Memorandum

To: All Commissioners; Deborah Flannagan; Tom Bond

From: Commissioner Advisory Staff (Dennis Sewell, Pandora Epps, Nancy Gibson, Allison Morris, Blair Fink, and George Brown)

Date: December 20, 2017

Subject: Docket No. 29849 Georgia Power Company's Seventeenth Semi-Annual Vogtle Construction Monitoring Report – **Advisory Staff's Recommendations**

Georgia Power Company ("Georgia Power" or "Company") filed its Seventeenth Semi-Annual Vogtle Construction Monitoring ("VCM") Report pursuant to its Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4 in Docket No. 27800 and in accordance with the Procedural and Scheduling Order ("PSO") of Docket No. 29849. O.C.G.A. § 46-3A-7(b) states the Commission shall verify and approve or disapprove expenditures made pursuant to the certificate and shall approve, disapprove, or modify any proposed revisions.

The PSO identified two issues to be resolved during this 17th VCM proceeding:

1. Whether the Commission should verify and approve or disapprove the expenditures as made pursuant to the certificate issued by the Commission.

2. Whether the Commission should approve, disapprove, or modify the Company's proposed revisions in the cost estimates, construction schedule, or project configuration and whether the proposed costs are reasonable.

The PSO in its ordering paragraph on page 11 states "that nothing in this Order or subsequent proceeding modifies the Prudency Review Stipulation agreed to by the Company and Staff and approved by this Commission on January 3, 2017."

The Company's requests in this Seventeenth ("17th") VCM Report, which covers the period of January 1, 2017 through June 30, 2017, along with the Commissioner Advisory Staff's recommendations are outlined below.

VERIFICATION AND APPROVAL OF EXPENDITURES

PSO Issue 1: Verification and Approval of Expenditures Made Pursuant to the Certificate in Accordance with O.C.G.A. § 46-3A-7(b).

The Company requests verification and approval of the expenditures incurred during this reporting period of $542 million. (17th VCM Report at pp. 6 & 100).

Public Interest Advocacy ("PIA") Staff disagrees with the Company and recommended only $44 million be verified and approved. PIA Staff further stated that "the liens and pre-petition amounts owed to Westinghouse Electric Corporation (WEC) contractors of $498 M" should not fall upon the ratepayers. (Tr. 1562).

Concerned Ratepayers of Georgia ("CRG") concurs with Staff Witnesses Jacobs, Roetger and Smith's recommendation that the Commission disallow $498 million for the liens and pre-petition amounts owed to Westinghouse contractors." (CRG's Brief at p.1)

The Company asserts "The Commission should reject PIA Staff's recommendation to verify and approve only $44 million of the expenditures for the VCM 17 Reporting Period." The Company's expenditures requests included approval for "$414 million in interim payments and liens incurred during the Reporting Period, which includes both pre-petition and post-petition amounts. PIA Staff has not provided an adequate quantification or consistent logic to support its recommendation that the interim payments and liens should not be verified and approved. It is illogical for PIA Staff to approve of the Company's decision to enter the IAA, Services Agreement and Guaranty Settlement but disallow costs incurred pursuant to those agreements." (Company's Brief at pp.20-21).

Upon review of the Company's 17th VCM Report in regards to expenditures during the Reporting Period, post-petition as well as liens and pre-petition amounts are included in the reported expenditure request. Post-petition amounts exceed Staffs' recommendation of $44 million; in fact, the post-petition amount is greater than $200 million. During cross examination by the Company's attorney, Staff Witness Roetger was asked "If that included some amount of post-petition work you would not suggest that be disallowed, would you?" Staff Witness responded with "I would have to meet with the rest of the team and our attorneys to make that determination. I can't make that unilaterally." Company attorney then asked "But when you filed your testimony you thought that it was all pre-petition, right". Staff Witness Roetger responded with "I did. That was my understanding, yes." (Tr. 1730).

It is unclear from the record whether or not PIA Staff Witness Roetger intended the entire $498 million be excluded if that amount included post-petition amounts.

