided two additional message boards that were used by the IE, GPC, and the Evaluation Team. Those separate message boards were dedicated to RFP process management. One Message Board was used by GPC and the IE to manage answers to questions and messages prior to the bid submission date. The other was used to exchange and record evaluation information. Both of these Message Boards were available to authorized Staff members.

Both the bidder message board and the alternative message boards remained open throughout the confirmation, review, and evaluation process so that communications could continue among relevant parties. All communications on the solicitation website are time and date stamped and maintained for accurate record keeping.

V. BIDDERS' CONFERENCE

The draft RFP was issued on February 1, 2023, and posted on the IE Website. An announcement to all registered users followed on February 3, 2023, notifying bidders the documents were available and that a bidders' conference was scheduled to review the documents.

A bidders' conference was conducted on February 16, 2023. The conference was open to in-person and remote participation. Thirty-seven individuals registered for the conference. One bidder attended in person and others participated remotely. The IE was present and ensured the bidder who attended in person and members of the Evaluation Team adhered to the Standards of Conduct.

During the bidders' conference GPC presented an overview of the Company and its Integrated Resource Plan ("IRP"). GPSC Staff were introduced, and the IE presented information about its responsibilities, the Standards of Conduct, and the IE Website. GPC reviewed details about the Biomass solicitation, comment period, bid fees and the evaluation process. Southern Company presented transmission and interconnection information. Questions were submitted by bidders, answered in writing, and posted on the IE Website along with the presentation materials. Information about the RFP was therefore widely available to any potential bidder registered on the IE Website, even if they were unable to participate in the bidders' conference.

VI. RFP DOCUMENTS AND COMMENTS

As noted above the draft RFP was released on February 1, 2023. Draft pro forma Power Purchase Agreements ("PPA") for New Greenfield Projects and Biomass Addition Projects were also posted to the IE Website with the draft RFP ("RFP Documents").

The IE conducted a Comment Period on those documents from February 1, 2023, through March 2, 2023, during which interested persons were encouraged to review the draft 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.

Using the comment feature on the IE Website, Participants and interested parties were invited to assist in drafting the RFP Documents to clarify the documents, improve bid submissions, and solicit a robust response. Two (2) registered bidders, the same two bidders who were offered contracts, provided all 22 comments received on the documents. This attention to the draft RFP Documents confirms that the bidders were very familiar with the RFP requirements before bidding.

The table below shows the number of comments on each type of PPA and the RFP by bidder.

Table 2
Comments Received on Draft RFP and PPAs

Comments by User		
Document	User A	User B
RFP		9
Greenfield PPA		2
Biomass Addition PPA	11	
TOTAL	11	11

The IE provided copies of all comments, including suggested red-line changes and explanations for the requested changes to GPC and the Staff. The identity of those offering comments was blinded before being shared with GPC and Staff to avoid any inference of bias during the comment review process. GPC provided a proposed



response to each comment and reviewed those responses with Staff and the IE before filing the final RFP Documents with the Commission.

VII. SUBMITTED BIDS

The online bid form was released on May 3, 2023, and the bid period closed on July 14, 2023, at 12:00 PM Eastern Standard Time. During that period, ten bids were begun. As shown in Figure 4, four bids were ultimately submitted by three bidders. Two bidders submitted one bid, and one other bidder submitted two bids.

Figure 1

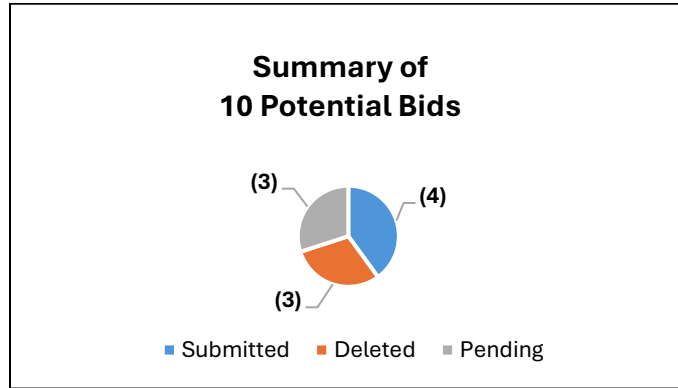


Table 3 below summarizes details of the bids that were submitted.

