IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC., Petitioner,	)	
v.	)	
GEORGIA PUBLIC SERVICE COMMISSION, Respondent,	)	Civil Action No. 2009CV170648
GEORGIA POWER COMPANY, Respondent,	)	
and	)	
GOVERNOR SONNY PERDUE, in his official capacity, Respondent.	)	

PETITION FOR JUDICIAL REVIEW and DECLARATORY JUDGMENT

COMES NOW Southern Alliance for Clean Energy, Inc. ("Petitioner) and files this petition for judicial review of that certain Amended Certification Order entered on or about March 26, 2009, by the Respondent Georgia Public Service Commission ("PSC") on application of Respondent Georgia Power Company ("Georgia Power"). In addition, Petitioner seeks judicial review of that certain Order Denying Motion for Reconsideration of Southern Alliance for Clean Energy entered on or about May 14, 2009, by the PSC. Furthermore, Petitioner seeks a Declaratory Judgment that the *Georgia Nuclear Energy Financing Act*, aka, Georgia Senate Bill 31 ("SB 31") is unconstitutional under the Constitutions of the State of Georgia and United States.

Parties

1. Petitioner is a Tennessee non-profit corporation with a Certificate of Authority to transact business in Georgia. Petitioner has offices in Atlanta, Georgia, and Savannah, Georgia.

2. Respondent PSC is a constitutional board of Georgia, created and existing pursuant to Article IV, Section I, Paragraph I of the Georgia Constitution, and may be served by serving its Chairman, Stan Wise, at the PSC's office at 244 Washington Street, S.W., Atlanta, Georgia 30334.

3. Respondent Georgia Power Company is a Georgia corporation, which may be served by serving its registered agent, Terry Hodges, at 241 Ralph McGill Blvd., B-10180, Atlanta, Georgia 30308.

4. Respondent Sonny Perdue, sued only in his official capacity as Governor of Georgia, is subject to the jurisdiction of this Court, and may be served at the Office of the Governor at Room 203 of the Georgia State Capitol Building, Atlanta, Georgia 30334. Respondent Perdue is a public officer of Georgia. Among other duties, pursuant to Article V, Section II, Paragraph II of the Constitution of Georgia, Respondent Perdue, in his official capacity as Governor of Georgia, is responsible for enforcing the Georgia Constitution.

5. Georgia Attorney General Thurbert Baker is also served, not as a party, but for purposes of complying with the Declaratory Judgment Act, which requires such service where a state statute's constitutionality is being challenged. Attorney General Baker may be served at the Office of the Attorney General, 40 Capital Street, SW, Atlanta, Georgia 30334.

Jurisdiction & Venue

6. This Court has jurisdiction pursuant to O.C.G.A §§ 50-13 *et seq.* and O.C.G.A §§ 9-4 *et seq.* Venue is also proper pursuant to the foregoing statutory provisions.

Procedural History

7. On or about August 1, 2008, Georgia Power initiated Docket # 27800 with an application to the PSC seeking, among other things, (i) certification for two new nuclear reactors, Units 3 and 4, at Plant Vogtle, Waynesboro, Georgia, (ii) approval of an update to Georgia Power's 2007 Integrated Resource Plan, and (iii) approval from the PSC to place construction work in progress ("CWIP") in the retail rate base of certain Georgia Power customers beginning January 1, 2011, in order to pre-pay the debt costs and return-on-equity associated with the construction costs of Units 3 and 4 at Plant Vogtle.

8. On or about October 8, 2008, Petitioner filed with the PSC an Application for Leave to Intervene in the above-referenced proceeding, which application was not objected to and, thus, Petitioner became an intervenor in the proceedings.

9. PSC held hearings on the above-referenced docket on November 3, 5 and 6, 2008, on January 12 and 14, 2009, and on February 9, 2009. Petitioner was present and participated in all hearings.

10. Petitioner, PSC staff, Georgia Power and other parties submitted briefs to the PSC on March 6, 2009.

11. PSC issued its final Certification Order on or about March 26, 2009, which was amended on March 30, 2009 (the "Amended Certification Order"), a copy of which is attached as *Exhibit A*.

12. On or about April 9, 2009, Petitioner filed a Motion for Reconsideration of the Certification Order with PSC.

13. On or about April 21, 2009, Governor Sonny Perdue signed into law SB31, a copy of which is attached as *Exhibit B*.

14. On or about May 14, 2009, PSC issued an Order Denying Motion for Reconsideration of Southern Alliance for Clean Energy, which was a final agency action, and, therefore, Petitioner has exhausted all administrative remedies.

Nature of Petitioner's Interest

15. Petitioner's organizational purposes include (i) education and research concerning the environment, public health and economic impacts of energy use and policy in the southeastern United States and (ii) advocacy for energy plans, policies and systems that best serve the environmental, public health and economic interests of communities in the southeastern United States.

16. Petitioner has members, including individuals and businesses, throughout Georgia. Some of Petitioner's members are ratepayers of Georgia Power. Other Petitioner's members live, work and/or recreate in proximity to Georgia Power's proposed Plant Vogtle expansion site and/or use or recreate in the waters of the Savannah River, along which the proposed Plant Vogtle expansion will be built and from which it will draw water for its operations.

17. Petitioner and its members have direct and substantial interests in the outcome of this litigation and are aggrieved and adversely impacted by PSC's decisions described herein. Petitioner brings this action on behalf of itself and its affected members.

Applicable Law

18. Article IV, Section I, Paragraph I(a) of the Constitution of the State of Georgia ("There shall be a Public Service Commission for the regulation of utilities . . . .").

19. Article I, Section I, Paragraphs I ("No person shall be deprived of life, liberty, or property except by due process of law.") and Article I, Section I, Paragraph II of the Constitution of the State of Georgia ("No person shall be denied the equal protection of the laws.") and under the 14th Amendment of the Constitution of the United States of America.

20. Article III, Section VI, Paragraph VI(a) of the Constitution of the State of Georgia ("General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public").

21. Article VII, Section I, Paragraph III(a) of the Constitution of the State of Georgia ("All taxes shall be levied and collected under general laws *and for public purposes only.*") (emphasis supplied). *See e.g. Gunby v. Yates*, 214 Ga. 17, 19 (1958)(A "tax" under Georgia law is "an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered."). "An assessment levied in excess of the benefit provided arbitrarily deprives a person of his property". *Monticello, Ltd. V. Atlanta*, 231 Ga. 382, 386 (1998).

22. Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia ("The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of or which is intended to have the effect of *defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void.*") (emphasis supplied).

23. O.C.G.A. § 46-2-25, O.C.G.A. § 46-2-26.1, O.C.G.A. § 46-3A-1 *et seq.* and O.C.G.A. § 50-13-1 *et seq.*, O.C.G.A § 9-4-1 *et seq.*, pertaining to the PSC and administrative actions.

Legal and Factual Issues Presented

24. The PSC's Amended Certification Order and its Order Denying Motion for Reconsideration of Southern Alliance for Clean Energy prejudice the substantial rights of Petitioner and its members because the PSC's findings, inferences, conclusions and decisions are:

(a) In violation of constitutional and statutory provisions;

(b) In excess of statutory procedure;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; and

(f) Arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

O.C.G.A §50-13-19(h).

In addition, SB31 interferes and impairs the constitutional rights of Petitioner's members, all as more specifically set forth below.

Count I – PSC Erred as a Matter of Law by Failing to Make Findings of Fact and Conclusions of Law in Accordance with O.C.G.A 50-13-17(b).

25. Petitioner incorporates by reference paragraphs 1 through 24 of this Petition as if fully set forth herein.

26. The PSC was required as part of its final decision to make "findings of fact and conclusions of law, separately stated." *O.C.G.A. § 50-13-17(b).* Findings of fact "shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.*

27. PSC's final decision in these proceedings, the Amended Certification Order, fails to include findings of fact, as contemplated in the above-referenced statute. The Amended Certification Order simply states conclusions and orders.

28. The stipulation prepared by Georgia Power and PSC staff and made a part of the Amended Certification Order by reference is clearly only a summary of the final decisions arrived at by those two

parties (as well as those issues on which the parties could not agree) and completely bereft of explicit statements of the underlying facts supporting the findings.

