**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petition by Florida Power & Light Company for Base Rate Increase | DOCKET NO. 20250011-EI<br><br>DATED: AUGUST 4, 2025 |

**FLORIDIANS AGAINST INCREASED RATES, INC.'S MOTION FOR AND NOTICE OF INTENT TO SEEK OFFICIAL RECOGNITION**

Pursuant to Section 120.569(2)(i), Florida Statutes, Sections 90.201-.203, Florida Statutes, Rule 28-106.213(6), Florida Administrative Code ("F.A.C."), and Paragraph VI.H of the Order Establishing Procedure for this docket, Order No. PSC-2025-0075-PCO-EI, Floridians Against Increased Rates, Inc. ("FAIR") hereby respectfully moves the Florida Public Service Commission to take official recognition of the following documents and gives notice to all parties of its intent to request official recognition.

EXHIBIT A: Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923).

EXHIBIT B: Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944).

EXHIBIT C: In Re: Georgia Power Company's 2022 Rate Case, Docket No. 44280, Order Adopting Settlement Agreement as Modified, Ga. P.S.C. Doc. No. 192550 (Ga. P.S.C., Dec. 30, 2022).

EXHIBIT D: In Re: Georgia Power Company's 2022 Rate Case, Docket No. 44280, Order Granting Joint Petition of Georgia Power Company and the Public Interest Advocacy Staff and Approval of the Stipulation to Extend the Alternative Rate Plan, Ga. P.S.C. Doc. No. 223495 (Ga. P.S.C., July 31, 2025).

The foregoing documents are orders of the United States Supreme Court and orders of the Commission's sister regulatory authority in Georgia, the Georgia Public

Service Commission. Pursuant to Section 90.202(5), Florida Statutes, the Commission may take official notice or recognition of official actions of the legislative, executive, and judicial departments of the United States or of any state, territory, or jurisdiction of the United States; pursuant to Section 90.203, Florida Statutes, the Commission shall take official notice or recognition of any matter in Section 90.202 when a party requests it and gives each party to the proceeding timely written notice of the request. FAIR is hereby making such request and giving such timely notice, i.e., within the time specified in the Order Establishing Procedure, and accordingly, FAIR is relying upon the provisions of Sections 90.202-.203, Florida Statutes, for the Commission to take official recognition and notice of the documents listed above.

Hope and Bluefield are well-known and recognized opinions of the United States Supreme Court and are therefore within the scope of Section 90.202(5), Fla. Stat. Similarly, and to the same legal effect and conclusion, the two orders of the Georgia Public Service Commission are official actions of the state government of the State of Georgia, and thus within the scope of Section 90.202(5), Fla. Stat. Since all four documents are within the scope of Section 90.202(5), and since FAIR is giving notice of its intent to request official recognition of these federal and state government actions in the time prescribed by the Order Establishing Procedure, FAIR believes that the Commission must take official recognition of these documents.

The undersigned attempted to confer via email with all parties on the service list. The Office of Public Counsel, Walmart, Florida Rising, LULAC, and ECOSWF support the motion. The following parties stated that they do not object to FAIR's motion: FEA, FRF, and the Fuel Retailers. The following take no position: FPL, FEIA, SACE, Electrify America, FIPUG, and the Commission Staff. No party has objected to any of the documents for which FAIR seeks official recognition.

This Motion and Notice is being filed by electronic mail to the Commission's discovery email address, discovery-gcl@psc.state.fl.us, and contemporaneously served on all parties to this proceeding, as indicated on the attached certificate of service.

Respectfully submitted this 4th day of August, 2025.

*/s/Robert Scheffel Wright*
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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 4th day of August, 2025, to the following:

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*/s/Robert Scheffel Wright*
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# Exhibit A

KeyCite Yellow Flag - Negative Treatment
Called into Doubt by Fitchburg Gas and Elec. Light Co. v. Department Of Public Utilities, Mass., April 14, 2014

43 S.Ct. 675
Supreme Court of the United States

# BLUEFIELD WATERWORKS & IMPROVEMENT CO.
v.
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA et al.

No. 256
|
Argued January 22, 1923.
|
Decided June 11, 1923.

