BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

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

GEORGIA POWER COMPANY'S RESPONSE TO RGP BOWMAN SOLAR, LLC'S MOTION FOR STAY

COMES NOW, Georgia Power Company ("Georgia Power" or the "Company") and submits this Response in Opposition to the Motion for Stay filed by RGP Bowman Solar, LLC ("Bowman"). Bowman seeks to stay the Commission's Order Denying RGP Bowman Solar, LLC's Request to Initiate a Procedural and Schedule Order to Determine the Reasonableness of Interconnection Costs (the "Order") entered on November 26, 2024. For the reasons set forth below, Bowman has not met the criteria for a stay and the Commission should deny the Motion for Stay.

I. Factual Background

On January 8, 2024, Georgia Power issued the Phase II interconnection study in compliance with the Commission's approved procedures.[1] Subsequently, on March 28, 2024, Georgia Power issued the Qualifying Facility Interconnection Agreement ("QFIA") to Bowman for execution within 30 days of receipt, as required by the QF-TGIP.[2]

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[1] *See* Order Denying RGP Bowman Solar, LLC's Request to Initiate a Procedural and Schedule Order to Determine the Reasonableness of Interconnection Costs, *In re: Capacity and Energy Payments to Cogenerators Under PURPA*; Docket 4822, p. 3 (Nov. 26, 2024) (hereafter, the "Order") (approving Staff's finding that the Interconnection Studies were completed in accordance with the QF-TGIP).

[2] State-Jurisdictional Qualifying Facility Transmission Generator Interconnection Procedures, *In re: Capacity and Energy Payments to Cogenerators Under PURPA*; Docket 4822, Section IV, para. 11. (Apr. 8, 2022).

On April 26, 2024, one day prior to the execution deadline, Bowman filed its Emergency Petition of RGP Bowman Solar, LLC for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for a Qualifying Facility (the "Petition"), seeking an emergency extension of time to execute the QFIA, various declaratory rulings excusing Bowman from the payment, financial securities, and documentary requirements of the QF-TGIP and QFIA, and a procedural and scheduling order to take evidence on the Petition.[3] The Petition raised unsupported objections to the interconnection costs identified in the Phase II interconnection study, relying on irrelevant law and inapplicable precedent to argue that the required interconnection costs were de facto unreasonable by nature of their size.[4]

At its Administrative Session on November 19, 2024, the Commission denied Bowman's request for an evidentiary hearing to determine the reasonableness of these costs, making a factual finding that "[t]he Company's QF Interconnection Studies of the Bowman project were completed in accordance to the Commission approved QF-TGIP," and requiring that Bowman execute the new QFIA within ten (10) days of receipt, provide notice to proceed one (1) day after executing the QFIA, and provide cash payment and securities within ten (10) days of providing notice to proceed.[5] On November 25, 2024, Georgia Power issued a new QFIA to Bowman, reflecting conforming updated terms.

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[3] *Emergency Petition of RGP Bowman Solar, LLC for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for a Qualifying Facility*; Docket 4822 (April 26, 2024) (hereafter, the "Petition").

[4] *Id.* at 11-32.

[5] Order at 3-4.

Bowman filed a Motion for Reconsideration on December 6, 2024.[6] Bowman also executed the QFIA on December 9, 2024, and issued Notice to Proceed the following day, December 10, 2024. Bowman then filed an errata and supplement to its Motion for Reconsideration on December 23, 2024.[7] However, instead of complying with the signed QFIA and the Order's requirement to provide payment and security, Bowman filed the Motion for Stay on December 26, 2024, the same day the payment was due.[8]

II. Applicable Law and Procedure

a. Bowman's misguided attempt to recast the Petition as a contested case does not create entitlement to an evidentiary hearing.

O.C.G.A. § 50-13-2(2) defines a "contested case" as "a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." As the plain language of the Petition itself makes clear, Bowman's Petition is not a contested case, but rather a request for a declaratory ruling.[9]

O.C.G.A. § 50-13-11 states that "each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency." The statutes governing declaratory rulings expressly yield authority to the Commission to promulgate rules of procedure.[10] Not only does

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[6] Motion for Reconsideration, *In re: Capacity and Energy Payments to Cogenerators Under PURPA*, Docket 4822 (Dec. 6, 2024) (hereafter, the "Motion for Reconsideration").