29. In referencing the stipulation, PSC only states that the stipulation is a reasonable balance between the interests of the Georgia Power ratepayers and Georgia Power, again, without providing explicit statements of the underlying facts supporting the findings.

30. With the possible exceptions of the "Incentive Mechanism Proposed by the Staff" and "Construction Work in Progress in Rate Base" issues, the Amended Certification Order is empty of any explicit statements of underlying facts supporting the findings, including, most importantly, the underlying facts supporting the finding approving the certification of Units 3 and 4.

Count II – PSC Erred as a Matter of Law in Failing to Make the Findings Required by O.C.G.A §46-3A-4.

31. Petitioner incorporates by reference paragraphs 1 through30 of this Petition as if fully set forth herein.

32. Although O.C.G.A § 50-13-17(b) does not provide the nature of the findings that PSC must make, other statutory provisions do. In evaluating whether to issue a certificate approving the construction of a new electric plant, such as Units 3 and 4 at Plant Vogtle, the PSC "shall issue a certificate upon a finding that there is or will be a need for the proposal capacity resource at the time that the proposed resource is proposed to be utilized to assure an economical and reliable supply of electric power and energy for the Georgia retail customers of a utility, that the certificate is required by the public convenience and necessity, and that the certificate complies with the provisions of this chapter and the rules of the commission." *O.C.G.A §46-3A-4.*

33. PSC's Amended Certification Order fails to make the findings referenced in the foregoing statutory provision.

34. Although "the mere failure to refer to all of the evidence in the findings of fact does not establish that the [PSC] did not consider the evidence in its review of the matter," *Georgia Power Co. v Georgia Public Service Commission 396 S.E.2d 562, 584 (Ga. 1990)*, the failure (i) to cite any underlying facts in the Amended Certification Order that support one of the central orders in the Amended Certification Order, namely, the granting of certification of the new Plant Vogtle nuclear reactors, or (ii) to show how such underlying facts demonstrate that said reactors "assure an economical and reliable supply of energy" does not comply with the above-referenced statutory provision and is error.

Count III - PSC Failed to Comply with Statutory Rate Case Procedures

35. Petitioner incorporates by reference paragraphs 1 through 34 of this Petition as if fully set forth herein.

36. Though the proceeding resulting in the Amended Certification Order was purportedly brought as a proceeding under the Integrated Resource Planning Act, O.C.G.A. § 46-3A-1 *et seq.*, by incorporating Construction Work in Progress ("CWIP") in rate base into the proceeding, the proceeding morphed into a rate case governed by O.C.G.A. § 46-2-25, and therefore, among other things, the CWIP tariff portion of the Amended Certification Order was approved in violation of the "test period" statute, O.C.G.A. § 46-2-26.1. *See e.g. Georgia Power Company v. Georgia Industrial Group*, 214 Ga. App. 196, 199 (1994) (distinguishing demand-side costs from construction costs, holding that demand-side costs could be determined outside "traditional ratemaking principles", confirming that decisions concerning construction costs are governed by such "traditional ratemaking principles"). This is particularly borne out by two factors. First, the estimated CWIP base rate tariff amounts proposed by Georgia Power became well-publicized, therefore, the PSC understood the estimated amounts it was approving.[1] Second, SB 31, on which the PSC so heavily relied, is an amendment to O.C.G.A. § 46-2-25, the rate case statute. PSC's reliance on new language in O.C.G.A. § 46-2-25 as the legal basis for the CWIP in rate base decision very

[1] *See e.g.* February 5, 2009 article in the Atlanta-Journal Constitution: "The company has proposed a fee that would add about $1.30 to a typical homeowner's monthly bill in 2011. The fee would ratchet up to $9.10 per month by 2017."

clearly makes this proceeding a rate case proceeding, albeit an illegal one, because all applicable rate case procedures were not followed, including, without limitation, the "test period" requirement of O.C.G.A. § 46-2-26.1.

Count IV - PSC Erred as a Matter of Law by Relying on SB31 Prior to Its Becoming Law and, Consequently, Violated O.C.G.A § 46-3A-7(a) by Approving Construction Work in Progress ("CWIP") in Rate Base

37. Petitioner incorporates by reference paragraphs 1 through 36 of this Petition as if fully set forth herein.

38. The Amended Certification Order improperly relied upon SB 31 for the legal conclusion authorizing CWIP in rate base. The effective date of the Amended Certification Order is March 30, 2009. SB 31 did *not* become law until April 21, 2009, and therefore could not have been the legal basis for the CWIP in rate base component of the Amended Certification Order. *See Amended Certification Order*, p. 10 ("The passage of SB 31 significantly altered the framework under which the Commission operates as it relates to the recovery of construction financing costs on nuclear power plants. SB 31 mandates the recovery of financing costs and such recovery may begin within five years of the Commission's certification of the nuclear generating facility. *In essence the passage of SB 31 removes the issue of recovering financing cost by use of the CWIP approach from this proceeding*, though at the date of the Commission's decision in this Docket, SB 31 had not become law.") (emphasis supplied).

39. Basing the CWIP in rate base decision on a then unsigned bill of the General Assembly, which was of no legal consequence whatsoever as of the effective date of the Amended Certification Order, is gross legal error.

40. Furthermore, approving the CWIP in rate base prior to the effective date of SB31 is illegal in Georgia with respect to Georgia Power electric plants. Construction costs of a Georgia Power electric plant can only be added to the rate base after completion of the plant. *O.C.G.A. § 46-3A-7(a)* ("So long as the commission has not modified or revoked the certificate for an electric plant under Code Section 46-

3A-6 and to the extent the utility seeks to add to its rate base *upon completion of the plant . . . .*"). Accordingly, the Amended Certification Order purporting to authorize CWIP in rate base for Units 3 and 4 at Plant Vogtle violates O.C.G.A. § 46-3A-7(a) and is invalid.

Count V - PSC's Risk Sharing Mechanism Parameters in the Amended Certification Order Violate O.C.G. A § 46-3A-7(a)

41. Petitioner incorporates by reference paragraphs 1 through 40 of this Petition as if fully set forth herein.

42. In an ordering paragraph of the Amended Certification Order, PSC orders that Georgia Power and PSC staff "shall work together to develop a risk sharing mechanism that will provide some level of protection to ratepayers in the event of significant cost overruns, but also not penalize the earnings on Units 3 and 4 if and when overruns are due to mandates from governing agencies." *Amended Certification Order, p. 12-13.*

43. Cost overruns "shall not be permitted unless shown by the utility to have been reasonable and prudent." *O.C.G. A § 46-3A-7(a).*

44. Taking into account Georgia Power's earnings in determining whether Georgia Power should absorb cost overruns violates O.C.G. A § 46-3A-7(a) and should be invalidated as a basis for such a determination. *See e.g. Georgia Power Company v. Georgia Public Service Commission 196 Ga. App. 572, 588, fn. 4 ("[m]aking the company 'whole' is not the standard for rate-making" quoting a prior Georgia Public Service Commission decision).*

45. In addition, implying that Georgia Power should not be required to absorb the cost of overruns associated with "mandates from government agencies" is on its face unreasonable and imprudent in light of several potential government agency mandates that are already reasonably foreseeable and which appear on the record of the PSC proceedings, for example, U.S. Army Corps of Engineers requirements associated with dredging the Savannah River, *See Written Testimony of Sara Barczak, page 4, line 19,*

submitted to PSC, attached hereto as Exhibit C-1, potential Nuclear Regulatory Commission changes to the nuclear reactor design, especially in light of the fact that the first construction of this nuclear reactor using these design specifications recently begun in China. *See Written Testimony of David Schlissel, page 4, line 21; page 19, line 20, submitted to PSC, attached hereto as Exhibit C-2,* and potential Nuclear Regulatory Commission restrictions regarding on-site storage of spent nuclear fuel. *See Written Testimony of Sara Barczak, page 10, line 20, submitted to PSC, attached hereto as Exhibit C-1.*

46. In addition, based on testimony before the PSC, other factors affecting the present estimated cost and impacts of constructing the nuclear reactors have not been properly evaluated. Such factors include adjustments in cost and energy demand forecasts associated with the current or future economic downturn. *See Testimony of David Schlissel, p. 31, line 9, attached hereto as Exhibit C-2.*

Count VI – Declaratory Judgment as to SB 31

Unauthorized Encroachment by General Assembly

47. Petitioner incorporates by reference paragraphs 1 through 46 of this Petition as if fully set forth herein.

48. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Article IV, Section I, Paragraph I(a) of the Constitution of the State of Georgia ("There shall be a Public Service Commission for the regulation of utilities . . . ."), as an unconstitutional encroachment by the Georgia General Assembly into the Commission's status as a constitutional board entrusted by the people of the State of Georgia to fix rates charged by regulated utility companies. SB 31 purports to mandate the imposition of a new tariff (the "Nuclear Tariff") on Georgia Power's customers, including Petitioner's members, to finance the construction of the nuclear generators, Units 3 and 4, at Plant Vogtle, thereby taking away the rate making authority and discretion from the PSC. That is facially unconstitutional.

49. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Article IV, Section I, Paragraph I(a) of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

50. Petitioner shows that the Court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

Count VII – Declaratory Judgment as to SB 31

Violation of Substantive Due Process

51. Petitioner incorporates by reference paragraphs 1 through 50 of this Petition as if fully set forth herein.

52. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Petitioner's members' rights to substantive due process under the 14th Amendment of the Constitution of the United States of America and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

53. Petitioner shows that the CWIP in SB 31 will result in a net present value loss estimated to be between $576 million and $740 million over the life of the Vogtle plants, according to the Bill Analysis Sheet prepared by the PSC staff. That is an unconstitutional confiscation and deprivation of Petitioner's members' property, in violation of such individuals' rights to substantive due process under the State and Federal Constitutions.

54. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Petitioner's members' rights to substantive due process under the 14th Amendment of the Constitution of the United States of America and Article I, Section I, Paragraph I of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

55. Petitioner shows that the court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

Count VIII – Declaratory Judgment as to SB 31

Violation of Equal Protection

56. Petitioner incorporates by reference paragraphs 1 through 55 of this Petition as if fully set forth herein.

57. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Petitioner's member's rights to equal protection under the 14th Amendment of the Constitution of the United States of America and Article I, Section I, Paragraph II of the Constitution of the State of Georgia.

58. Petitioner shows, by way Bill Analysis Sheet prepared by the PSC staff that certain large industrial and commercial customers of Georgia Power are exempted from paying the Nuclear Tariff imposed by SB 31. That is an unconstitutional discrimination against Petitioner's members, in violation of such individuals' rights to equal protection under the State and Federal Constitutions.

59. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Petitioner's members' rights to equal protection under the 14th Amendment of the Constitution of the United States of America and Article I, Section I, Paragraph II of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

60. Petitioner shows that the court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

Count IX– Declaratory Judgment as to SB 31

Unconstitutional Gratuity

61. Petitioner incorporates by reference paragraphs 1 through 60 of this Petition as if fully set forth herein.

62. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Article III, Section VI, Paragraph VI(a) of the Constitution of the State of Georgia, which prohibits gratuities. The adoption of the Nuclear Tariff by the Georgia General Assembly creates an unconstitutional gratuity in favor of Georgia Power and its stockholders, for, among other reasons, paying such stockholders of Georgia Power a return on equity in excess of $1 billion before Units 3 and 4 at Plant Vogtle are even put into service, i.e., for services which have not been rendered.

63. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Article III, Section VI, Paragraph VI(a) of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

64. Petitioner shows that the court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

Count X– Declaratory Judgment as to SB 31

Unconstitutional Private Tax or Fee

65. Petitioner incorporates by reference paragraphs 1 through 64 of this Petition as if fully set forth herein.

66. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Article VII, Section I,

Paragraph III(a) of the Constitution of the State of Georgia ("All taxes shall be levied and collected under general laws *and for public purposes only.*") (emphasis supplied). *See e.g. Gunby v. Yates*, 214 Ga. 17, 19 (1958)(A "tax" under Georgia law is "an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered.").

67. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Article VII, Section I, Paragraph III(a) of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

68. Petitioner shows that the Court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

Count XI– Declaratory Judgment as to SB 31

Unconstitutional Act in Furtherance of a Monopoly

69. Petitioner incorporates by reference paragraphs 1 through 68of this Petition as if fully set forth herein.

70. Petitioner shows that there is an actual controversy between Petitioner and Respondent Perdue, growing out of the enactment and enforcement of SB 31, in that SB 31 violates Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia ("The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of or which is intended to have the effect of *defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void.*") (emphasis supplied).

71. Petitioner shows the Nuclear Tariff providing CWIP in rate base for Units 3 and 4 of Plant Vogtle unconstitutionally encourages Georgia Power's existing monopoly as a regulated utility in Georgia, to the

detriment of Georgia Power customers and the citizens of the State of Georgia, including Petitioner's members, as well as non-nuclear electrical providers and energy efficiency providers.

72. Petitioner alleges that its members are entitled to a judicial declaration that SB 31 violates Article III, Section VI, Paragraph V(c) of the Constitution of the State of Georgia. Petitioner shows that its members are entitled to a declaration of these rights, and a declaration with reference to their legal relations thereto.

73. Petitioner shows that the Court should designate a time not earlier than 20 days after the date of service hereof, and that process issue thereon for a trial of this controversy, unless the parties consent in writing to an earlier trial.

WHEREFORE, Petitioner prays:

(1) that the Amended Certificate Order and Order Denying Motion to Reconsider of Southern Alliance for Clean Energy be reversed (or that the Court set a briefing schedule, provide for oral argument, and then reverse said Orders);

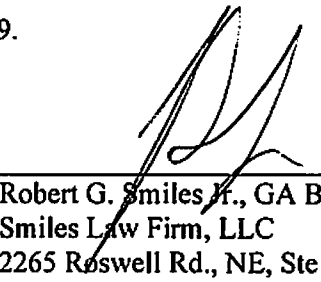
(2) that SB31 be declared unconstitutional under the Constitutions of the State of Georgia and the United States;

(3) that process issue in terms of requiring Respondents to answer the declaratory judgments aspects of this Petition as provided by law;

(4) that attorney's fees and costs incurred in this action be awarded to Petitioner; and

(5) that this Court grant Petitioner such other relief as the Court may find just and appropriate.

Respectfully submitted this 15th day of June, 2009.



Robert G. Smiles Jr., GA Bar Number 653648
Smiles Law Firm, LLC
2265 Roswell Rd., NE, Ste 100
Marietta, Georgia 30062

COUNSEL FOR PETITIONER

EXHIBIT "A"

Georgia Public Service Commission

Docket No. 27800, Georgia Power's Application for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan

AMENDED CERTIFICATION ORDER

APPEARANCES

Georgia Public Service Commission Public Interest Advocacy Staff: Daniel Walsh, Esq. and Jeffrey Stair, Esq.; ***Georgia Power Company***: Kevin C. Greene, Esq., Brandon F. Marzo, Esq., Heather S. Smith, Esq. and Todd F. Kimbrough, Esq.; ***Commercial Group***: Alan Jenkins, Esq.; ***City of Dalton, Georgia*** Newton M. Galloway, Esq. and Terri M. Lyndall, Esq.; ***Georgia Industrial Group***: Randall D. Quintrell; **Georgia Traditional Manufactures Association**: Charles B. Jones, III, Esq.; ***The Municipal Electric Authority of Georgia***: Peter M. Degnan, Esq., Peter K. Floyd, Esq. and Clay Massey, Esq.; ***Oglethorpe Power Corporation***: George B, Taylor; ***Resource Supply Management:*** Jim Clarkson; ***Southern Alliance for Clean Energy***: Anne Blair and Rita Kilpatrick;

BY THE COMMISSION:

I. STATEMENT OF PROCEEDINGS

This matter comes before the Georgia Public Service Commission ("Commission") upon the application by Georgia Power Company ("Company") for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan, filed on August 1, 2008 ("Application"). In its Application, the Company sought Commission approval of its addition of Units 3 and 4 at Plant Vogtle ("Vogtle Units 3 and 4"). Specifically the Company requested that the Commission: (1) certify the proposed Vogtle Units 3 and 4; (2) approve the 2008 Integrated Resource Plan ("IRP") Update; (3) allow Construction Work in Progress ("CWIP") in rate base for Vogtle Units 3 and 4; (4) institute Quarterly Construction Monitoring and Treatment of Indexed Costs; (5) approve the installation of emissions controls at Plants Branch and Yates; and (6) approve the deferral for later cost recovery of the significant expenses incurred in developing and evaluating coal-fired generation, as required by the 2007 IRP Order.

