IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GEORGIA INTERFAITH POWER & LIGHT, INC. and PARTNERSHIP FOR SOUTHERN EQUITY, INC. Petitioners, v. GEORGIA PUBLIC SERVICE COMMISSION, Respondent.	)	2018CV301128 Civil Action No. _____

PETITION FOR JUDICIAL REVIEW

Petitioners Georgia Interfaith Power & Light, Inc. and Partnership for Southern Equity, Inc. respectfully request judicial review of a final decision entered on January 11, 2018 by the Georgia Public Service Commission ("PSC" or "Commission"), pursuant to O.C.G.A. § 50-13-19. A copy of the Final Decision is attached hereto as Exhibit A.

INTRODUCTION

1. Petitioners appeal the Commission's decision to approve, in violation of Georgia law and the Commission's own rules, the continuation of the nuclear expansion project at Plant Vogtle despite a near doubling of the original project budget and a five-year delay in the date of commercial operation. The decision ensures Georgia Power Company billions in additional profit while saddling ratepayers with billions in additional expense.

2. In rendering the Final Decision the Commission violated Georgia law and its own governing rules, making the Final Decision illegal, ultra vires, and void.

3. The Commission's decision put the interests of Georgia Power shareholders ahead of the interests of ratepayers, especially low-income customers, who will be particularly burdened by continuation of the Vogtle project at the sharply revised cost.

JURISDICTION AND VENUE

4. The Court has jurisdiction over appeals from final decisions of the Commission pursuant to O.C.G.A. § 50-13-19(a).

5. Venue is proper in Fulton County under O.C.G.A. § 50-13-19(b).

6. This petition is filed within 30 days after service of the final decision by the Commission on January 12, 2018, and has therefore been timely filed. O.C.G.A. § 50-13-19(b).

FACTUAL AND PROCEDURAL BACKGROUND

7. Almost ten years ago Georgia Power Company filed an application with the Commission seeking approval to build two new nuclear units—Units 3 and 4—at its existing Plant Vogtle site near Waynesboro, Georgia. The process for securing regulatory approval to build new electricity generation units is known as "certification."

8. In 2009 the Commission issued an order granting Georgia Power approval to construct the two units at a total capital cost of $4.418 billion and with projected operation dates of 2016 and 2017, respectively. Including financing costs, the total certified amount was and remains $6.1 billion.

9. The certification order required Georgia Power to file semi-annual monitoring reports with the Commission. The monitoring reports are filed each August 31st and February 28th, and cover any proposed revisions in the cost estimates, construction schedule, or project configuration and actual costs incurred during the preceding six months. Over the past ten years there have been multiple Vogtle Construction Monitoring ("VCM") proceedings.

10. In March 2017, the lead contractor for the Plant Vogtle expansion declared bankruptcy. As a result, Georgia Power lost the security of its fixed-price construction contract. The contractor no longer bears the risk of cost overruns. The risk now lies with Georgia Power, its customers, or both.

11. On August 31, 2017 Georgia Power filed its Seventeenth Semi-Annual Construction Monitoring Report for Plant Vogtle Units 3 and 4 (called the "17th VCM"). The filing initiated a proceeding to determine whether the Commission should verify and approve expenditures by Georgia Power toward construction of the Vogtle units over the six-month period preceding the filing.

12. Over Petitioners' objection, the Commission issued a Procedural and Scheduling Order ("PSO")[1] outlining a second issue for determination ("Issue 2"): Whether the Commission should approve, disapprove, or modify Georgia Power's proposed revisions in the cost estimates, construction schedule, or project configuration, and whether the proposed costs are reasonable.

13. Georgia Power's filing proposed for approval a revised total cost of $12.17 billion for its share[2] of the project, representing a near doubling of the original approved project cost of $6.1 billion.

14. Georgia Power's filing also proposed for approval a revised schedule that forecast completion of Units 3 and 4 in November 2021 and November 2022, respectively, five and a half years beyond their original in-service dates.