[7] Supplement and Errata to Motion for Reconsideration, *In re: Capacity and Energy Payments to Cogenerators Under PURPA*, Docket 4822 (Dec. 23, 2024) (hereafter, the "Supplement").

[8] Order at 4; *see also* Motion for Stay, *In re: Capacity and Energy Payments to Cogenerators Under PURPA*, Docket 4822 (Dec. 26, 2024).

[9] *See* Petition at 2-3 (identifying the relief sought by the Petition).

[10] *See* O.C.G.A. § 50-13-11.

Commission Rule 515-2-1-.08 ***not*** mandate an evidentiary hearing for declaratory rulings, it forbids them unless (1) there is a dispute of material fact, **and** (2) the Commission so orders.[11] The discretionary nature of Commission Rule 515-2-1-.08 eliminates any notion of entitlement to a hearing.

b. Bowman cannot demonstrate good cause for a stay of the Commission's decision to support continuation of the status quo.

O.C.G.A. § 50-13-19 explains that an "agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown."[12] In *Green Bull Ga. Partners*, the Court outlined a set of four factors for granting a stay: "the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction, the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest."[13] The Commission must balance these factors to determine whether to preserve the status quo by granting the stay.[14]

III. Argument

The central issue in this proceeding is whether Bowman is entitled to an evidentiary hearing on the underlying Petition.[15] The Commission's Order correctly rejected Bowman's claim of entitlement.[16] The *Green Bull* factors provide the framework for considering the necessity of a

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[11] *See* GA. COMP. R. & REGS. 515-2-1-.08.

[12] O.C.G.A. § 50-13-19. Although O.C.G.A. § 50-13-19 addresses review of contested cases, the sentence in section (b) requiring that "all proceedings for review, however, with respect to orders, rules, regulations, or other decisions or directives of the Public Service Commission must be brought in the Superior Court of Fulton County" indicates that other decisions or directives of the Public Service Commission, such as declaratory rulings, are also subject to the statute. *Id.*

[13] *Green Bull Ga. Partners, LLC v. Register*, 301 Ga. 472, 473 n. 4 (2017).

[14] *City of Waycross v. Pierce County Board of Commissioners*, 300 Ga. 109, 111 (2016).

[15] Motion for Stay at 4 (stating "[h]ere, the issue is whether Bowman is entitled to a hearing by the Commission to review the reasonableness of the interconnection costs imposed by the Company in the QFIA").

[16] Order at 4.

stay, each weighing against Bowman's misguided claims. As demonstrated below, Bowman has failed to meet these criteria.

a. Bowman's likelihood of success on the merits is zero.

Bowman's claim can only succeed on the merits if the dispute is a contested case under O.C.G.A. § 50-13-13. **It is not**. Bowman's Petition explicitly identified itself as a request for declaratory ruling in numerous instances:

1. The document is titled "Emergency Petition for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for A Qualifying Facility;"
2. The relief sought **states four (4) times that it seeks a declaratory ruling**;
3. In discussing the Commission's jurisdiction, Bowman cites to O.C.G.A. § 50-13-11 and Commission Rule 515-2-1-.12 as the authority for the Commission to rule on the dispute while making no mention of the "contested case" statute; and
4. The Petition spends approximately 30 pages arguing a section titled "Request for Declaratory Relief" where it states "[p]ursuant to O.C.G.A. § 50-13-11 and Commission Utility Rule 515-2-1-.12, Bowman requests that the Commission issue a declaratory ruling as to its rights and obligations under the QF Facility's QFIA pertaining to interconnection costs assessed by the Company."[17]

Any attempt to portray the Petition as a contested case is a blatant misrepresentation of law that flies in the face of the statute's plain text and runs counter to Bowman's own words. Bowman's claims do not include "rate making, price fixing, and licensing" issues, nor has Bowman established a legal right that is "required by law to be determined by an agency after an opportunity

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[17] *See* Petition at 1-3, 5-6, 11-31, 33.

for hearing."[18] Moreover, the law is clear: decisions regarding evidentiary hearings on a petition for declaratory ruling are exclusively left to the Commission's discretion. Therefore, Bowman's likelihood of success on the merits of its claim of entitlement to a hearing is zero, as it has fundamentally misunderstood the legal framework governing its Petition. For this reason, the Commission should deny the Motion for Stay.

b. Any harm Bowman claims is self-inflicted due to its failure to comply with the Commission's deadlines.