**Synopsis**
In Error to the Supreme Court of Appeals of West Virginia.

Proceedings by the Bluefield Waterworks & Improvement Company against the Public Service Commission of the State of West Virginia and others to suspend and set aside an order of the Commission fixing rates. From a judgment of the Supreme Court of West Virginia, dismissing the petition, and denying the relief (89 W. Va. 736, 110 S. E. 205), the Waterworks Company bring error. Reversed.

West Headnotes (6)

[1] **Constitutional Law** Charges and prices in general

Rates which are not sufficient to yield a reasonable return on the value of the property used in public service at the time it is being so used to render the service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property, in violation of the Fourteenth Amendment of the Constitution.

116 Cases that cite this headnote

[2] **Constitutional Law** Water, sewer, and irrigation

Under the due process clause of the Fourteenth Amendment of the Constitution, U.S.C.A., a waterworks company is entitled to the independent judgment of the court as to both law and facts, where the question is whether the rates fixed by a public service commission are confiscatory.

33 Cases that cite this headnote

[3] **Water Law** Methodologies; establishment of rate base

It was error for a state public service commission, in arriving at the value of the property used in public service, for the purpose of fixing the rates, to fail to give proper weight to the greatly increased cost of construction since the war.

24 Cases that cite this headnote

[4] **Water Law** Rate of return

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties, but it has no constitutional right to such profits as are realized or anticipated in highly profitable enterprises or speculative ventures.

166 Cases that cite this headnote

  

**[5]** **Water Law**Rate of return

Since the investors take into account the result of past operations as well as present rates in determining whether they will invest, a waterworks company which had been earning a low rate of returns through a long period up to the time of the inquiry is entitled to return of more than 6 per cent. on the value of its property used in the public service, in order to justly compensate it for the use of its property.

155 Cases that cite this headnote

**[6]** **Federal Courts**Particular Cases, Contexts, and Questions

A proceeding in a state court attacking an order of a public service commission fixing rates, on the ground that the rates were confiscatory and the order void under the federal Constitution, is one where there is drawn in question the validity of authority exercised under the state, on the ground of repugnancy to the federal Constitution, and therefore is reviewable by writ of error.

22 Cases that cite this headnote

**Attorneys and Law Firms**

****675 *680** Messrs. Alfred G. Fox and Jos. M. Sanders, both of Bluefield, W. Va., for plaintiff in error.

Mr. Russell S. Ritz, of Bluefield, W. Va., for defendants in error.

**Opinion**

***683** Mr. Justice BUTLER delivered the opinion of the Court.

Plaintiff in error is a corporation furnishing water to the city of Bluefield, W. Va., ****676** and its inhabitants. September 27, 1920, the Public Service Commission of the state, being authorized by statute to fix just and reasonable rates, made its order prescribing rates. In accordance with the laws of the state (section 16, c. 15–O, Code of West Virginia [sec. 651]), the company instituted proceedings in the Supreme Court of Appeals to suspend and set aside the order. The petition alleges that the order is repugnant to the Fourteenth Amendment, and deprives the company of its property without just compensation and without due process of law, and denies it equal protection of the laws. A final judgment was entered, denying the company relief and dismissing its petition. The case is here on writ of error.

[1] 1. The city moves to dismiss the writ of error for the reason, as it asserts, that there was not drawn in question the validity of a statute or an authority exercised under the state, on the ground of repugnancy to the federal Constitution.

The validity of the order prescribing the rates was directly challenged on constitutional grounds, and it was held valid by the highest court of the state. The prescribing of rates is a legislative act. The commission is an instrumentality of the state, exercising delegated powers. Its order is of the same force as would be a like enactment by the Legislature. If, as alleged, the prescribed rates are confiscatory, the order is void. Plaintiff in error is entitled to bring the case here on writ of error and to have that question decided by this court. The motion to dismiss will be denied. See ***684** Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290, 43 Sup. Ct. 353, 67 L. Ed. 659, decided March 5, 1923, and cases cited; also Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287, 40 Sup. Ct. 527, 64 L. Ed. 908.