However, it is clear from PIA Staff testimony that "expenditures over the certified amount would not be verified and approved under the VCM 8 Stipulation. VCM 8 Trans. pp 425-426." PIA "Staff therefore recommends that cost in excess of the certified amount not be 'approved' by the Commission in this proceeding." (Tr. 1558). According to the pre-filed testimony of PIA Staff Witnesses Roetger and Jacobs, "The downside (for the Company) of not amending the certificate is that the certified amount has not changed and expenditures above the certificated amount therefore cannot be 'approved' since they are not 'made pursuant to the certificate.' Since the expenditures above the certificate amount are not 'approved', they are not deemed reasonable under 43-3A-7(c) and the burden of proof on prudency for such amounts does not automatically shift from the Company to Staff." (Tr. 1560-1561). PIA Staff Witnesses state that "O.C.G.A. 46-3A-7(b) only provides that the Commission 'shall verify and approve or disapprove expenditures made pursuant to the certificate.'" (Tr. 1559).

Therefore, Advisory Staff recommends that the Commission verify and approve the expenditures made by the Company up to the certified amount of $4.418 billion pursuant to its Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4 through June 30, 2017. Any expenditures in excess of the certified amount is disapproved for this proceeding. The Company will have an opportunity to seek Commission approval of those amounts during an amended certificate proceeding. *The Commission is only confirming the expenditures made in association with the Vogtle Project during this reporting period and it does not preclude the Commission from subsequently excluding those expenditures from rate base upon a finding of fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct.*

GO/NO-GO

The Company recommends that the Project be continued based on the following assumptions about the regulatory treatment of this recommendation:

1. Approve new cost and schedule forecast and find that it is a reasonable basis for going forward.
2. The January 3, 2017 Stipulation remains in full force and effect, including Company retaining burden of proving all capital costs above 5.68 B were prudent.
3. Recognize that the certified amount is not a cap, and all prudently incurred costs will be recoverable.
4. Failure of Toshiba to pay the Toshiba Parent Guaranty, failure of Congress to extend the PTCs, or failure of the DOE to extend the DOE Loan Guarantees will not reduce the amount of investment the Company is otherwise allowed to collect.

5. As conditions change and assumptions are either proven or disproven, the Owners and the Commission may reconsider the decision to go forward. (17th VCM Report at pp. 6, 10 & 11).

PIA Staff recommends "the Project go forward only if the Commission modifies the Company's proposed conditions [assumptions]". (Tr. 1787). PIA Staff "recommends that the reasonable Total Project Cost be set to no more than $9.0 billion, consisting of a Capital and Construction Cost of $5.8 billion and Financial Cost of $3.2 billion." (Tr. 1787). As stated earlier PIA Staff recommends "that the Commission not make a reasonable determination of costs until Unit 4 achieves commercial operation." (Tr. 1506). PIA Staff states "if the Commission declines to adopt Staff's going forward recommendations… that the Project be cancelled and that the Commission decline to prematurely provide assurance of recovery in this proceeding." (Tr. 1787). PIA Staff recommends that a subsequent proceeding be established for purposes of reviewing the prudence and reasonableness of actual costs incurred and determining the recovery of those costs.

Georgia Interfaith Power and Light and Partnership for Southern Equity ("GIPL/PSE') Witness Cox testified that the forecast of capacity and energy needs used to justify the Vogtle units during certification was woefully inaccurate. In addition, the revised forecast of capacity and energy needs is not reliable because it makes unreasonably high estimates of load growth far in the future; He concludes that energy efficiency, demand response, solar generation, and renewed power purchase agreements (PPAs) are much more cost-effective options for meeting future demand; Further, the completion of the Vogtle units puts shareholder value before the best interests of Georgia Power customers. Particularly the low income customers to whom the bill impacts are significant and burdensome. Based upon the results of Dr. Cox' analyses and conclusions, GIPL/PSE recommends that the Commission direct the Company to suspend construction of the Project and preserve the site for possible future completion. (Tr. 2260).

Georgia Watch urges the Commission to cancel Vogtle 3 & 4 as uneconomic for ratepayers going forward unless the Commission can impose cost disallowances on the Company and a prospective cap on further increases that make the Project economic for ratepayers. The admitted risks of further cost escalation are likely to make it even less economic if the project proceeds. (Georgia Watch's Brief at p. 14)

Georgia Industrial Group ("GIG") and the Georgia Association of Manufactures ("GAM") supported the construction of Vogtle 3 and 4 and continues to do so. As stated in their brief, "Despite the increased cost and uncertainty, GIG and GAM favor completion of Units 3 and 4. It is important to remember that, while the Commission would be declaring a new cost estimate as "reasonable" in making its decision, it would not be making an ultimate decision regarding prudency of the expenses incurred. A

full prudency review will take place later with an opportunity for all parties to make their views known. Reserving judgment on prudency is the appropriate course of action in this case. We are hopeful the Commission can issue an order that will protect ratepayers while allowing construction of Vogtle 3 and 4 to be completed." (GIG and GAM's Brief at pp. 1-2).