As part of the Application, the Company submitted: (1) information on the two proposed nuclear generation units to meet the Company's 2016 and 2017 capacity and energy needs, (2) the 2008 Integrated Resource Plan update, (3) updated information regarding the economics of retirement of coal fired resources, and (4) an evaluation of coal resources as directed in the 2007 IRP.

The Company, Public Interest Advocacy Staff ("PIAS" or "Staff"), and Intervenors to this proceeding have prefiled testimony and participated in three rounds of hearings on the Application. On October 20, 2008, the Company filed the direct testimony of Kris Nielsen; Steven Fetter; the panel of Jeffrey A. Burleson, Garey C. Rozier, Larry T. Legg and Charles H. Huling; the panel of Edward Day IV and Joseph Miller; and the panel of Ann P. Daiss and Robert Morris. The Commission held its hearing on the Company's direct case on November 5 and November 6, 2008. Thereafter, on December 19, 2008, the Staff filed the direct testimony of Lane Kollen; Tom J. Newsome; John W. Hutts; William R. Jacobs, Jr. PhD; Richard A. Baudino; Philip M. Hayet; the panel of Harold T. Judd, Alan Kessler and John B. Hart; and the panel of Sheree Kernizan and Daniel R. Cearfoss. Testimony filed by the Intervening parties consisted of testimony presented by Mr. Forrest F. Stacy for the Commercial Group, by Mr.

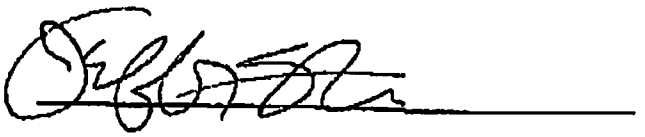
Jeffrey Pollock for Georgia Industrial Group and the Georgia Traditional Manufacturers Association, and by. David Schlissel and Sara Barczak on behalf of the Southern Alliance for Clean Energy ("SACE"). The direct testimony of the Staff and intervening parties was heard by the Commission on January 12 and January 14, 2009. On rebuttal the Company presented testimony by the panel of Jeffrey A. Burleson and Edward Day VI, the panel of Ann P. Daiss, Robert B. Morris and Christine M. Thom and by Steven M. Fetter. Hearing of the Company's Rebuttal Testimony was conducted on February 9, 2009.

In addition to the witnesses appearing on behalf of intervening parties, the Commission at the beginning of each round of hearings received comments from member of the general public who expressed their views on nuclear power and the Plant Vogtle Units 3 and 4 construction project.

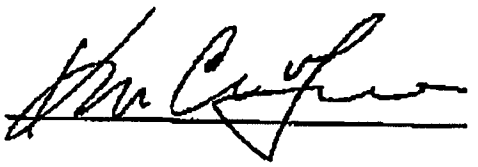
Subsequent to the February 9 hearing and prior to the date set forth for the filing of briefs and recommendations, the Staff and Company entered into a partial settlement ("Stipulation") of a number of issues presented by this matter. The Stipulation, attached hereto as Attachment 1 and incorporated herein by reference, was entered into on March 4, 2009 and filed with the Commission by the Staff and the Company along with their respective Briefs on March 6, 2009. As stated by both the Company and Staff the Stipulation resolves many of the contested issues in this case. However, as noted in the Stipulation, three issues before the Commission in this proceeding remain in contention and unresolved between the Company and Staff. Those three issues are: (1) the incentive mechanism proposed by Staff; (2) the question of whether the Company should be allowed to include CWIP on the Vogtle Units 3 and 4 in rate base, and if so, whether Staff and Intervenors' proposals to use "mirror" CWIP in rate base should be utilized; and (3) the legal argument of whether the verification of costs in monitoring reports constitutes a finding of prudence. The Staff and the Company agreed that the first two unresolved issues need to be addressed in this proceeding. Both the Staff and Company, however, agreed that the third unresolved issue is not ripe for a determination and need not be decided by the Commission at this time. Therefore, the Company and Staff agreed to table their respective arguments on the third unresolved issue for a more appropriate time.

Post Hearing Briefs were also filed by SACE and Resource Supply Management on March 6, 2009.

On Behalf of the Georgia Public Service Commission Public Interest Advocacy Staff:



On Behalf of Georgia Power Company:



BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In Re:	)	
Georgia Power Company's Application	)	
For The Certification of Units 3 and 4	)	Docket No. 27800
At Plant Vogtle and Updated Integrated	)	
Resource Plan	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Amended Certification Order** in the above-referenced docket was filed with the Commission's Executive Secretary, and a copy of same was served upon all parties and persons listed below via hand-delivery where indicated by an asterisk, or by depositing same in the United States mail with sufficient postage thereon to insure delivery and addressed as follows:

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Executive Secretary
Georgia Public Service Comm.
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Atlanta, GA 30334

Dan Walsh *
Office of the Attorney General
Department of Law
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Atlanta, GA 30334

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So certified, this 30th day of March 2009.

Pandora Epps
Director, Internal Consultants

EXHIBIT "B"

09 SB31/AP

Senate Bill 31

By: Senators Balfour of the 9th, Tarver of the 22nd, Rogers of the 21st, Powell of the 23rd, Tolleson of the 20th and others

AS PASSED

AN ACT

To enact the "Georgia Nuclear Energy Financing Act"; to amend Code Section 46-2-25 of the Official Code of Georgia Annotated, relating to the procedure for changing any rate, charge, classification, or service, so as to provide for a utility to recover from its customers the costs of financing associated with the construction of a nuclear generating plant; to provide a short title; to provide for the calculation and collection of the financing costs; to provide for the Georgia Public Service Commission to exercise discretion in setting the level of assistance for senior and low income customers; to provide the commission with the authority to authorize any specific accounting treatment for the costs recovered; to provide for review by the commission as to whether the costs recovered are being properly recorded; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Nuclear Energy Financing Act."

SECTION 2.

Code Section 46-2-25 of the Official Code of Georgia Annotated, relating to the procedure for changing any rate, charge, classification, or service, is amended by adding a new subsection as follows:

"(c.1)(1) Notwithstanding any provision to the contrary, a utility shall recover from its customers, as provided in this subsection, the costs of financing associated with the construction of a nuclear generating plant which has been certified by the commission. The financing charges shall accrue on all applicable certified costs as they are recorded in the utility's construction work in progress accounts pursuant to generally accepted accounting and regulatory principles as approved by the commission. The financing costs shall be based on the utility's actual cost of debt, as reflected in its annual surveillance report filed with the commission, and based on the authorized cost of equity

capital and capital structure as determined by the commission when setting the utility's current base rates. These financing costs shall be recovered from each customer through a separate rate tariff and allocated on an equal percentage basis to standard base tariffs which are designed to collect embedded capacity costs. The commission shall retain the discretion to consider the effect of this tariff when setting the level of any senior or low income assistance it may authorize; provided, however, that the income qualification for such assistance shall be 200 percent of the federal poverty level.

(2) The commission shall have the authority to authorize any specific accounting treatment for the costs recovered pursuant to this subsection and to review whether costs recovered pursuant to this subsection are being properly recorded.

(3)(A) For any nuclear generating plant certified by the commission on or after July 1, 2009, the utility may begin recovering the costs of financing the construction of the nuclear generating plant at any time within five years after the date on which such nuclear generating plant is certified. Any such costs incurred between the time the plant is certified and the time the utility begins recovering its cost shall be accrued, capitalized, and included in the balance of the account and then amortized over the next five years following the date on which the utility begins recovering the costs of financing the construction and shall be recovered with one-fifth of those deferred costs being recovered each year for five years.

(B) For any nuclear generating plant certified by the commission on or after January 1, 2009, and before July 1, 2009, the utility shall begin recovering on January 1, 2011, any costs of financing the construction of the nuclear generating plant. Any such costs incurred prior to January 1, 2011, shall be accrued, capitalized, and included in the balance of the account and then amortized over the next five years following January 1, 2011, and shall be recovered with one-fifth of those deferred costs being recovered each year for five years.