2. The commission fixed $460,000 as the amount on which the company is entitled to a return. It found that under existing rates, assuming some increase of business, gross earnings for 1921 would be $80,000 and operating expenses $53,000 leaving $27,000, the equivalent of 5.87 per cent., or 3.87 per cent. after deducting 2 per cent. allowed for depreciation. It held existing rates insufficient to the extent of 10,000. Its order allowed the company to add 16 per cent. to all bills, excepting those for public and private fire protection. The total of the bills so to be increased amounted to $64,000; that is, 80 per cent. of the revenue was authorized to be increased 16 per cent., equal to an increase of 12.8 per cent. on the total, amounting to $10,240.

  

As to value: The company claims that the value of the property is greatly in excess of $460,000. Reference to the evidence is necessary. There was submitted to the commission evidence of value which it summarized substantially as follows:

a. Estimate by company's engineer on

basis of reproduction new, less

depreciation, at prewar prices ........................................................ $ 624,548 00

b. Estimate by company's engineer on

basis of reproduction new, less

depreciation, at 1920 prices ............................................................ 1,194,663 00

c. Testimony of company's engineer

fixing present fair value for rate

making purposes ............................................................................ 900,000 00

d. Estimate by commissioner's engineer on

basis of reproduction new, less

depreciation at 1915 prices, plus

additions since December 31, 1915, at

actual cost, excluding Bluefield

| | | |
|---|---|---|
| | Valley waterworks, water rights, | |
| | and going value | 397,964 38 |
| e. | Report of commission's statistician | |
| | showing investment cost less | |
| | depreciation | 365,445 13 |
| f. | Commission's valuation, as fixed in | |
| | case No. 368 ($360,000), plus gross | |
| | additions to capital since made | |
| | ($92,520.53) | 452,520 53 |

***685** It was shown that the prices prevailing in 1920 were nearly double those in 1915 and pre-war time. The company did not claim value as high as its estimate of cost of construction in 1920. Its valuation engineer testified that in his opinion the value of the property was $900,000—a figure between the cost of construction in 1920, less depreciation, and the cost of construction in 1915 and before the war, less depreciation.

The commission's application of the evidence may be stated briefly as follows:

As to 'a,' supra: The commission deducted $204,000 from the estimate (details printed in the margin),[1] leaving approximately $421,000, which it contrasted with the estimate of its own engineer, $397,964.38 (see 'd,' supra). It found that there should be included $25,000 for the Bluefield Valley waterworks plant in Virginia, 10 per cent. for going value, and $10,000 for working capital. If these be added to $421,000, there results $500,600. This may be compared with the commission's final figure, $460,000.

***686** As to 'b' and 'c,' supra: These were given no weight by the commission in arriving at its final figure, $460,000. It said:
'Applicant's plant was originally constructed more than twenty years ago, and has been added to from time to time as the progress and development of the community

required. For this reason, it would be unfair to its consumers to use as a basis for present fair value the abnormal prices prevailing during the recent war period; but, when, as in this case, a part of the plant has been constructed or added to during that period, in fairness to the applicant, consideration must be given to the cost of such expenditures made to meet the demands of the public.'

****677** As to 'd,' supra: The commission, taking $400,000 (round figures), added $25,000 for Bluefield Valley waterworks plant in Virginia, 10 per cent. for going value, and $10,000 for working capital, making $477,500. This may be compared with its final figure, $460,000.

As to 'e,' supra: The commission, on the report of its statistician, found gross investment to be $500,402.53. Its engineer, applying the straight line method, found 19 per cent. depreciation. It applied 81 per cent. to gross investment and added 10 per cent. for going value and $10,000 for working capital, producing $455,500.[2] This may be compared with its final figure, $460,000.