15. Georgia Power's filing asked the Commission to determine whether the project should continue in light of the dramatic changes to the project cost and schedule.

[1] A Procedural and Scheduling Order, which the Commission issues at the outset of a proceeding, defines its scope and establishes a schedule for hearing dates and other deadlines.
[2] Georgia Power owns a 45.7 percent share of the project and is the only project participant regulated by the Public Service Commission.

16. Petitioners objected to inclusion of Issue 2 in the PSO in part because under Georgia law and the Commission's rules the VCM proceeding was not an appropriate proceeding for considering changes of this magnitude. The Commission overruled Petitioners' objection.

17. Petitioners subsequently intervened in the 17th VCM proceeding pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Ga. Comp. Rules & Regs. 515-2-1-.06.

18. During the proceeding, Petitioners sought a declaratory ruling that resolving Issue 2 in Georgia Power's favor would violate Georgia law, Commission rules, and past orders of the Commission related to the Vogtle expansion project. The Commission denied Petitioners' request.

19. Petitioners participated in the 17th VCM proceeding as full parties of record, cross-examining adverse witnesses, presenting their own witnesses, and filing a post-hearing brief. Petitioners' post-hearing brief reasserted their objections to Commission resolution of Issue 2 of the PSO.

20. The Commission's PSO established January 10, 2018 as the final hearing date and February 6, 2018 as the date when the Commission would render a final decision.

21. On December 11, 2017 the Commission amended the PSO to advance the date for a final decision by 47 days, to December 21, 2017, pruning more than one-third of the original time allotted for the proceeding.

22. In connection with the scheduling change, Petitioners and other parties asked the Commission to observe its ex parte rule, which forbids Commissioners and their staff from communicating privately with any parties after the evidentiary hearings conclude.

23. Petitioners objected in writing to the Commission's waiver of its ex parte rule,

which allowed Georgia Power to communicate with Commissioners behind closed doors in the days leading up to the final decision without notifying other parties to give them an opportunity to respond to the substance of the communications.

24. On December 21, 2017 the Commission voted to overrule its own staff's recommendation and to approve and find reasonable Georgia Power's revised schedule and cost forecast.

25. The Commission entered its written final decision on January 11, 2018 ("Final Decision"). *See* Final Decision, attached as Exhibit A. The Final Decision was served on Petitioners and other parties by electronic mail on January 12, 2018.[3]

26. The Commission's Final Decision approved a revised capital cost of $7.3 billion and financing costs of $3.4 billion.[4] Together these sums represent a 75 percent increase over the original certified cost.

27. Since 2011 Georgia Power has collected costs associated with constructing the new Vogtle units from customers as a line-item on their electric bills. The accounting method used for this pre-collection is called the Nuclear Construction Cost Recovery rider. The money collected includes profits for Georgia Power shareholders, taxes on those profits, and a smaller portion for debt service. The money collected does not go toward paying down the capital cost of constructing the units. To date, Georgia Power has collected more than $2 billion in Vogtle-related costs from its customers.

28. The Final Decision allows Georgia Power to continue collecting profits and debt service financing from its customers for at least another five years, before the new units generate

[3] On January 22, 2018, one intervenor, Georgia Watch, filed a motion seeking reconsideration on several issues. The Commission denied Georgia Watch's request for reconsideration on February 1, 2018.

[4] The Commission approved Georgia Power's revised cost estimate after adjusting it to reflect receipt of a $1.47 billion payment from Toshiba, the parent and guarantor of Georgia Power's bankrupt project contractor, Westinghouse.

any electricity.

29. Georgia Power stands to reap more than $5 billion in added profit from the project delays.

30. According to Georgia Power's testimony, the projected rate impact to retail customers under the revised cost and schedule is more than double the amount that customers are already paying for the Vogtle expansion project.