(4) The costs recoverable pursuant to this subsection shall be recalculated and the level of the charges reset annually if necessary to reflect the level of construction costs expected to be incurred in the next 12 months consistent with the certificate and the financing costs expected to be incurred for the next 12 months together with a balanced accounting of actual expenditures and financing costs incurred in the preceding period.

(5) The financing costs associated with a nuclear generating plant which has been certified by the commission shall continue to be recovered between the time that the generating plant begins commercial operation and until the next general rate case filed by the utility becomes effective, at which time the financing costs being collected for any

generating plants which are then in commercial operation shall be included in the general revenue requirements of the utility and collected in the general base rates of the utility."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

EXHIBIT "C-1"

DIRECT TESTIMONY OF

SARA BARCZAK

ON BEHALF OF SOUTHERN ALLIANCE FOR CLEAN ENERGY

GPSC DOCKET NO. 27800-U

GEORGIA POWER'S APPLICATION FOR CERTIFICATION OF UNITS 3 AND 4 AT PLANT VOGTLE AND UPDATED INTEGRATED RESOURCE PLAN

DECEMBER 19, 2008

ON WHETHER TO APPROVE GEORGIA POWER'S CERTIFICATION REQUEST.

A. The Commission should be concerned about several factors related to water consumption at the proposed Vogtle site. First, the Commission needs to be assured there will be adequate water supplies for the proposed reactors to continually operate over their proposed life and for the time when they are non-operational and non-productive but will still require water in safety mode. Disruptions of water flow due to drought conditions could have a negative impact on ratepayers if the reactors were unable to operate or were forced to throttle back. Also, water usage and water consumption at the new reactors can have adverse impacts on existing and future competing energy and non-energy uses for the same water supply. This can affect the livelihood and long-term growth potential for businesses and communities both upstream and downstream from the proposed reactors.

Q. **PLEASE EXPLAIN WHY WATER USAGE AND WATER CONSUMPTION AT THE PROPOSED REACTORS WOULD BE OF CONCERN TO RESIDENTS, BUSINESSES OR MUNICIPALITIES UPSTREAM OR DOWNSTREAM OF THE VOGTLE SITE.**

A. Upstream communities should be concerned about projected water consumption at the proposed Vogtle site because this consumptive use could negatively impact upstream reservoirs, such as Lake Hartwell, during drought conditions. Further, if river barging during construction activities is required to supply necessary components and supplies for the new Vogtle reactors, this barge traffic could require river flow significantly above the drought flow limits, again negatively impacting upstream communities. These construction activities could occur over the long term as outlined in a March 2008 e-mail from the Army Corps of Engineers Savannah District attached as Exhibit __SB-2.

Downstream communities should be concerned about project water consumption at the proposed Vogtle site because consumptive water loss especially during low river flows can pose significant negative impacts to water quality and aquatic resources. Additionally, downstream users include municipalities that use the Savannah River for drinking water. As contaminants are concentrated during drought conditions due to low

A. As new regulations are implemented to ensure greater security of on-site nuclear waste storage and as a federal nuclear waste repository becomes a less likely scenario, this regulatory uncertainty could adversely impact ratepayers in terms of unknown or unpredictable costs that the Company faces in dealing with nuclear waste management (e.g. costs associated with onsite dry cask storage of spent nuclear fuel in a more robust, long-term manner designed to be more resistant to terrorist attacks and acts of sabotage than the Company's currently proposed form of dry cask storage).

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THE POTENTIAL PROBLEMS POSED TO RATEPAYERS BY GEORGIA POWER'S PLANS TO KEEP HIGH LEVEL RADIOACTIVE WASTE ON SITE UNTIL A FEDERAL SITE IS FOUND?

A. The Commission should conduct an independent analysis of the long-term costs of storing high level radioactive waste on site for at least one hundred years and run cost comparison scenarios. This should be done using the methods currently proposed by Georgia Power as outlined in its Vogtle 3 and 4 Certification Application (i.e. to build an outdoor, on-site Independent Spent Fuel Storage Installation) as compared to other more robust methods that are being promoted or considered by some in the industry (e.g. Hardened On-Site Storage (HOSS), monitored-retrievable long term on-site storage, etc.). Additionally, since it is very unlikely that Yucca Mountain will ever become an operating federal waste repository, the Commission should analyze the ratepayer costs associated with other proposals including to reprocess nuclear waste, which is known to be very costly to ratepayers in countries where it is occurring, such as France. In addition, the Commission should require the Company to provide information about expected regulatory requirements and their associated costs for the handling of radioactive waste for new reactors. Lastly, after completing an independent analysis, the Commission should then require Georgia Power to do a cost comparison of all energy resource options with the costs of these different radioactive waste storage technologies reflected in those comparisons.

EXHIBIT "C-2"

BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

ON BEHALF OF GEORGIA POWER COMPANY APPLICATION FOR CERTIFICATION OF UNITS 3 AND 4 AT PLANT VOGTLE AND UPDATED INTEGRATED RESOURCE PLAN	)	DOCKET NO. 27800-U

DIRECT TESTIMONY OF DAVID A. SCHLISSEL
ON BEHALF OF
SOUTHERN ALLIANCE FOR CLEAN ENERGY

PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED

DECEMBER 19, 2008

reviewing construction and operating licenses for new nuclear plants. Under these circumstances, it is unclear whether a COL will be issued for Plant Vogtle Units 3 and 4 under the Company's proposed schedule that would allow construction to begin in time for Unit 3 to start operations in 2016 and Unit 4 in 2017. In fact, preliminary evidence suggests that the schedule for one of the first applications for a COL, i.e., by South Carolina Electric & Gas, has slipped by perhaps 8 months since the application was filed with the NRC.

- Construction cost uncertainty represents the most significant risk for a new nuclear power plant -- no nuclear power plant with an AP 1000 design has been constructed, let alone operated, anywhere in the world. Without such actual experience, the estimated costs of proposed units such as Plant Vogtle Units 3 and 4 are highly uncertain. The actual costs of the existing generation of nuclear power plants were, on average, between two to three times the costs that were estimated during licensing or at the start of construction. And this does not include the experiences of the most expensive nuclear power plants like Plant Vogtle Units 1 and 2 whose actual costs were more than ten times the initial cost estimated by Georgia Power.

- The first AP 1000 project to actually begin construction has just been started in China and has a scheduled completion date of late 2013. Currently unanticipated problems may be experienced during the construction or initial operation of this project or of the other initial AP 1000 plants that will require extensive, expensive and time-consuming modifications to the design of Plant Vogtle Units 3 and 4.

- Perhaps as many as 15 to 20 other nuclear construction projects (including five other AP 1000 projects with a total of ten plants in the Southeast alone) may be underway in the U.S. at the same time as Plant Vogtle Units 3 and 4. This will create competing demands on the manufacturing capacity required to fabricate large structural components and equipment, craft labor, engineering labor and project management personnel, NRC licensing and oversight resources, and required construction commodities.

- For these reasons, there also is significant uncertainty as to whether Georgia Power will be able to achieve the accelerated construction schedules that would be required for Plant Vogtle Unit 3 to start commercial operations in 2016 and Unit 4 in 2017.

- Contrary to what Georgia Power may claim, its contract with Westinghouse and Stone & Webster will allow for [REDACTED], the costs of which would have to be borne by the Company's ratepayers.

- The Company's need for the 1,000 MW of capacity and associated energy represented by Plant Vogtle Units 3 and 4 may be significantly delayed if

Q. Wouldn't the use of higher CO_2 prices improve the relative economics of Plant Vogtle Units 3 and 4 relative to natural gas-fired and coal-fired capacity?

A. Yes. However, the use of higher CO_2 prices also would improve the relative economics of DSM and renewable resources, as well.

Q. Have there been any significant changes in circumstances that justify a re-examination of Georgia Power's need for the capacity from Plant Vogtle Units 3 and 4?

A. The entire nation, including the state of Georgia, is in the midst of a financial crisis and an economic recession that is expected to be both long and deep. These crises can be expected to have major impacts on the Company's peak load and energy sales forecasts. Utilities around the nation, including the South, have reported sharp decreases in electricity sales.[40] For example, Duke Energy Carolinas third-quarter electricity sales were down 4.3 percent for the three month period ending September 30, 2008 from a year earlier.