**Table 3
Bid Summary**

Bid No.	Contract Type	Contract Term (Years)	Energy Price Selection	Nominal Capacity at POI (MW)	Facility City	Proposed COD ³
208-01	Biomass Addition PPA	10	Escalating	4.3	Oglethorpe	4/8/2026
208-02	Biomass Addition PPA	10	Escalating	3.6	Port Wentworth	10/1/2026
253-01	Greenfield Biomass PPA	30	Escalating	30	Warm Springs	7/16/2027
259-02	Greenfield Biomass PPA	30	Escalating ⁴	70	Jesup	6/1/2027

³ "COD" refers to the project commercial operation date.

⁴ As discussed below, during negotiations, the price of this bid was converted to an equivalent levelized price.

VIII. EVALUATION

The IE and Staff worked closely with the GPC Evaluation Team. A lengthy process to cure information initially received with bids continued through September 2023. Bidders were notified on September 11, 2023, of selection to the Competitive Tier at which time Bid Security was required.

Bid Security Documents were updated and provided to bidders on October 5, 2023. In response to a request from a bidder the Bid Security due date was extended to October 20, 2023. One bidder did not provide adequate site control documents and was unable to secure a Letter of Credit (“LOC”) from a bank with an acceptable credit rating.⁵ GPC worked with that bidder to produce an acceptable LOC, extending the deadline to November 20, 2023. The bidder was ultimately unable to produce an acceptable LOC and firm Site Control documentation. Therefore, bid 253-01 was released on December 20, 2023.

Three bids were included in the full evaluation process. Two of the bids were less than 5 MW additions to existing Biomass facilities, proposed for 10-year terms. One 70 MW greenfield Biomass project, that proposed a 30-year term, was also evaluated.

A. Bid Ranking by Price

GPC evaluated the net value to customers on each of the three remaining bids. Each of the bids proposed escalating pricing. The value of avoided capacity and avoided energy was computed, the cost of transmission was evaluated, and the net benefit (cost) to ratepayers of each project was determined.

GPC calculated a “levelized” bid price when determining the net benefit to compare pricing among the three bids. The two Biomass addition projects were proposed for 10-year terms. For comparison with pricing for the 30-year term bid, GPC assumed the capacity and energy of the 10-year term bids would be replaced in years 11 through 30 with the project’s generation at GPC’s avoided cost to “fill in” those remaining years, to calculate a levelized price over 30 years.

The Competitive Tier ranking of bids was based on the proposed price, including escalation, levelized over 30 years, transmission and distribution costs, and the benefit

⁵ Acceptable forms of security were cash, a Surety Bond, and LOC.

from avoided costs. At that point the net value (cost) to customers was calculated and GPC ranked the projects from lowest cost to highest cost in the following order:

Table 4

Biomass Price Ranking	
Rank	Project
1	208-01
2	208-02
3	259-02

The RFP did not establish a price cap or a price benchmark because of the goal to include Biomass in GPC’s generation portfolio expressed in the 2022 IRP Order. As a result, the bid prices included in the PPAs far exceeded the Company’s avoided cost starting in the first year. All pricing received for Biomass was higher than the avoided cost. The IE’s review of pricing is presented in Confidential Appendix A.

B. Economic Development Information

In the 2022 IRP Order the Commission “recognized the benefits of Biomass as a renewable resource to support Georgia’s forest industry and rural job and economic development.”⁶ That policy goal was the most relevant non-price factor and none of the three bids in the competitive tier was removed from consideration because of price.

Information provided with the three bids indicated Biomass projects would result in a cumulative total of approximately \$300 million in capital expenditure, \$17 million in local construction contracts, \$3.2 million in increased annual pay for new wood procurement crews and \$3.5 million in equipment for the additional crews. County tax and school tax revenue were projected to increase by \$6.5 million over 15 years.

IX. SHORT LIST AND PPA DISCUSSIONS

The remaining two bidders were notified on April 2, 2024, that their bids were selected for the short list. While contracts were being reviewed and completed for execution, several issues arose, extending the anticipated contract finalization and

⁶ 2022 IRP Order P43.



execution date from May 31, 2024, to June 24, 2024, for Bid Nos. 208-01 and 208-02 and to August 6, 2024, for Bid No. 259-02.