NEI Witness Korsnick testified that constructing new nuclear power plants in the United States is vital for this safe, reliable, clean air electricity source to maintain its important role in our nation's energy mix. Nuclear energy is the only greenhouse gas emission-free source that can safely and reliably generate electricity 24/7. Further, each nuclear plant built in the United States is part of the supply chain that includes the skilled workers and technicians who design, build, and operate that plant, as well as the other individuals and businesses, small and large, that support that plant and the nuclear industry at large. NEI strongly supports deployment of new nuclear generating capacity in the United States, including the Vogtle project, Admittedly, no testimony was offered to address specific economic considerations relevant to the Commission's verification of expenditures and decisions regarding the proposed cost forecast and schedule revisions. Rather, Witness Korsnick provided the Commission with information demonstrating the unique benefits of nuclear as a source of electricity generation. (Tr. 2131-2132).

In its post-hearing brief, the Company asserts that "The Company evaluated the risk and uncertainties and, based upon the best information available at this time, determined that completing the Project is in the best interests of customers. The Company's economic evaluation reflects both current circumstances and potential future developments. The Company recognized that a full evaluation of the go/no go decision required that it make reasonable assumptions to capture the impact of many unknowns in the economic evaluation." (Company's Brief at pp. 7-9). The Company goes on to explain the "updated forecast" incorporated in VCM 17 continues to show a baseload capacity need. Although "Renewables and DSM provide customers with cost-effective, clean, reliable energy, they are inadequate alternatives for a baseload resource." (Company's Brief at p. 10).

Based on the evidence in the record, Advisory Staff recommends that the Project should go forward only if the Commission recognizes that continuation of the Project should leave ratepayers no worse off than if the Project was cancelled. Advisory Staff agrees with PIA Staff that, at this time, any cost above $9 billion cannot be considered reasonable. Consequently, Advisory Staff recommends that the Commission use breakeven as an estimate of reasonableness in making its go/no-go decision. PIA Staff's breakeven scenario allows the Company to finance the Project through November 30, 2021/2022. Advisory Staff's recommendation does not preclude the Company from filing for an amended certificate if the

actual costs exceed $9 billion or from recovery of those costs if the Commission so decides at a later date.

If the Commission declines to adopt Advisory Staff's going forward recommendation, which is PIA Staff's going forward recommendations, Advisory Staff recommends that the Commission should allow the Company to decide whether or not to cancel the Project. Any costs above $9 billion should be solely a Company decision. Additionally, if the Project is cancelled, Advisory Staff agrees with PIA Staff that the Commission should decline to prematurely provide assurance of recovery in this proceeding. Advisory Staff further agrees that a subsequent proceeding be established for that purpose to review the prudence and reasonableness of actual costs incurred and determination of recovery of those costs.

REVISED COST AND SCHEDULE

PSO Issue 2: Approval, Disapproval, or Modification to any Proposed Revisions in the Cost Estimates, Construction Schedule, or Project Configuration Made Pursuant to the Certificate in Accordance with O.C.G.A. § 46-3A-7(b).

New Cost And Schedule

"The Company requests that the Commission approve this revised cost estimate and construction schedule pursuant to O.C.G.A. § 46-3A-7(b)." (17th VCM Report at p. 6). The Company states "The most reasonable schedule is that Unit 3 will reach its Commercial Operate Date ("COD") in November 2021 and Unit 4 will reach COD in November 2022. That schedule represents an additional 29 months for each unit from the currently approved schedule." "Georgia Power's share of the total capital cost of the Project is now forecasted to be $8.77 billion." (17th VCM Report at p. 7).

PIA Staff states "The Company is currently working to a +21-month schedule versus the requested +29-month 'regular' schedule. The Company considers the difference between the +21-month schedule and the +29-month to be schedule contingency. In addition, the estimated capital cost to complete the Project contains a total contingency of $1.159 billion. Whether or not this amount of contingency is sufficient to account for the assumptions and risks identified for the Project cannot be determined at this time." (Tr. 1497). PIA Staff further states "the risks associated with 8 additional months of construction under the Company's regulatory schedule contingency should remain with the Company at this time and should not be shifted to ratepayers."