The Commission should withhold granting the Certification requested by Georgia Power until it has had a full opportunity to evaluate the effect of the financial crisis and economic recession.

Q. Has the Company recently revised its capacity and energy needs as a result of updates to its energy and peak demand forecast and planned capacity additions?

A. Yes. Georgia Power submitted a short two page letter in Docket No. 24505-U on November 3, 2008 that updated its capacity and energy needs. However, no details were provided. [REDACTED]. It is unclear from this letter what adjustment Georgia Power had made to its projected annual peak loads or annual

[40] For example, see *Surprise Drop in Power Use Delivers Jolt to Utilities,* Wall Street Journal, November 21, 2008 and *Economy Slows Tennessee Valley Authority Sales,* Chattanooga Times Free Press, December 18, 2008.

II. JURISDICTION AND AUTHORITY

Georgia Power is a public electric utility serving retail customers within the State of Georgia. This Commission has jurisdiction over Georgia Power's Application for Certification pursuant to O.C.G.A. § 46-2-1 et seq., generally, and the "Integrated Resource Planning Act", O.C.G.A. § 46-3A-4 et seq. in particular.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

To ensure that the competing interests of all parties were properly considered, the Commission has carefully analyzed all evidence of record including the testimony given and the various exhibits entered by all the parties.

A. Stipulation by Staff and Company

As evidenced by the Stipulation, the Staff and Company have reached an agreement on nearly all of the material facts related to the construction of Vogtle Units 3 and 4. The breadth of the Stipulation demonstrates that the majority of this case has been resolved by agreement between the Stipulating Parties.

The Commission finds that the evidence before it in this proceeding show that the provisions of the Stipulation to which the Staff and Company agree is a reasonable result for those issues. The Commission further finds that the Stipulation fairly and reasonably balances the interests of the ratepayers and the Company. Therefore, the Commission approved the Stipulation presented by the Staff and Company and the provisions of said Stipulation as stated in enumerated parts 1, 2, 3, 4, and 8 of the Stipulation are incorporated herein by reference as findings of the Commission.

B. Incentive Mechanism Proposed by Staff

Staff asserts that the Commission should provide the Company an incentive to aggressively manage and control the costs incurred in constructing Vogtle Units 3 and 4. To

provide the incentive Staff proposed a mechanism that it argues will result in a fair allocation of risks and aligns the interests of the Company and the ratepayer and will also provide the Company with an incentive to more actively manage the costs of the project. Staff argues that the incentive mechanism it proposes establishes a ratemaking incentive through an adjustment to the return on common equity applied to the Vogtle Units 3 and 4 rate base, depending upon the completed cost of the Units as compared to the certification amount.

The mechanism proposed by the Staff establishes a bandwidth of plus and minus $250 million above or below the certification cost. If the in service cost of the project is less than the lower threshold, then the Company can earn an incentive return of 10 basis points in the return on common equity for every $100 million the in-service cost is less than the lower threshold of the bandwidth. If the completed cost of the project is more than the upper threshold, then the return on common equity would be reduced by 10 basis points for every $100 million the completed cost is over the upper threshold of the bandwidth.

Under Staff's proposal, the incentive return would apply only to the rate base amounts of the Units and would continue for the service lives of the Units. The proposed risk-sharing mechanism would also provide for complete recovery of all operating cost, depreciation, taxes and debt expense (principle and interest). Staff argues that under its proposal the Company would be allowed a full return of equity, which would guarantee that shareholders would not experience any loss on the project, only the return on equity or profit is subject to a possible upward or downward adjustment.

Staff believes that its incentive mechanism as proposed sets the correct balance between ratepayers and shareholders. Staff's position is that its proposal provides for minor adjustments to the return that the Company is authorized to earn on Vogtle Units 3 and 4, providing the Company with the incentive both to provide its best cost analysis to the Commission when seeking certification and to diligently manage the costs of the units. .

Georgia Power Company produced a number of arguments supporting their recommendation that the Commission should reject the incentive mechanism proposed by the Staff. First, the Company argued that the proposed mechanism is contrary to Georgia law as it would ignore any determination of prudence by the and thus, would penalize the Company's exercise of sound project management. The Company states that O.C.G.A. § 46-3A-7 provides

the statutory basis for the Commission to make ongoing determinations of what projects costs or investments may be excluded from rate base. Such basis for exclusion requires a Commission finding of "fraud, concealment, failure to disclose a material fact, imprudence or criminal misconduct." (O.C.G.A. 46-3A-7(a)) It is the Company's position that a reduction to the allowed return on common equity results in a disallowance of plant investment without the Commission making the findings required under O.C.G.A. § 46-3A-7.

The Company further argues that the Staff's proposal would automatically disallow costs for the very operation of the EPC contract indices which were found reasonable by Staff in the Stipulation. Once again the statutory provisions of O.C.G.A. § 46-3A-7 provides for a mandatory oversight by the Commission of the construction of a certified plant through periodic reviews, approval and verifications of all costs, and the Stipulation sets out the details of that procedure.

A third argument raised by the Company is that the proposed mechanism violates the U.S. Constitution by depriving the Company of the ability to recover all of the properly incurred costs associated with the addition of Vogtle Units 3 and 4 and would deprive the Company of Due Process. Such deprivation resulting from a reduction of the return the Company could earn on the plant would be contrary of the holdings of *Bluefield Water Works and Improvement Co. v. Public Service Comm'n.*, 262 U.S. 679 (1923) and *Federal Power Comm'n. v Hope Natural Gas Co.*, 320 U.S. 591 (1944) by reducing the true cost of equity to a level below comparable investments and by reducing the incentive of investors to proved capital knowing that the potential exists that the investment will earn a lower return.

Finally the Company argues that creates perverse incentives to build a less efficient or shoddy plant. Further, the Company argues that the proposed mechanism does not contemplate changes in construction that could be beneficial to customers. The Company also points out that the rigidity of the staff's proposed mechanism does not accommodate increases in cost of the Units that may be required by future governmental and regulatory causes. Also, the mechanism proposed by the Staff is an untested experiment, unlike any other incentive mechanism and could prevent the development of needed base load generation.

There is justifiable concern that the in-service cost of Vogtle Units 3 and 4 will exceed the estimates presented in this case. It is the nature of such large construction projects and the

history of nuclear construction programs bears that out. While the Commission believes that the Company should be, and will be, held accountable for the final construction costs, there certainly exists the potential that increases to the cost of construction might be stem from events or causes over which the Company has no control. As the incentive mechanism proposed by the Staff would look simply at the in-service cost of the units and not differentiate as to the causes for cost increases over the certified cost the Commission finds that the proposed mechanism is flawed and will not be adopted. However, the question of accountability continues to exist and the Commission believes that a properly constructed incentive mechanism will aligned the risks of project overruns without sacrificing project efficiency and safety. Therefore, the Commission finds that it is in the best interest of the Company and its ratepayers that such properly constructed incentive mechanism be put in place at these early stages of the Plant Vogtle Units 3 and 4 construction project. To that end the Commission directs the Staff and the Company to meet in a collaborative effort to develop a mechanism crafted as such and report to the Commission not later than 180 days after the date of this Order with such a mechanism for the Commission consideration.

C. Construction Work In Progress in Rate Base

In its application the Company requested that the Commission enter an order in this proceeding that would allow the Company to recover on-going financing cost attributable to the construction of Vogtle Unites 3 and 4 through retail base rates. The Company proposed the inclusion of the CWIP related to Plant Vogtle Units 3 and 4 in rate base for the setting of new base rates determined during the Company's next base rate proceeding, to be filed in July 2010. Rates determined in that proceeding would be effective January 1, 2011.

The amount of CWIP in rate base will be based on calendar year budgeted expenditures and adjusted annually. Differences between actual and forecasted costs, once approved by this Commission, would be trued-up in the subsequent period. Allowance For Funds Used During Construction ("AFUDC") would be applied to under-recovered costs, with any over-recoveries returned to customers with interest.

The Company also proposed a new tariff, the Nuclear Construction Cost Recovery ("NCCR") rate. The NCCR tariff would be calculated consistent with the traditional regulatory computation of rate base multiplied by the Company's weighted average cost of capital.