In keeping with established protocols, GPC, the IE, and Commission Staff met with each of the bidders selected for the competitive tier to establish understanding of the pro forma PPA. The purpose of the discussions was to confirm that the bidder would execute the PPA, and to minimize the possibility of future misunderstandings that would lead to disputes. With each bidder GPC began the discussions with the reminder that material terms of the PPA were not subject to negotiation. This standard was clearly presented in the RFP, the bidder conference, and during the discussions. Notwithstanding individual professions of agreement, each bidder attempted to alter material terms of the PPA.

A. Qualifying Federal Support - GPC Revision

At the urging of Staff, GPC moved to revise the approved pro forma PPAs to include terms that would require generators to use commercially reasonable efforts to pursue and maximize existing federal support. Under the terms, GPC could terminate the PPA if the generator did not satisfy GPC that the generator appropriately sought such support.

On May 24, 2024, GPC proposed changing the pro forma PPA to require generators to seek future federal support during the life of the contract and to permit GPC to reduce the Monthly Energy Payment by an amount, calculated by GPC, that the generator could have received through federal support, if the generator did not seek such support. Both remaining bidders claimed the revisions were material and unreasonable and GPC entertained negotiation of acceptable terms with both bidders.

One bidder continued to insist on negotiation regarding inclusion of requirements surrounding federal support and other terms. Notwithstanding reminders from the IE and the Staff that the PPA's were to be non-negotiable, GPC entertained the negotiation of terms and extended the contract execution date. After several revisions, GPC and that bidder reached agreement with a commitment that future benefits received pursuant to the Qualifying Federal Support opportunities would be evenly shared between ratepayers and the bidder.

B. Additional Negotiated Terms to Biomass Addition PPA

The Biomass addition projects proposed to add capacity to existing Biomass generating plants with existing Qualifying Facility (“QF”) PPAs. In order for that to occur, the existing QF PPAs needed to be aligned with the Biomass Addition PPA in several sections. The QF PPAs were amended to define the Biomass Addition PPA, contracted capacity, and excess energy, and terms in the QF PPAs were amended to align with the Biomass Addition PPA.

In addition to the QF PPA amendments and negotiations on GPC’s proposed Qualifying Federal Support terms, bidder 208 requested revisions to the pro forma PPA on dispute resolution, new Green House Gas law/Change of law provisions and fuel supply.

Ultimately, in addition to the agreement reached on Qualifying Federal Support applicable to both bidders and discussed in subsection A above, GPC agreed to revise the dispute resolution section of the Biomass Addition PPAs. The bidder expressed a desire to retain the AAA dispute resolution provisions in its QF PPA based on its experience that “...AAA provides a more effective and efficient arbitration mechanism. We strongly prefer to include a AAA dispute resolution (instead of JAMS) in both the Biomass and QF PPAs.” The PPAs for Bid Nos. 208-01 and 208-02 were revised to satisfy that preference and keep the QF and Biomass Addition PPAs consistent. Staff and the IE agreed the change was acceptable because it was not a material change to the pro forma PPA.

Regarding fuel supply, the bidder advocated it should be allowed to use natural gas in accordance with prudent industry practices for startup, shutdown, and flame stabilization. GPC responded that the purpose of fuel restrictions in the PPA was to ensure Georgia Power is purchasing renewable energy fueled from Biomass except in the most limited and necessary situations (i.e. for startup and shutdown). The bidder ultimately agreed to the terms in the PPA that Biomass be used during all operations except as expressly allowed; including that natural gas in no circumstance is allowed in economical fuel switching or fuel blending for generation. The PPA allows for “natural gas to be used with limitations in the startup and shutdown of the Facility in accordance with Prudent Industry Practices so long as its limited and necessary use is clearly demonstrated by Generator to the satisfaction of GPC in each operating report to GPC.”



The IE urged GPC to include reporting requirements for each fuel that was used to mitigate the risk that a non-Biomass fuel, such as natural gas, would be used beyond what was needed for startup and shutdown, preventing ratepayers from subsidizing the use of non-Biomass fuel. GPC agreed with the IE and accepted responsibility to monitor fuel usage for 30 years.