As to 'f,' supra: It is necessary briefly to explain how this figure, $452,520.53, was arrived at. Case No. 368 was a proceeding initiated by the application of the company for higher rates, April 24, 1915. The commission made a valuation as of January 1, 1915. There were presented two estimates of reproduction cost less depreciation, one by a valuation engineer engaged by the company, ***687** and the other by a valuation engineer engaged by the city, both 'using the same method.' An inventory made by the company's engineer was accepted as correct by the city and by the commission. The method 'was that generally employed by courts and commissions in arriving at the value of public utility properties under this method.' and in both estimates 'five year average unit prices' were applied. The estimate of the company's engineer was $540,000 and of the city's engineer, $392,000. The principal differences as given by the commission are shown in the margin.[3] The commission disregarded both estimates and arrived at $360,000. It held that the best basis of valuation was the net investment, i. e., the total cost of the property less depreciation. It said:

'The books of the company show a total gross investment, since its organization, of $407,882, and that there has been charged off for depreciation from year to year the total sum of $83,445, leaving a net investment of $324,427. * * * From an examination of the books * * * it appears that the records of the company have been remarkably well kept and preserved. It therefore seems that, when a plant is developed under these conditions, the net investment, which, of course, means the total gross investment less depreciation, is the very best basis of valuation for rate making purposes and that the other methods above referred to should ***688** be used only when it is impossible to arrive at the true investment. Therefore, after making due allowance for capital necessary for the conduct of the business and considering the plant as a going concern, it is the opinion of the commission that the fair value for the purpose of determining reasonable and just rates in this case of the property of the applicant company, used by it in the public service of supplying water to the city of Bluefield and its citizens, is the sum of $360,000, which sum is hereby fixed and determined by the commission to be the fair present value for the said purpose of determining the reasonable and just rates in this case.'

In its report in No. 368, the commission did not indicate the amounts respectively allowed for going value or working capital. If 10 per cent. be added for the former, and $10,000 for the latter (as fixed by the commission in the present case), there is produced $366,870, to be compared with $360,000, found by the commission in its valuation as of January 1, 1915. To this it added $92,520.53, expended since, producing $452,520.53. This may be compared with its final figure, $460,000.

The state Supreme Court of Appeals holds that the valuing of the property of a public utility corporation and prescribing rates are purely legislative acts, not subject to judicial review, except in so far as may be necessary to determine whether such rates are void on constitutional or other grounds, and that findings of fact by the commission based on evidence to support them will not be reviewed by the court. City of Bluefield v. Waterworks, 81 W. Va. 201, 204, 94 S. E. 121; Coal & Coke Co. v. Public Service Commission, 84 W. Va. 662, 678, 100 S. E. 557, 7 A. L. R. 108; Charleston v. Public Service Commission, 86 W. Va. 536, 103 S. E. 673.

In this case (89 W. Va. 736, 738, 110 S. E. 205, 206) it said:
'From the written opinion of the commission we find that it ascertained the value of the petitioner's property for rate making [then quoting the commission] 'after ***689** maturely and carefully considering the various methods presented for the ascertainment of fair value and giving such weight as seems proper to every element involved and all the facts and circumstances disclosed by the record.''

[2] [3] The record clearly shows that the commission, in arriving at its final figure, did not accord proper, if any, weight to the greatly enhanced costs of construction in

  

1920 over those prevailing about 1915 and before the war, as established by uncontradicted **678 evidence; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appears to have been wholly disregarded. This was erroneous. Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 262 U. S. 276, 43 Sup. Ct. 544, 67 L. Ed. 981, decided May 21, 1923. Plaintiff in error is entitled under the due process clause of the Fourteenth Amendment to the independent judgment of the court as to both law and facts. Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287, 289, 40 Sup. Ct. 527, 64 L. Ed. 908, and cases cited.

We quote further from the court's opinion (89 W. Va. 739, 740, 110 S. E. 206):
'In our opinion the commission was justified by the law and by the facts in finding as a basis for rate making the sum of $460,000.00. * * * In our case of Coal & Coke Ry. Co. v. Conley, 67 W. Va. 129, it is said: 'It seems to be generally held that, in the absence of peculiar and extraordinary conditions, such as a more costly plant than the public service of the community requires, or the erection of a plant at an actual, though extravagant, cost, or the purchase of one at an exorbitant or inflated price, the actual amount of money invested is to be taken as the basis, and upon this a return must be allowed equivalent to that which is ordinarily received in the locality in which the business is done, upon capital invested in similar enterprises. In addition to this, consideration must be given to the nature of the investment, a higher rate *690 being regarded as justified by the risk incident to a hazardous investment.'