Bowman argues that it will suffer irreparable harm if the stay is not granted because the signed QFIA will be voided and its project will be removed from the interconnection queue, leading to project failure and lost investment of money and time.[19] In asserting this irreparable harm argument, Bowman makes the illogical leap from removal of the project from the queue to project failure. Bowman ignores alternatives such as reentering the interconnection queue or bidding the project into one of Georgia Power's many requests for proposal.

Irrespective of those opportunities, Bowman's argument ignores that the harm it may suffer is entirely self-inflicted due to its choice of location (resulting in the high interconnection costs) and subsequent pervasive failure to comply with the Commission's deadlines. Any harm to Bowman would be the direct result of its violation of the Commission's Order and breach of the executed QFIA. As discussed in prior pleadings in this Docket, both PURPA and this Commission's orders adhere to the cost causation and customer indifference principles and require

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[18] See O.C.G.A. § 50-13-2(2) (defining a "contested case").

[19] Motion for Stay at 4.

the QF to pay for the costs it causes when interconnecting to Georgia Power's system.[20] Thus, Bowman's inability to secure financing is not a consequence of the Order but rather a direct result of Bowman's own poor siting decisions.

There is no reason to maintain the status quo. By Bowman's own admission, no amount of time will change the economic viability of its facility or impact its ability to secure financing.[21] Bowman has had ample time to secure financing for the interconnection costs that, as this Commission has already established, "were completed in accordance to the Commission approved QF-TGIP."[22] Bowman has repeatedly defied the Commission's established deadlines by seeking last minute extensions to the timely processes of the established QF-TGIP. The Motion for Stay is simply the latest installment in the saga. Under the Commission's approved procedures, Bowman's original deadline for providing the payments and securities required by the QFIA was April 27, 2024. Rather than executing the QFIA, Bowman filed the Petition one day prior to the deadline. Subsequently, the Commission's Order required Bowman to provide a cash payment and security within 10 business days of providing Notice to Proceed and 11 days of executing the QFIA, ultimately December 26, 2024. Rather than providing the required payment and security, Bowman instead filed this Motion for Stay on the day payment was due.

Granting a stay would reward Bowman's continued obstruction of the Company's interconnection queue and undermine the integrity of the Commission's processes. Bowman

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[20] "Georgia Power Company's Response to the Emergency Petition of RGP Bowman Solar, LLC for Extension of Time and Petition for Declaratory Ruling on Interconnection Costs for a Qualifying Facility" *In re: Capacity and Energy Payments to Cogenerators Under PURPA*; Docket 4822, p. 8 (May 28, 2024).

[21] Motion, Exhibit A at para. 11.

[22] Order at 3.

should not be permitted to take advantage of the harm it created and perpetuated. For this reason, the Commission should deny the Motion for Stay.

c. Granting a stay would further undermine the Commission's procedures and Georgia Power's compliance with those procedures, causing harm to Georgia Power, other QFs, and the public interest.

The remaining two factors, "the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest," are two sides of the same coin as applied to this case, both weighing against Bowman's claim. The allegations raised throughout the various pleadings amount to little more than repeated requests for the Commission to exempt Bowman from the requirements of the previously approved QF-TGIP. As a matter of simple fairness, Bowman should not be allowed to undermine the Commission's authority and bypass the QF-TGIP, which bind Georgia Power and other QFs during the interconnection process. In the same vein, the public interest is best served by upholding the Commission's Order and ensuring regulatory compliance. Granting a stay would undermine the Commission's procedures and Georgia Power's compliance with those procedures, and harm all other projects currently awaiting review in the interconnection queue. For this reason, the Commission should deny the Motion for Stay.

IV. Conclusion

For the reasons set forth above, Georgia Power requests that the Commission deny Bowman's Motion for Stay and uphold the Order issued on November 26, 2024.

Respectfully submitted, this 8th day of January, 2025.

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