PETITIONERS' INTERESTS AND AGGRIEVED STATUS

31. Petitioners are aggrieved by the Final Decision and therefore entitled to judicial review pursuant to O.C.G.A. § 50-13-19(a).

32. Petitioner Georgia Interfaith Power & Light ("GIPL") is a not-for-profit organization headquartered in Decatur, Georgia. GIPL represents the interests of communities of faith in promoting energy conservation, energy efficiency, renewable energy, and related sustainable practices. GIPL engages faith communities in the stewardship of Creation. GIPL is a growing organization with more than 300 member congregations representing a wide variety of faiths across the state. GIPL's members have executed a Congregational Covenant or Memorandum of Understanding pledging some level of support to GIPL, or have otherwise provided such support, including participating in GIPL's energy-saving programs. GIPL urges its members to engage in energy-saving programs not only to protect God's Creation, but also to save money. In addition to the financial support GIPL receives from its member congregations, GIPL also receives funding from community organizations, corporations, foundations, and individuals. GIPL brings this action on behalf of itself and its members.

33. Petitioner Partnership for Southern Equity ("PSE") is an Atlanta-based nonprofit committed to promoting racial equity and shared prosperity in metropolitan Atlanta and the

American South through a coalition-based model for multi-demographic capacity building for equity. PSE works to connect, educate, and empower diverse individuals and organizations to encourage just and sustainable practices for balanced growth and shared prosperity. PSE seeks to lift up low-wealth people and communities of color by connecting vulnerable populations to solutions that empower communities. PSE is a founding member of the Just Energy Circle, a morally-grounded collaborative effort that promotes sustainable, self-sufficient communities and encourages participation in developing clean energy solutions that benefit everyone. Two distinct aims of PSE's Just Energy work include access to clean energy at a fair price for all and transparency and accountability on behalf of energy providers. .

34. PSE works in communities served by Georgia Power, including low-wealth communities. Many individuals in these communities are unable to advocate for their own rights at the Public Service Commission because of their limited resources. The Final Decision directly undermines PSE's efforts to protect low-wealth communities from rising energy costs. PSE brings this action on behalf of itself and the low-wealth communities whose interests PSE serves as a core purpose of its mission.

35. Petitioners are directly and adversely affected by the Final Decision because it deprives them of the right, on behalf of themselves and their members and supporters, to challenge in any future proceeding the reasonableness of the revised project costs.

36. In addition, the Final Decision unlawfully shifts the burden of proof to Petitioners and other intervenors to show a basis for assigning the new excess costs to Georgia Power shareholders rather than to ratepayers.

37. Finally, the Final Decision deprived Petitioners of the type of review required under the circumstances, an amended certification proceeding, which would have afforded a

more thorough and quantitative consideration of renewable energy and energy efficiency as lower-cost alternatives to continuing the Vogtle project at the sharply revised cost and schedule.

38. The above legal and procedural injuries are the direct result of the Final Decision.

39. In addition, Petitioners are directly and adversely affected because the Final Decision ensures that billions of additional ratepayer dollars will go toward the Vogtle expansion project rather than to the types of renewable energy and energy efficiency projects that Petitioners seek to promote in furtherance of their missions.

40. GIPL's member congregations are specially and adversely affected by the Final Decision.

41. The majority of GIPL's members are Georgia Power customers. Those congregations are paying for the construction of Plant Vogtle Units 3 and 4 now through the Commission-approved Nuclear Construction Cost Recovery rider surcharge on their bills.

42. GIPL's member congregations that purchase electricity from Georgia Power are directly impacted by the Public Service Commission's decision to approve and deem reasonable a dramatic increase in cost for Plant Vogtle Units 3 and 4. The higher project cost will increase electric rates paid by those congregations and thereby divert limited resources away from their faith-based sustainability efforts and charitable programs.

43. Further, the Commission's approval of the schedule delay means that for an additional five years a portion of those congregations' electric bills will go toward extra profits for Georgia Power shareholders rather than toward funding renewable energy and energy efficiency projects that advance GIPL's mission.