The other proposed revisions regarding change of law were also rejected by GPC, Staff, and the IE. The Biomass Addition PPAs for Bid Nos 208-01 and 208-02 were executed on June 24, 2024. The agreed upon required commercial operation date for Bid No. 208-01 is October 8, 2026, and April 1, 2027, for Bid No. 208-02.

C. Additional Negotiated Terms to the Pro forma Greenfield PPA

On May 31, 2024, bidder 259 expressed it had determined it must withdraw its bid because of the new Qualifying Federal Support terms, and scheduling risks associated with interconnection created by FERC Order 2023. On June 11, 2024, the IE asked the bidder to confirm the bid was withdrawn. On June 13, 2024, the bidder provided conditions that it asserted were necessary to proceed with negotiations.

The bidder proposed that 1) the requirement to pursue future federal support be eliminated; 2) the bid price be converted to a levelized price; 3) the COD be established after the interconnection timeline was confirmed and financing was approved; 4) the performance bond be fully refundable at any time prior to COD if interconnection or financing options were not acceptable to the bidder; and 5) no penalties would accrue if the PPA was terminated.

GPC offered the same terms on which it had reached agreement with the other bidder on Qualifying Federal Support, and the bidder accepted those terms.

To effectuate the policies enumerated by the Commission in the 2022 IRP Order, GPC agreed to entertain the idea of accepting a levelized price. To ensure the bidder was not permitted to refresh and raise its original bid price, GPC calculated a price equivalent to the originally proposed escalating price and accounted for the time value of money. The bidder ultimately agreed to that levelized price.

After agreeing on the levelized price, on July 9, 2024, the bidder informed GPC it had withdrawn from the Transitional Cluster Study, further delaying the process and requiring negotiations about flexibility on the Required COD (“RCOD”). The parties agreed to add a provision for an “RCOD Decision Date” being the earlier of 30 days after

the bidder receives a proposed COD from the Interconnection Provider or June 30, 2026. The RCOD is defined as the date on or before November 30, 2029, as mutually agreed by the parties. If the parties cannot reach agreement on the RCOD by the RCOD Decision Date, the PPA is terminated and performance security released. The bidder continued to press for additional concessions, but GPC, Staff, and the IE declined to agree. The PPA was executed by the bidder on July 24, 2024, and by GPC on August 6, 2024, after acceptable Closing Documents were provided by the bidder.

D. Comments on PPA Negotiations

GPC's modifications to the pro forma PPA regarding Qualifying Federal Support came very late in the process. One of the remaining bidders chose to work with GPC to reach acceptable terms. Those same terms were offered to and accepted by the other bidder. The late revisions to the contract terms were designed to ensure that federal support benefits ratepayers rather than the developer. The IE does not believe bias against either bidder was introduced as a result of the addition of Qualifying Federal Support terms and that the change was appropriate.

Despite knowledge by the bidders that the PPAs were pro forma and non-negotiable, both bidders repeatedly requested material changes. Because of the GPSC Biomass policy preference and the limited number of bids, after consultation with Staff and the IE, GPC agreed to consider some requested changes to the pro forma PPA in order to meet the GPSC goal of including Biomass generation in the Company's portfolio. This decision resulted in protracted discussions over three months as GPC repeatedly extended the deadline for decisions to accommodate a bidder and resulted in the negotiation of terms; something the Company has not done during the 22 years Accion has served as IE. Staff and the IE declined to support some changes and acquiesced to others in the interest of completing what became a multi-year effort to add Biomass to GPC's generation portfolio. Throughout the process, however, the IE and Staff expressed disappointment that GPC repeatedly waived deadlines and entertained new demands, long after receiving representations that all desired changes were "on the table." This "if you give a mouse a cookie" approach was costly and resulted in long delays. Both the Staff and the IE repeatedly expressed concern that wavering from the Commission approved non-negotiable PPA, beyond capturing for ratepayers the value of Qualifying Federal Support, will likely result in similar demands on other on-going RFPs and beyond.



As a result of the prolonged discussions, two material differences between the PPAs executed with bidder 208 and the PPA for bidder 259 emerged. The dispute resolution revisions demanded by bidder 208 were not offered as revisions to bidder 259. Staff and the IE agreed that the revision was non-material and done to align with existing QF contracts. Similarly, a levelized price, equivalent to the proposed escalated price, negotiated and accepted for bidder 259's PPA was not offered to bidder 208. The IE notes that the PPAs with bidder 208 had already been executed before GPC agreed to change the PPA for bidder 259.