PIA Staff goes on to state that "the additional delay associated with the schedule contingency cannot be assumed to be reasonable and prudent." (Tr. 1498). "Staff believes it is not appropriate to allocate all of the Company's forecasted cost increase

to ratepayers." (Tr. 1499). PIA Staff emphasize that costs for payment of liens, potential loss of tax benefits, the Company's "cost related to oversight and management beyond December 31, 2020" and "financing costs related to mobilization beyond December 31, 2020" should not be allocated to ratepayers. (Tr. 1499-1501).

PIA Staff "recommends that the reasonable Total Project Cost be set to no more than $9.0 billion, consisting of a Capital and Construction Cost of $5.8 billion and Financial Cost of $3.2 billion." (Tr. 1787). As stated earlier PIA Staff recommends "that the Commission not make a reasonable determination of costs until Unit 4 achieves commercial operation." (Tr. 1506).

In pre-filed testimony, PIA Staff states "Staff concludes that completion of the Project is no longer economic on a to-go (forward looking) basis given the additional costs and schedule delays, even without considering the conditions requested by the Company." In supporting the reasonableness of its recommendation, PIA Staff developed other estimates to test the reasonableness of its quantification. Table 9 at Tr. 1830 shows four supporting estimates, "Breakeven" is identified as Estimate D. PIA "Staff's breakeven quantification is a simple one. If a decision is made, then ratepayers should be no worse off than if the Project was cancelled. Staff conducted a 'breakeven' analysis, on a cost to complete basis, to determine the maximum capital and financing cost that could be spent on the Project for it to be breakeven." (Tr. 1829-1830).

"Under this breakeven scenario, Staff has calculated that the Company could spend $5.7 billion on the Project, and finance it through Nov. 30, 2021/2022 at an estimated financing cost of $3.2 billion. Together, the breakeven approach leads to an estimate of $8.9 billion as the reasonableness estimate." (Tr. 1829-1830). Under cross-examination regarding the breakeven amount, PIA Staff Witness Kollen stated "Anything in excess of $9 billion would not be economic compared to cancellation." (Tr. 1934).

Georgia Watch recommends in its Post-Hearing Brief that The Commission deny the Company's request for verification and approval of a total project cost estimate of $12.2 billion. If the Commission is convinced by GPC that there is no turning back, whatever the cost, then the Commission must allocate the risks to make it fair for Georgia's ratepayers, particularly low-income ratepayers. It has been shown that Georgia Power profits from delay. The Commission should not determine the reasonableness of future expenses now and instead should hold that determination in abeyance to be considered along with prudence when the plants are completed and operational. To do otherwise violates the law and prior rulings and orders. (Georgia Watch's Brief at p. 14)

NABTU Witness Booker testified that "the Commission approve Georgia Power's cost and schedule forecast, and permit the completion of Units 3 and 4." (Tr. 2099).

Nuclear Watch South ("NWS") Witness Pokalsky concluded that there was a more accurate and direct cost analysis that could have been performed. His opinion is that PwC's Qualitative Risk Analysis (QRA) which was used to create Triangle Distributions (Best Outcome, Most Likely Outcome and Worst Outcome) was based on major assumptions, undervalued the probability of the best and worst case outcomes, and is a serious concern. He cites the lack of data and the fact that all data used was supplied by the Company. Further, a more robust cost analysis using plentiful historical and current data (e.g. a Program Evaluation and Review Technique (PERT)) would have yielded more information and a more accurate cost estimate. (Tr. 2399-2400). Based on his analysis, NWS Witness Pokalsky finds that it is not a sound financial decision for the Commission to allow the project to move forward. (Tr. 2408).

Southern Alliance for Clean Energy ("SACE") Witness Bradford urges the Commission not to find the new cost and schedule to be a reasonable basis for going forward at this time. Mr. Bradford argues that the Company should provide an evaluation of the alternatives adequate to making such a determination. Nor should the PSC commit to allowing the Company to recover its actual investment to date in Vogtle 3 and 4 since such a commitment requires a prudence review. (Tr. 1550).