44. The injuries suffered by GIPL's members as a result of the Final Decision are germane to, and undermine, GIPL's mission of helping faith communities save on their energy

bills while promoting renewable energy and energy efficiency programs.

45. GIPL and PSE participated as intervenors in the 17th VCM proceeding pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Ga. Comp. R. & Regs. 515-2-1-.06. No party challenged Petitioners' right to intervene in the 17th VCM proceeding. The Public Service Commission allowed Petitioners to proceed as parties and participate in the VCM proceeding.

46. The above injuries caused by the Final Decision will not be redressed except by an order of this Court reversing and remanding the Commission's Final Decision.

TRANSMITTAL OF THE RECORD

47. The Georgia Administrative Procedure Act ("APA"), O.C.G.A. §§ 50-13-1 to 50-13-44, provides that the agency shall transmit to this Court the original or a certified copy of the entire record of the proceeding under review within 30 days after service of the petition or within further time as allowed by the Court. O.C.G.A. § 50-13-19(e). Petitioners request that the Court direct that the record be filed in a time and manner that will permit a timely decision in this case.

GROUNDS FOR REVIEW

48. This Petition is brought pursuant to the Georgia APA, O.C.G.A. § 50-13-1 to 50-13-44. Under the APA, a superior court sitting in review of a Commission's final decision may reverse the decision if substantial rights of the petitioner have been prejudiced because the Commission's findings, inferences, conclusions and decisions are:

(1) In violation of constitutional and statutory provisions;

(2) In excess of statutory the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of

the whole record; and

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

O.C.G.A. § 50-13-19(h).

49. The final decision here is contrary to the Integrated Resource Planning Statute, O.C.G.A. § 46-3A-1 to 46-3A-11, and regulations promulgated thereunder, and substantially prejudices Petitioners' rights in all respects under O.C.G.A. § 50-13-19(h).

COUNT I

The Commission erred by approving significant changes to the cost and schedule without an amended certification proceeding.

50. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

51. Georgia Power sought approval of its revised cost estimate and schedule pursuant to O.C.G.A. § 46-3A-7(b), which requires the Commission to approve, disapprove, or modify any proposed revisions in the cost estimates, construction schedule, or project configuration of a certified electric plant under construction.

52. Revisions of the magnitude under consideration in the 17th VCM, however, may not receive Commission approval pursuant to O.C.G.A. § 46-3A-7(b). Georgia Power was instead required to seek an amendment to its certificate—its original grant of approval to build Vogtle Units 3 and 4—pursuant to O.C.G.A. § 46-3A-5.

53. A rule adopted by the Commission under the Integrated Resource Planning statute requires the utility to submit an amended application for certification under certain defined circumstances, including a significant change to the construction schedule or an increase in the total cost estimate that exceeds the estimate in the original certificate by more than five percent.

Ga. Comp. R. & Regs. 515-3-4-.08(1)(a) & (b).

54. Georgia Power's proposed revisions, which sought approval of five years' delay and a 75 percent increase in the certified project cost, triggered the requirement to file an application to amend its certificate under the rule.

55. An amended certification proceeding would have differed from the 17th VCM proceeding in several significant ways, including additional time (up to two months) for consideration of the Company's request; additional resources for Commission Staff's review of the proposal; and the requirement for Georgia Power to file an updated Integrated Resource Plan.

56. An Integrated Resource Plan is a document detailing the utility's electric demand and energy forecast for at least a twenty-year period. It must contain the utility's program for meeting the requirements shown in its forecast in an economical and reliable manner, and it must include the utility's analysis of all capacity resource options, including both demand-side (i.e., customer-sited energy efficiency) and supply-side options.

57. Because the decision about whether to continue the project was explicitly raised for determination in light of the drastically changed circumstances, the Commission was required to give Georgia Power's request the same level of attention and scrutiny as when it first authorized the project almost ten years ago. An updated Integrated Resource Plan would have provided the level of detail necessary to allow for such review.