GPC agreed to significant flexibility regarding the RCOD for bidder 259. The IE believes the changes necessary to accommodate the transition resulting from FERC Order 2023 are reasonable and would have no impact on bidder 208's project. However, effectively GPC provided bidder 259 with a free option for a lucrative 30-year contract by agreeing the bidder could withdraw without penalty if interconnection could not be achieved in time to ensure a COD by November 30, 2029. See: PPA Section 8.1.4. That allowance was not available to other potential bidders before the bid submission date. While it would be beneficial to GPC ratepayers if the developer chose to terminate the PPA, it remains unknown whether other bidders would have participated had the provision been available. The IE views the terms embedded in the RCOD revision to be material.

X. INDEPENDENT EVALUATOR

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, Puerto Rico, Canada, the U.S. Virgin Islands, and Mexico. 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, our consultants are well-versed in the subtleties of utility procurement practices. Our goal as IE is the same as the purchasing utility and 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. The IE's Role in the RFP

As IE, Accion reviewed the process designed by the Evaluation Team prior to releasing the RFP. This review included the following:

- The Company's efforts to identify prospective bidders and publicize the RFP;
- The terms and conditions that would control both the RFP process and any resulting contracts;
- The evaluation criteria and methodology to be employed;
- The procedures employed to ensure that all bidders would have access to the same information at the same time;
- The form and content of all draft RFP documents;
- The procedures designed to encourage bidder input on the quality and content of RFP documents and RFP procedures; and
- The design and implementation of the affiliate Standards of Conduct protocols.

Accion designed and operated the Website for the receipt of bids, which hosted and captured for review all RFP-related information and all Website activity. The Website facilitated Accion's ability to closely monitor communications during the RFP process. Accion participated in the bidders' conference. Other than those asked during the Conference, all questions from bidders were submitted on the Website and the



Evaluation Team's response to each question was reviewed by the IE prior to the question being answered on the Website. Accion also reviewed the comments provided by the bidders before the RFP was released, discussed those comments that suggested changes to the RFP and PPA with the Evaluation Team, and reviewed the Evaluation Team's responses to the comments, before forwarding them back to the respective bidders.

XI. OVERALL CONCLUSION

The solicitation for Biomass was conducted by GPC pursuant to the Commission's rules. The number of bids was limited, and the pricing received for each bid was higher than the avoided costs. One greenfield bid was released for inability to demonstrate site control and to produce an acceptable letter of credit, leaving only one 70 MW greenfield proposal and two proposals for combined addition of 7.9 MW to existing facilities.

The bidder of the 70 MW greenfield project withdrew its bid, and then returned demanding a levelized price fixed for the 30-year term, after having bid an escalating price structure, along with other changes to the PPA. Staff and the IE accepted the change in price structure because the net impact on ratepayers would not be increased provided the plant operates for 30 years. However, the IE believes it must be recognized that the calculated net benefit of that project is a cost to ratepayers of more than three times the avoided cost. While pricing of the two small addition projects is lower, the price of energy from those projects is twice as high as GPC's avoided cost.

Although working with bidders to negotiate certain terms of the pro forma PPA was necessary to execute contracts, and GPC, Staff, and the IE agreed to a limited number of changes, departure from a non-negotiable PPA is far from ideal. As noted, the IE and Staff repeatedly expressed concern about deviation from the commitment that material terms of the PPA would remain non-negotiable, once approved by the Commission. If bidders expect competitors will be able to negotiate terms after being selected for the competitive tier, there is a significant risk that bidders will "low ball" prices in order to get the opportunity to negotiate greater value. Also, as clearly demonstrated by this exercise, permitting negotiation of PPA terms dramatically prolongs the RFP process: indeed, in the instant case more than a year elapsed between the bid submission date and final contract terms being agreed upon. While the addition of 77.9 MW of Biomass is insignificant to GPC's overall generation portfolio, permitting



this sort of protracted delay in other RFPs would seriously endanger GPC's ability to meet system needs and ensure reliable resource adequacy for customers. Accordingly, the IE strongly urges the Commission to direct GPC not to entertain negotiation of material terms once contracts are approved by the Commission.