The Company in its brief states "Southern Nuclear developed, and the Owners have approved, a 29-month extension to the currently approved schedule for Vogtle 3 & 4 as the most reasonable schedule for the Project. The Southern Nuclear ETC does not contain a +21-month projection. The +21-month target schedule was developed as Bechtel took over the management of construction on the site and was intended to provide a more aggressive target that would provide additional confidence in the +29/+29 Schedule. The +29/+29 Schedule remains a realistic estimate for purposes of developing a reasonable ETC." (Company's Brief at p. 13).

The Company summarized its position on cost and schedule stating it "has provided the only cost and schedule estimates in this proceeding, and these estimates were validated by external assessments. While recognizing that risks persist, both known and unknown, the Company has worked diligently to provide the Commission with the most complete analysis possible, including providing multiple sensitivities in the Southern Nuclear ETC, the Kenrich ETC, the Bechtel assessment, and the PwC QRA. Based on the evidence presented in this matter, the Commission should adopt the cost and schedule proffered by the Company as reasonable." (Company's Brief at pp. 16-17).

Advisory Staff recommends that an amount not to exceed breakeven cost in the amount of $8.9 billion should be used as the maximum reasonable cost for the total project cost and that breakeven cost allows the Company to finance the Project through the November 30, 2021/2022 timeframe.

New Project Management Structure

"The Company also requests that the Commission approve the new project management structure". "Under the new project management structure, Georgia Power, along with Southern Nuclear Operating Company ("SNC" or "Southern Nuclear') acting as the project manager, will manage the Project on behalf of the Owners pursuant to a revised Ownership Participation Agreement. Bechtel Corporation ("Bechtel') … will serve as the prime construction contractor." "The Company asks that the Commission, pursuant to its obligation under O.C.G.A. § 46-3A-7(b), approve these proposed revisions to the project management structure, schedule and cost so that the Project may be completed." (17th VCM Report at pp. 6 & 7).

PIA Staff believes that "all project related activities [that] are now controlled by SNC personnel reporting to Southern Nuclear Executive Vice President… to be [the] appropriate organization for completion of the Project". (Tr. 1483).

NABTU Witness Booker states that "Building Trades wholeheartedly supports Southern Nuclear's decision to bring on Bechtel and RCC to hire and manage the construction workforce." (Tr. 2101).

SACE Witness Bradford recommends that the Commission not approve the Company's request and that it not find the new management structure reasonable at this time. (Tr. 2485). SACE claims that the Commission should reserve its post completion prudence review before deciding the reasonableness of the revised management structure. (Tr.2467).

The Company has established a Project structure and has entered into agreement that are necessary to complete the Project. According to the Company "PIA Staff has testified that the Project organization 'appears to be an appropriate organization including a separate Project Controls organization reporting to the Executive Vice President and an experienced construction manager in Bechtel could provide increased accountability and efficiency for the Project.' (Tr. 1483). As PIS Staff specifically recognizes, Project productivity, performance, accountability and engagement have all improved under the new Project configuration." (Company's Brief at p. 14).

Advisory Staff recommends that the Commission approve the new management structure.

COMPANY'S REMAINING ASSUMPTIONS/CONDITIONS

January 3, 2017 Stipulation

The January 3, 2017 Stipulation remains in full force and effect, including the Company retaining the burden of proving all capital costs above $5.68 billion were prudent.

PIA Staff recommends affirmation of the January 3, 2017 Stipulation

In its brief CRG states "The primary justification for the stipulation no longer exists. The EPC agreement that was supposed to protect Customers has been terminated by the Westinghouse bankruptcy. Hence, the stipulation should also be terminated." (CRG's Brief at p.4)

Advisory Staff recommends that the Commission reject CRG's request to terminate the Stipulation and concurs with the request of GPC and PIA Staff recommendation that the Commission affirm the January 3, 2017 Stipulation.

Cost Cap

Georgia Power additionally requested that while this Commission will make no prudence finding in the upcoming VCM 17 proceeding, nor will the certified amount be amended consistent with the Stipulation, the Commission recognizes that the certified amount is not a cap, and all costs that are approved and presumed or shown to be prudently incurred will be recoverable by Georgia Power.