58. An updated Integrated Resource Plan would have included a demonstration that the Vogtle expansion project is still needed to meet forecast demand. It would also have included a more thorough consideration of alternative, potentially cheaper resource portfolios for meeting demand than occurred in the truncated 17th VCM proceeding.

59. The Commission's failure to require an updated Integrated Resource Plan allowed

Georgia Power to reject renewable energy and energy efficiency measures as lower-cost alternatives to continuing the Vogtle project on a subjective, qualitative basis.

60. By refusing to require Georgia Power to seek an amendment to its certificate, and by instead shoehorning major changes to the project cost and schedule into an otherwise routine construction monitoring proceeding, the Commission violated the Integrated Resource Planning statute and its own rule.

61. Any purported waiver by the Commission of Rule 515-3-4-.08 was not legally effective.

62. Accordingly, the Final Decision is in violation of the Integrated Resource Planning statute, *see* O.C.G.A. § 50-13-19(h)(1); in excess of statutory authority, *see id.* at (2); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

Count II

The Commission erred by approving the revised cost estimate and schedule and declaring them "reasonable."

63. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

64. The Commission improperly allowed Georgia Power to carry its burden of proof as to the reasonableness of billions of dollars in excess costs well in advance of Unit 3's completion and before such sums are even spent.

65. As Georgia Power has admitted, and as past Commission Orders have held, reasonableness and prudence are distinct but related concepts that cannot be determined independently of one another. Prudence goes to the decision-making process, while reasonableness goes to the cost of that prudent decision. A cost can be unreasonable even if it

results from a prudent decision.

66. By rubber-stamping reasonableness now, the Commission has made it impossible for Petitioners to challenge the reasonableness of the revised project cost in any future proceeding, including the prudency review set to take place following the project's completion.

67. Georgia Power sought a determination that its new cost estimate was "reasonable" pursuant to O.C.G.A. § 46-3A-7(b). This provision does not include the word "reasonable." As a result, the Commission did not have authority under O.C.G.A. § 46-3A-7(b) to declare the new excess costs reasonable.

68. The authority for the Commission to determine reasonableness derives from a different statutory subsection, O.C.G.A. § 46-3A-7(a), which requires Georgia Power to demonstrate, upon project completion, that costs in excess of the approved costs were both reasonable and prudently incurred.

69. In a prior VCM proceeding, the Commission held that costs in excess of the certified amount would not be considered until Unit 3's completion, and that at that time Georgia Power would have the obligation to show that such excess costs were reasonable and prudent.

70. While the Final Decision nominally retains Georgia Power's burden to show the prudency of the excess costs following Unit 3's completion, the law is clear that Georgia Power has a single burden to show both reasonableness and prudency *after* the plant is completed.

71. By determining reasonableness of the revised cost estimate and schedule in the 17th VCM proceeding, more than five years ahead of the project's estimated completion, the Commission improperly allowed Georgia Power to split its burden of proof in violation of Georgia law.

72. Further, by approving Georgia Power's revised cost estimate, the Commission relieved Georgia Power of any further burden of proof as to the revised costs because the new costs are now approved costs. By statute, Georgia Power's burden of proof applies only to costs in excess of approved costs.

73. In past filings with the Commission related to the Vogtle expansion project, Georgia Power has asserted that its burden of proof applies only to costs in excess of those approved by the Commission, including approval pursuant to O.C.G.A. § 46-3A-7(b).

74. By approving Georgia Power's revised cost estimate while simultaneously claiming that Georgia Power retains a burden of proof as to such costs, the Final Decision is internally inconsistent and arbitrary.

75. Accordingly, the Final Decision is in violation of the Integrated Resource Planning statute; *see* O.C.G.A. § 50-13-19(h)(1); in excess of statutory authority, *see id.* at (2); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

Count III

The Commission erred by refusing to observe its ex parte rule.

76. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

77. By rule, proceedings before the Commission are required to be open and transparent to all parties and to the public. Ga. Comp. R. & Regs. 515-2-1-.14(2).

78. Except for trade secret matters, all communications between a party and the Commission, an individual Commissioner, or a member of the Commission's Advisory Staff relating to a proceeding before the Commission must be made in a public and open manner that

allows all other parties the opportunity to respond to such communication or information. *Id.*

79. The Commission adopted its ex parte rule in 2007 to restore the public's confidence that its decisions are fairly decided based on what was said in the open hearing room and not behind closed doors.

80. The Commission's ex parte rule applies immediately upon the conclusion of the hearings to receive testimony in the proceeding and ends the day after the official time for filing for reconsideration. Ga. Comp. R. & Regs. 515-2-1-.14(6).

81. In the 17th VCM proceeding, the hearings concluded on December 13, 2017 as a result of the Commission's late decision to truncate the proceeding by advancing its final decision date from February 6, 2018 to December 21, 2017. As a result, the Commission's ex parte rule applied as of the final hearing date, December 13, 2017.

82. Over Petitioners' written objection, the Commission refused to observe its ex parte rule.

83. Upon information and belief, between the conclusion of the hearings on December 13, 2017 and the final decision date of December 21, 2017, Georgia Power and individual Commissioners met privately and exchanged communications and information without giving all other parties the opportunity to respond, in violation of the ex parte rule.

84. The illegal ex parte communications between the Commissioners and Georgia Power resulted in terms that favor Georgia Power at the expense of ratepayers, which terms were subsequently incorporated into the Final Decision.

85. The Commission's stated justification for refusing to observe its ex parte rule was that *if* the Commission failed to render a final decision on December 21, 2017, the proceeding would continue, in that Georgia Power would have the right to file rebuttal testimony and a final

round of hearings on such testimony would be held in January 2018.

86. The Commission's stated justification conflicted with the language of its order modifying the schedule, which stated that on December 21, 2017 "the Commission will render a decision in this docket."

87. Further, had the Commission failed to render a decision on December 21, 2017, the ex parte rule would have, by its own terms, ceased to apply until the hearings concluded. Therefore, the Commission's stated justification for suspending the rule was unreasonable and arbitrary. The Commission was required to observe the ex parte rule for the limited period between December 13 and December 21, 2017, in case, as happened, the Commission reached its final decision on the latter date.

88. Upon information and belief, the Commissioners continued to engage in ex parte communications with Georgia Power following the decision on December 21, 2017 even though the ex parte rule expressly applied through the day after the official time for filing for reconsideration, and if a motion for reconsideration was made, through the Commission's rendering of a final decision on such a motion.

89. In the 17th VCM proceeding, a motion for reconsideration was filed, such that the ex parte rule continued to apply through the Commission's decision on that motion, February 1, 2018. Yet the Commission continued, upon information and belief, to engage in ex parte communications with Georgia Power between December 21, 2017 and February 1, 2018.

90. The Commission's stated justification for suspending the ex parte rule could not logically have applied after December 21, 2017 because a final decision was made on that date and no further evidentiary hearings would be held.

91. That the Commission continued, upon information and belief, to engage in ex

parte communications with Georgia Power after the final decision date shows that its stated justification for suspending the ex parte rule was spurious.

92. Accordingly, the Final Decision was made upon unlawful procedure, *see* O.C.G.A. § 50-13-19(h)(3); is arbitrary and capricious, *see id.* at (6); and an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

Count IV

The Commission erred by truncating its review.

93. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

94. The Commission's decision, late in the proceeding, to amend the PSO to advance the Final Decision by 47 days, shortened the length of the overall proceeding by more a third and left insufficient time for the Commission to reach a fair and balanced decision.

95. Under the amended PSO, Petitioners and the other parties were required to submit final briefs within five days of the final hearing date, and the Commission then rendered its Final Decision a mere two days later.