During the pendency of this proceeding, the Georgia General Assembly passed Senate Bill 31 ("SB 31") relating to the accounting for and recovery of finance costs for nuclear construction. The Company argued that the question of whether to include CWIP in rate base is moot based on the passage of SB 31. Though SB 31 had not yet become law by the date the Commission reached its decision in this proceeding, the Company argues that its request to use CWIP in rate base treatment for Vogtle Units 3 and 4 precisely follows the treatment detailed in SB 31 and therefore should be approved by the Commission.

The Staff argued against the recovery of construction financing cost through the utilization of CWIP. Rather the Staff recommended that the Commission continue with what the Staff characterized as the "traditional" approach of allowing the Company to accrue AFUDC while the project is under construction. Upon completion the total project, prudently incurred and certified construction costs as well as associated financing cost would then be place in rate base. The Staff argued that the Company recovers its full cost whether the "traditional" AFUDC or the Company's proposed CWIP methodology is utilized, but that the CWIP methodology costs the ratepayers more than would utilizing the AFUDC methodology.

Staff advanced the argument that recovery of cost prior to the commercial operation of the project results in current ratepayers, who may never receive power from the units, subsidizing future ratepayers. It is argued that use of the Company's proposed CWIP methodology violates the "matching principle" that ensures the basic fairness that the costs of a plant are recovered from those ratepayers that receive the benefit of the plant. Under that principle, current ratepayers who have paid under the Company's CWIP proposal but who leave Georgia Power's system for whatever reason, before Vogtle Unit 3 and 4 generates electricity stand to be harmed under the Company's CWIP proposal.

Other arguments by the Staff opposing the Company's CWIP proposal are that claims of possible down rating of Company bonds is not supported by the evidence presented and that the Commission should not make the decision on whether to allow CWIP until the Company's next base rate proceeding. Staff argued that even if the Commission were to conclude that CWIP may

have merit in this case, there is no need to decide that question at this time. The Commission will have the opportunity in the Company's 2010 rate case to decide what recovery methodology is most appropriate for the financing costs associated with Vogtle Units 3 and 4. A decision in the rate case will be issued prior to 2011 and the Company is not seeking to recover financing costs for Vogtle Units 3 and 4 in base rates until 2011. In the event that the Commission ultimately agrees with the Company that the CWIP approach should be employed to recover financing costs associated with the two Vogtle units, the Commission could grant the same relief in the 2010 rate case that the Company is requesting in this docket. Therefore, waiting until 2010 does not in any way disadvantage the Commission or limit its options, rather, addressing the CWIP issue in the 2010 rate case would offer the significant benefit of enabling the Commission to review more and better information to guide its decision-making.

The Staff further recommended that should the Commission determine that the Company is permitted to recover construction financing costs prior to commercial operation that the Commission utilized an alternative rate making approach known as "mirror CWIP." Under the "mirror CWIP" methodology, though the Company would be allowed to include CWIP in rate base, the amounts recovered as the result of CWIP would be placed into a regulatory liability account which in turn could be used by the Commission to level the revenue requirements of the units once they achieve commercial operation. The leveling of revenue requirements through the amortization of the regulatory liability could be structured so that it occurs over approximately the same number of years as the recoveries from ratepayers during construction.

The Company argued that the "mirror CWIP" proposal would expose Georgia Power customers to rate shock and deprive customers of the interest cost savings included in the Company's proposal. Moreover, the revenue requirements for Vogtle Units 3 and 4 would be approximately 20 to 25 percent higher over the life of the plant under "mirror" CWIP than with true CWIP in rate base as proposed by the Company. In sum, customers will not reap the same benefits as they would under the Company's proposal. Additionally, the Company states that while the Staff proposed "mirror CWIP" proposal may yield lower rates in the earlier years of commercial operation, once the amortization of the regulatory asset disappears, rates increase for several years before stabilizing.

The passage of SB 31 significantly altered the framework under which the Commission operates as it relates to the recovery of construction financing costs on nuclear power plants. SB 31 mandates the recovery of financing costs and such recovery may begin within five years of the Commission's certification of the nuclear generating facility. In essence the passage of SB 31 removes the issue of recovering financing cost by use of the CWIP approach from this proceeding, though at the date of the Commission's decision in this Docket, SB 31 had not become law.

Notwithstanding the passage and enactment of SB 31, the Commission finds that the Company's proposed inclusion of CWIP relating to the Vogtle Units 3 and 4 is supported by the evidence before the Commission. Further, while the Commission has some latitude with regard to the regulatory accounting treatment of revenues resultant from CWIP, the Commission is not persuaded that the "mirror CWIP" approach advanced by the Staff in this proceeding holds beneficial for the Company or the Company's ratepayers. Therefore, the Commission rejects the Staff's recommendation to utilize the "mirror CWIP" approach.

IV. OTHER RECOMMENDATIONS

SACE was generally opposed to certification of Vogtle Units 3 and 4 and made suggestions regarding the Company's Updated IRP. In summary, SACE recommended that the Commission:

1. Deny certification of Vogtle Units 3 and 4;
2. Require the Company to submit an IRP conforming to O.C.G.A. §46-3A-1(7);
3. Require the Company to develop and pursue more flexible options as a comprehensive plan to be filed as its 2010 IRP;
4. Require the company to comply with Rule 515-3-4-.07(2)3(xi);
5. Require the Company to consider direct impact due long-term water supply problems associated with operation of Plant Vogtle;
6. Require the Company to institute immediate action to set up a long term back-up plan to protect ratepayers in the highly likely event that construction of Vogtle 3 and 4 is deemed by a future Commission to be uneconomic.

In its Post Hearing Brief, Georgia Power argued that the Stipulation does not address the water issue but that there is no evidence that water supply will affect the performance of the plants in any way.

Resource Supply Management argued that (1) the whole IRP process should be abolished; (2) Georgia Power's rates continue to send false price signals; and (3) Independents not affiliated with Georgia Power should build 100% of new generation.

The Commission declined to adopt any of the recommendations put forth by SACE or Resource Supply Management, opting rather to adopt the Stipulation instead.

V. ORDERING PARAGRAPHS

WHEREFORE IT IS ORDERED, that the Commission adopts and approves the Stipulation entered into by the Company and Staff and

ORDERED FURTHER, Georgia Power Company's application for the certification of Vogtle Units 3 and 4 as modified by the Stipulation between the Commission Staff and Georgia Power Company is approved.

ORDERED FURTHER, that the certified in-service cost of Georgia Power Company's interest in Plant Vogtle Units 3 and 4 shall b e $6,446,564,927.

ORDERED FURTHER, that Georgia Power Company's selection of the AP1000 technology is reasonable and prudent.

ORDERED FURTHER, that the enginecring, procurement and construction agreement entered into by Georgia Power Company is reasonable.

ORDERED FURTHER, that Georgia Power Company shall file with the Commission semiannual and monthly monitoring reports as describe in part 2 of the Stipulation.

ORDERED FURTHER, that within 30 days of this Order Georgia Power Company shall develop and file with the Commission a records retention program for records relating to the Vogtle construction project.

ORDERED FURTHER, that Georgia Power Company's 2008 Integrated Resource Plan Update and Budget 2009 forecast are approved as filed.

ORDERED FURTHER, Georgia Power Company's plan for the installation of emission controls at its Plant Branch and plant Yates is approved.

ORDERED FURTHER, that Georgia Power Company's request to place Vogtle Units 3 and 4 Construction Work in Progress into retail rate base in the rate case to be filed in 2010 is granted. The Commission Staff's proposal to utilize "mirror CWIP" is denied. However, any party may propose in the 2010 rate case a different or better form of mirror CWIP, or any other accounting method which would benefit customers so long as it does not increase the projected service cost of Vogtle Units 3 and 4.

ORDERED FURTHER, that Georgia Power Company and Commission Staff shall work together to develop a risk sharing mechanism that will provide some level of protection to

ratepayers in the event of significant cost overruns, but also not penalize the earnings on Units 3 and 4 if and when overruns are due to mandates from governing agencies.

ORDERED FURTHER, that within 180 days of the date of this Order the Company and Staff shall report the results of their meeting regarding an incentive mechanism to the Commission.