PIA Staff recommended that the Commission should not approve this request. If this provision is an attempt to paraphrase or interpret the Stipulation then it is unnecessary, the Stipulation was well understood by parties at the time it was signed, and does not need any further interpretation now. If on the other hand, it is another attempt to establish the proposed Total Project Cost as reasonable, the Company has already requested that (above), which again makes this duplicative. (Tr. 1833)

SACE Witness Bradford contends that the Commission must immediately undertake a Request For Proposal proceeding to ascertain cost of and developing a cap for reasonable expenditures for completion of Vogtle 3 and 4. Mr. Bradford recommends that the Company seek buyers for some of its ownership in Vogtle. From SACE's perspective, the Company is very unlikely to need the full amount of Vogtle power to which it is entitled, so such a sale would spread the substantial Vogtle construction risk over a wider group of customers. The results of such an offer, SACE argues, would also provide useful information as to what the real value of completing the Vogtle reactors is likely to be. (Tr. 1551).

Resource Supply Management ("RSM"), from its letter brief filed December 19, 2017, states "Plant Vogtle is best resolved by following the advice of SACE Witness Peter Bradford." "Bradford recommends a 'market test' to determine the value of the

facility to Georgia Power customers." RSM concluded with "The Commission should rule that the proper ratepayer responsibility shall be set by the market test."

In its post hearing brief, the Company states "PIA Staff recommends that the Commission disallow certain costs spent to ensure the continuation and continuity of the Project immediately following the Westinghouse bankruptcy, and that the Commission impose a cap, despite their refusal to characterize it as such, which they acknowledge would result in a disallowance of approximately $1.5 billion. PIA Staff acknowledges, however that Georgia Power and the other Owners find those recommendations unacceptable and would cancel the Project if the Commission adopts those conditions." (Company's Brief at pp. 4-5).

Advisory Staff agrees with PIA Staff's recommendation that the Company's request be denied as it is duplicative and not necessary given that the Commission affirms the January 3rd Stipulation.

Toshiba Payments, Production Tax Credits, And DOE Loan Guarantee

Failure of Toshiba to pay the Toshiba Parent Guaranty, failure of Congress to extend the Production Tax Credits ("PTCs"), or failure of the DOE to extend the DOE Loan Guarantees will not reduce the amount of investment the Company is otherwise allowed to collect.

As for the Toshiba Parent Guaranty, the issue is now moot given that the payment in full was received by the Company on December 14, 2017.

PIA Staff recommends "the Commission decline to adopt the Company's proposed condition related to PTCs." (Tr. 1833). PIA Staff recommends that failure to receive this benefits "be considered in a future post-construction prudence and reasonableness review". (Tr. 1833). Although not specifically addressed, PIA Staff's testimony suggests that the DOE Loan Guarantee should be treated similarly.

Georgia Watch agrees with staff that the ratepayers cannot be the guarantors as to the Toshiba guarantee, availability of Production Tax Credits or other future tax consequences. Georgia Watch believes, along with the Staff, that the receipt of this payment is not an issue in the go forward analysis, because the payment is received whether the project goes forward or not. Georgia Power has said the production tax credit extension is one of three things it needs to complete two reactors at Plant Vogtle, along with the Toshiba guarantee and the federal loan guarantee. It appears now that the federal tax overhaul plans no longer includes an extension of a deadline for Georgia Power to receive tax credits for its nuclear expansion project. The nuclear production tax credit, as it stands now, requires new reactors to be in service by the end of 2020. Georgia Power now expects the Vogtle reactors to be completed after

that date. The ratepayers should not be responsible for any future increased tax consequences to GPC caused by its delay in completing the Project. GW Brief p 12

Advisory Staff agrees with PIA Staff and Georgia Watch's recommendation. In addition, we recommend the Commission also consider in that review the fact that the Company failed to receive bonus depreciation because of the repeated schedule delays. (Tr. 1833)

Option To Reconsider Go Forward Decision

Georgia Power requested that if conditions change and assumptions are either proven or disproven, the Owners and the Commission may reconsider the decision to go forward. (17th VCM Report at pp. 10 &11).

PIA recommends acceptance of the Owners and the Commission having the ability to "reconsider the decision to go forward" when "conditions change and assumptions are either proven or disproven." (Tr. 1834).

There is no disagreement among the parties on this issue. Accordingly, Advisory Staff recommends approval of this condition by Georgia Power.

CANCELLATION AND COST RECOVERY

The Company requests that "If the Commission disagrees with any of the assumptions [conditions] at any time, including either now, during the VCM 17 proceedings, or in its final order, the Company recommends that the Commission cancel the Project and allow the Company to fully recover its prudently incurred investments in the partially completed Facility, along with the cost of carrying the unamortized balance of that investment." (17th VCM Report at p. 11). The Company in its brief restated its position that "If the Commission disapproves of the Company's proposed revisions and the Company cancel the Project, the Commission should establish a docket to review the Company's actual investment in Vogtle 3&4 and determine the recovery period in accordance with O.C.G.A. § 46-3A-7(d)." (Company's Brief at p. 4).