96. The shortened timeframe did not allow for careful consideration of the evidence in the record.

97. Instead, as detailed in Count III, the Commission, upon information and belief, met behind closed doors with Georgia Power in the days between the final hearing date and the Final Decision.

98. The result was a Final Decision that reflects no in-depth analysis and substantially mirrors Georgia Power's settlement position.

99. The Commission's stated justification for amending the PSO was that, in light of

tax law changes then under consideration in the United States Congress, a decision to abandon the project before year's end would provide $150 million in ratepayer benefits.

100. The alleged tax savings were stated in a letter from Georgia Power CEO Paul Bowers to Commission Chairman Stan Wise.

101. Petitioners and other parties were unable to conduct cross-examination regarding the substance of the allegation in the letter from Mr. Bowers to Commissioner Wise.

102. The alleged savings amounted to only 2.5 percent of the more than six billion in increased costs for which Georgia Power was seeking approval.

103. The alleged savings totaled less than the amounts incurred by Georgia Power at the Plant Vogtle construction site in just three of the preceding months under review.

104. Hence the alleged savings were not a reasonable basis for the Commission to truncate the schedule.

105. The Commission refused to hear from the parties regarding the proposed scheduling change before entering the amended PSO.

106. The Commission's decision to shorten the proceeding was contrary to the original PSO's finding that the proceedings constituted "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a).

107. In a proceeding in the late 1980s regarding cost overruns at Plant Vogtle Units 1 and 2, the Commission held 42 days of hearings over five months, before issuing a lengthy and detailed final decision.

108. Here, by contrast, the Commission held just seven days of hearings, before issuing a twenty page order that was insufficiently detailed, as set forth in Count V.

109. Given the magnitude of the issues at stake, the Commission's decision to truncate

its review by 47 days for the mere possibility of three months' worth of savings on a project now delayed by five years, was arbitrary and capricious, and an abuse of discretion, *see* O.C.G.A. § 50-13-19(h)(6).

Count V

The Commission erred by issuing a decision devoid of detailed analysis and findings.

110. All preceding paragraphs of this Petition are hereby incorporated by reference as if rewritten in their entirety.

111. Under the Georgia Administrative Procedure Act, a final order in a contested case must include separately stated findings of fact and conclusions of law. O.C.G.A. § 50-13-17(b). Findings of fact must be "accompanied by a concise and explicit statement of the underlying facts supporting the findings." *Id.*

112. In resolving Issue 2 of the PSO, the Final Decision simply summarizes the positions of the parties, before declaring: "Based upon careful consideration of all the evidence in the record, the Commission finds as a matter of fact and concludes as a matter of law that it is appropriate to continue construction of Vogtle Units 3 & 4 under the terms set forth in this Order."

113. The Commission thus failed to make detailed findings of fact and conclusions of law on the monumental question framed by Issue 2 of the PSO, as required by law.

114. Accordingly, the Final Decision was made in violation of a statutory provision, *see* O.C.G.A. § 50-13-19(h)(1); made upon unlawful procedure, *see id.* at (3); is arbitrary and capricious, *see id.* at (6); and an abuse of discretion, *see id.*; and affected by other errors of law, *see id.* at (4).

REQUEST FOR WRITTEN BRIEFING AND ORAL ARGUMENT

Pursuant to O.C.G.A. § 50-13-19(g), Petitioners request oral argument and the opportunity to submit written briefs.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Petitioners pray that:

(1) The Court enter a schedule for the parties to brief the issues on appeal and set a date for hearing oral argument;

(2) The Court take evidence of unlawful ex parte communications as a procedural irregularity not shown in the record, as permitted by O.C.G.A. §50-13-19(g);

(3) Reverse the Final Decision;

(4) Remand to the Commission with direction that they instruct Georgia Power Company to file an application for amended certification, as required by law; and

(5) Grant such other relief as the Court deems just and fair, consistent with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 to 50-13-44.

Respectfully submitted this 12th day of February, 2018.

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