'That the original cost considered in connection with the history and growth of the utility and the value of the services rendered constitute the principal elements to be considered in connection with rate making, seems to be supported by nearly all the authorities.'

[4] The question in the case is whether the rates prescribed in the commission's order are confiscatory and therefore beyond legislative power. Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment. This is so well settled by numerous decisions of this court that citation of the cases is scarcely necessary:

'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.' Smyth v. Ames (1898) 169 U. S. 467, 547, 18 Sup. Ct. 418, 434 (42 L. Ed. 819).

'There must be a fair return upon the reasonable value of the property at the time it is being used for the public. * * * And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase.' Willcox v. Consolidated Gas Co. (1909) 212 U. S. 19, 41, 52, 29 Sup. Ct. 192, 200 (53 L. Ed. 382, 15 Ann. Cas. 1034, 48 L. R. A. [N. S.] 1134).

'The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.' Minnesota Rate Cases (1913) 230 U. S. 352, 434, 33 Sup. Ct. 729, 754 (57 L. Ed. 1511, 48 L. R. A. [N. S.] 1151, Ann. Cas. 1916A, 18).

*691 'And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.' Smyth v. Ames, 169 U. S., 546, 547, 18 Sup. Ct. 434, 42 L. Ed. 819.

'* * * The making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law.'

Minnesota Rate Cases, 230 U. S. 454, 33 Sup. Ct. 762, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18.

In Missouri ex rel. Southwestern Bell Telephone Co., v. Public Service Commission of Missouri, supra, applying the principles of the cases above cited and others, this court said:
'Obviously, the commission undertook to value the property without according any weight to the greatly enhanced costs of material, labor, supplies, etc., over those prevailing in 1913, 1914, and 1916. As matter of common knowledge, these increases were large.

Competent witnesses estimated them as 45 to 50 per centum. * * * It is impossible to ascertain what will amount to a fair return upon properties devoted to public service, without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for to-morrow cannot ignore prices of to-day.'

[5] ***692** It is clear that the court also failed to give proper consideration to the higher cost of construction in 1920 over that in 1915 and before the war, and failed to give weight to cost of reproduction less depreciation on the basis of 1920 prices, or to the testimony of the company's valuation engineer, based on present and past costs of construction, that the property in his opinion, was worth $900,000. The final figure, $460,000, was arrived ****679** at substantially on the basis of actual cost, less depreciation, plus 10 per cent. for going value and $10,000 for working capital. This resulted in a valuation considerably and materially less than would have been reached by a fair and just consideration of all the facts. The valuation cannot be sustained. Other objections to the valuation need not be considered.

3. Rate of return: The state commission found that the company's net annual income should be approximately $37,000, in order to enable it to earn 8 per cent. for return and depreciation upon the value of its property as fixed by it. Deducting 2 per cent. for depreciation, there remains 6 per cent. on $460,000, amounting to $27,600 for return. This was approved by the state court.

[6] The company contends that the rate of return is too low and confiscatory. What annual rate will constitute just compensation depeds upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in ***693** highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

In 1909, this court, in Willcox v. Consolidated Gas Co., 212 U. S. 19, 48–50, 29 Sup. Ct. 192, 53 L. Ed. 382, 15 Ann. Cas. 1034, 48 L. R. A. (N. S.) 1134, held that the question whether a rate yields such a return as not to be confiscatory depends upon circumstances, locality and risk, and that no proper rate can be established for all cases; and that, under the circumstances of that case, 6 per cent. was a fair return on the value of the property employed in supplying gas to the city of New York, and that a rate yielding that return was not confiscatory. In that case the investment was held to be safe, returns certain and risk reduced almost to a minimum—as nearly a safe and secure investment as could be imagined in regard to any private manufacturing enterprise.