PIA Staff recommends that if the Project is cancelled that the Commission review the prudence and reasonableness of the actual costs incurred and determine the recovery of those actual costs in a subsequent proceeding established for that purpose. Such a proceeding would consider what portion of the costs that have been incurred and that would have to be incurred to terminate construction and demobilize and secure the site should be recovered from ratepayers." (Tr. 1787).

In its brief CRG states "Given Vogtle's $6 billion cost escalation and 4+ year schedule delay, partially caused by GPC's inability to effectively manage their primary contractors--

Westinghouse, CB&I, Shaw, and Stone & Webster, CRG maintains the project should be immediately cancelled." (CRG's Brief at p.2).

Advisory Staff recommends acceptance of PIA Staff recommendations.

CO-OWNERS AGREEMENT

In its proposed order, PIA Staff took the position that the Commission should not approve the Co-Owner agreement by itself or as part of any Project configuration, and that the Co-Owner agreement should in no way factor into the Commission's decision. PIA Staff states that **t**he law provides that the Company must show costs over the approved amount are reasonable in order to recover them from ratepayers and that the determination of reasonableness doesn't change as a result of the Co-Owner Agreement. PIA Staff goes on to state that the Company cannot enter into an agreement that impairs its obligation to discharge its public duty to provide just and reasonable service.

GIPL/PSE Witness Berhold testified that the Revised Ownership Participation Agreement ("Revised Owner Agreement") entered into recently among Georgia Power and the Vogtle project Co-owners is a violation of Federal Antitrust law and the Georgia Constitution because it is an agreement among competitors to raise prices and lessen competition in the customer choice market. (Tr. 2375, 2389). However, Mr. Berhold appeared to concede, upon cross examination, the significance of the Revised Owner Agreement given the weight of issues at hand. The Commission is not being asked to approve the contract. The question before this Commission is whether the costs are reasonable or unreasonable based on the evidence in the record.

In its post hearing brief, the Company states "The Commission need not be concerned with Witness Berhold's dire warnings. The Commission is not being asked to approve the Revised Ownership Participation Agreement. (Tr. 164). Accordingly, Commission action on the Company's recommendation presents no opportunity for a state constitutional challenge, even if the provisions in question were an agreement in restraint of trade, which they are not. Second, again with respect to his worries on behalf of the Commission, Witness Berhold overlooks the seminal decision of *Parker v. Brown*, 317 U.S. 3431 (1943), holding that the federal antitrust laws do not apply to state regulatory agencies or their commissioners acting in their official capacities. Third, no 'injunctions' (Tr. 2350) may be brought against the Commission since anyone aggrieved by its decision has an adequate remedy through timely judicial review. Moreover, even if someone brings an antitrust action, only federal courts have jurisdiction to enforce the antitrust laws, 15 U.S.C. § 4…". (Company's Brief at pp. 35-36).

Advisory Staff agrees with the position taken by PIA Staff and therefore recommends the Commission not approve the Co-Owner agreement by itself or as part of any Project configuration, and that the Commission not allow the Co-Owner agreement to factor into its decision in any way.

PIA Staff Standing Request

Additional Delay Scenarios and Total Project Cost Results. PIA Staff requests that "If construction of the Units continues, Staff recommends that the Company perform economic analyses of the additional 24, 36, and 48-month delay scenarios, as was done in previous VCM filings. Staff also recommends that for each such delay scenario, the Company provide Total Project Cost and the full embedded cost revenue requirements associated with the Total Project Cost that the Company expects customers will incur both during construction and over the operating lives of the Units." (Tr. 1788). **Advisory Staff recommends that the Commission direct the Company to perform the scenarios as requested by PIA Staff.** *This does not preclude the Company from presenting its analysis of the appropriate path forward for the Project using the assumptions that the Company determines to be most appropriate for the Commission's consideration.*

This concludes Advisory Staff's recommendations. This matter will be discussed at the December 21, 2017 Special Called Energy Committee and decided at the Special Called Administrative Session the same day. The statutory deadline is February 27, 2018. If you have any questions, please let us know.