ORDERED FURTHER, that all findings of fact and conclusions of law contained within the preceding sections of this Order are hereby adopted as findings and conclusions of this Commission;

ORDERED FURTHER, that a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission; and

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of March 2009.

Reece McAlister
Executive Secretary

3/30/09
Date

H. Doug Everett
Chairman

03/30/09
Date

ATTACHMENT 1

Stipulation

Georgia Power Company ("Company"), and the Public Interest Advocacy ("PIA") Staff agree to the following:

1. The Commission should certify the proposed Vogtle Units 3 and 4 as set forth in the Company's certification application with the modifications specified in paragraphs 2 through 7 below. The certified in service cost of Georgia Power's interest in the proposed Vogtle Units 3 & 4 shall be $6,446,564,927. The Commission should find that the selection of the AP1000 technology was reasonable and prudent, and that the EPC Agreement is reasonable. The Company shall ensure that the Consortium is performing in accordance with the standards and requirements set forth in the EPC Agreement.

2. The Company will file semiannual monitoring reports with the Commission as provided by O.C.G.A. § 46-3A-7(b) and shall provide to the Commission monthly status reports on the construction work in progress. In addition, the Company shall develop a records retention program acceptable to the Commission for records relating to Vogtle construction. The Company shall file its proposed records retention program with the Commission within 30 days of the date of an order accepting this Agreement.

   a. The content of the monthly status reports and semiannual monitoring reports shall be as agreed to from time to time by the Company and the Staff, or, if those parties fail to agree on the content, as ordered by the Commission. Each monthly status report shall be filed by the 20th of the following month. The semiannual monitoring report all include any proposed revisions in the cost estimates, construction schedule, or project configuration, as well report on actual costs incurred in the period covered by the report. The parties agree that the monthly status reports do not constitute monitoring reports within the meaning of O.C.G.A. § 46-3A-7(b).

b. The Company agrees to pay up to a total of $600,000 per year for each year of construction for an independent Construction Monitor ("CM") to assist the Staff in monitoring the construction work in progress as provided by O.C.G.A. § 46-3A-7(b). This amount may be increased at any time by the Commission upon agreement of the Staff and the Company. The CM will be retained by the Company under a contract that is acceptable to the Commission. In order to help assure independence, the CM shall be selected by and report to the Commission. The Company and the Staff may recommend persons or entities to serve as the CM. The Commission shall establish the minimum qualifications and requirements for the CM and shall select the CM. The amounts. paid under this provision shall be capitalized as part of the in-service cost of the units.

c. The Company's first semiannual monitoring report shall be filed on August 31, 2009 and shall cover any proposed revisions in the cost estimates, construction schedule, or project configuration and actual costs incurred during the preceding January through June. The second shall be filed on February 28, 2010 and shall cover any proposed revisions in the cost estimates, construction schedule, or project configuration and actual costs incurred during the preceding July through December. Each following monitoring report shall be filed on those dates (August 31 and February 28) in the following years until both Units 3 and 4 have reached commercial operation and shall cover the corresponding periods. If the date for filing a semiannual monitoring report occurs on a weekend or holiday, the filing shall be made on the next subsequent business day.

d. In each semiannual monitoring report, the Company shall provide the following information:

1. The reasons for any additional change in the estimated costs of the units since the process began.
2. A description of any cooperative actions between other builders of nuclear units in the southeast to address labor, crafts, engineering and management requirements.

3. An explanation of how the indices used in the EPC contract are tracking.
4. Any updated estimate of on site spent fuel storage costs, including the costs for dry storage of spent fuel for an extended period of time after shutdown, and any updated calculation of spent fuel storage costs assuming Yucca Mountain is never available.
5. The status of the Company's loan guarantee application at the Department of Energy and to the extent that application is granted, then the Company shall also report on the impact it has or would have on the final expected in service cost of the units.
6. Whether the Company is using trust preferred financing and the impact it has or would have on the expected in-service cost of the units.
7. The extent to which the Company is using short terms debt and the impact it has or would have on the expected in-service cost of the units.
8. An update of the estimated in-service cost and projected date of commercial operation of both Units.
9. A description of all major sources of changes (both increases and decreases) to the in-service cost and sources of change in commercial operation dates, if any.
10. The status of the Company's combined construction and operating license (COL) application at the Nuclear Regulatory Commission.
11. The status of all other significant permits and licenses required from other governmental agencies.
12. The status of procurement, engineering, fabrication, transportation and erection of major equipment.
13. The status of transportation links for heavy forgings and modules.
14. An updated comparison of the economics of the certified project to other capacity options, and
15. The Company will be under a continuing obligation to supplement its response to PIA Staff DR STF-TN-1-2 by ensuring that the financing data reflected in the schedules attached to that DR response reflect the most current and updated information at the time of each semi-annual monitoring report. In addition, the Company will provide the most current information shared with each of the Rating Agencies.

The Commission should approve the Company's 2008 Integrated Resource Plan Update ("Updated IRP") as well as its Budget 2009 forecast as filed. The Company expects to complete its Budget 2010 Forecast in the Fall of 2009 and shall file that with the Commission as part of its 2010 W .

4. The Company will withdraw its request for deferral of costs incurred in developing and evaluating coal-fired generation.

ATTACHMENT 1

5. The parties can not reach an agreement as to whether the Commission should grant, or grant in part, or deny, the Company's request to include the project's construction work in progress ("CWIP") accounts in rate base. The parties agree that on March 17, 2009, the Commission should approve this Agreement and then separately decide the question of whether to include the project's CWIP accounts in rate base. Staff urges the Commission to deny that request. In the event that the Commission determines that some amount of CWIP in rate base is appropriate, Staff urges the Commission to adopt Staff alternative proposals of partial CWIP or Mirror CWIP in lieu the Company's NCCR rider proposal. The Company urges the Commission to grant the request to include the project's CWIP accounts in rate base and to approve the NCCR rider proposal. The Parties agree to support this Agreement in their briefs to be filed on March 6, 2009,. but agree that each may argue their respective positions on the question of whether the Commission should grant, or grant in part, or deny, the Company's request to include the project's CWIP accounts in rate base.

6. The Parties further agree that after the Commission decides whether to include the project's CWIP accounts in rate base, SB 31, which is currently under consideration in the General Assembly, has the potential to impact whether and how the Company will recover the project's CWIP accounts in rate base, if it is allowed at all. Therefore, the Parties agree that, if SB 31 becomes law, any party that believes that SB 31 requires that the Commission modify its decision may petition the Commission to initiate a proceeding to conform the order to the requirements of the new law.

7. The parties also can not reach an agreement as to whether the Commission should adopt Staff's proposed Incentive Plan. The parties agree that on March 17, 2009, the Commission should approve this Agreement and then separately decide the question of whether to adopt, adopt in part, or deny Staff's proposed Incentive Plan. Staff urges the Commission to approve that plan. The Company urges the Commission to not approve that plan. The Parties agree to support this Agreement in their briefs to be filed on March 6, 2009,

but agree that each may argue their respective positions on the question of whether the Commission should adopt, or adopt in part, or deny, the Staff's proposed Incentive Plan. By agreeing that this issue should be decided separately by the Commission, the Company is not waiving its right to assert that it may reject a Certificate conditioned on approval of the Staff's proposed Incentive Plan or any similar plan, nor is the PIA Staff waiving its right to assert that the Company must accept such a certificate. Specifically, the Company retains its right to appeal any adverse decision pertaining to Commission's resolution of the Staffs proposed Incentive Plan.

8. The Commission should approve and find prudent the Company's plan to install emission controls at Plants Branch and Yates.

9. The parties agree that the issue raised by PIA Staff concerning whether the verification of costs as part of a semi annual monitoring report constitutes a finding of prudence or not is a Legal question which is not resolved in this Stipulation and should not be resolved by the Commission at this time. If the issue ever becomes ripe for decision, each party reserves the right make its own legal arguments on this question at that time

10. This agreement resolves all of the issues in dispute in this docket except those set out in paragraphs 5, 6, 7 and 9. Nothing contained in this Agreement may be used as evidence in any subsequent case except for the purpose of enforcing the terms of this agreement. Nothing contained in this Agreement shall constitute precedent in any subsequent proceeding.

Agreed to this day of March, 2009