In 1912, in Cedar Rapids Gas Co. v. Cedar Rapids, 223 U. S. 655, 670, 32 Sup. Ct. 389, 56 L. Ed. 594, this court declined to reverse the state court where the value of the plant considerably exceeded its cost, and the estimated return was over 6 per cent.

In 1915, in Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 172, 35 Sup. Ct. 811, 59 L. Ed. 1244, this court declined to reverse the United States District Court in refusing an injunction upon the conclusion reached that a return of 6 per cent. per annum upon the value would not be confiscatory.

In 1919, this court in Lincoln Gas Co. v. Lincoln, 250 U. S. 256, 268, 39 Sup. Ct. 454, 458 (63 L. Ed. 968), declined on the facts of that case to approve a finding that no rate yielding as much as 6 per cent. ***694** on the invested capital could be regarded as confiscatory. Speaking for the court, Mr. Justice Pitney said:
'It is a matter of common knowledge that, owing principally to the World War, the costs of labor and supplies of every kind have greatly advanced since the ordinance was adopted, and largely since this cause was last heard in the court below. And it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future.'

In 1921, in Brush Electric Co. v. Galveston, the United States District Court held 8 per cent. a fair rate of return.[4]

In January, 1923, in City of Minneapolis v. Rand, the Circuit Court of Appeals of the Eighth Circuit (285 Fed. 818, 830) sustained, as against the attack of the city on the ground that it was excessive, 7 ½ per cent., found by a special master and approved by the District Court as a fair and reasonable return on the capital investment—the value of the property.

Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain, or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit, and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it. In ***695** this case the record shows that the rate of return has been low through a long period up to the time of the inquiry by the commission here involved. For example, the average rate of return on the total cost of the property from 1895 to 1915, inclusive, was less than 5 per cent.; from 1911 to 1915, inclusive, ****680** about 4.4 per cent., without allowance for depreciation. In 1919 the net operating income was approximately $24,700, leaving $15,500, approximately, or 3.4 per cent. on $460,000 fixed by the commission, after deducting 2 per cent. for depreciation. In 1920, the net operating income was approximately $25,465, leaving $16,265 for return, after allowing for depreciation. Under the facts and circumstances indicated by the record, we think that a rate of return of 6 per cent. upon the value of the property is substantially too low to constitute just compensation for the use of the property employed to render the service.

The judgment of the Supreme Court of Appeals of West Virginia is reversed.

Mr. Justice BRANDEIS concurs in the judgment of reversal, for the reasons stated by him in Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, supra.

**All Citations**

262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176, P.U.R. 1923D 11

Footnotes

1

| | |
|---|---|
| Difference in depreciation allowed | $ 49,000 |
| Preliminary organization and development cost | 14,500 |
| Bluefield Valley waterworks plant | 25,000 |
| Water rights | 50,000 |
| Excess overhead costs | 39,000 |
| Paving over mains | 28,500 |

$204,000

2 As to 'e': $365,445.13 represents investment cost less depreciation. The gross investment was found to be $500,402.53, indicating a deduction on account of depreciation of $134,957.40, about 27 per cent., as against 19 per cent. found by the commission's engineer.

3

| | Company Engineer. | City Engineer. |
| --- | --- | --- |
| 1. Preliminary costs | $14,455 | $1,000 |
| 2. Water rights | 50,000 | Nothing |
| 3. Cutting pavements over mains | 27,744 | 233 |
| 4. Pipe lines from gravity springs | 22,072 | 15,442 |
| 5. Laying cast iron street mains | 19,252 | 15,212 |

| | | |
|---|---|---|
| 6. Reproducing Ada springs | 18,558 | 13,027 |
| 7. Superintendence and engineering | 20,515 | 13,621 |
| 8. General contingent cost | 16,415 | 5,448 |
| | $189,011 | $63,983 |

4 This case was affirmed by this court June 4, 1923, 262 U. S. 443, 43 Sup. Ct. 606, 67 L. Ed. 1076.

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# Exhibit B

KeyCite Yellow Flag - Negative Treatment
Disagreement Recognized by City of Brookings Mun. Telephone Co. v. F.C.C., D.C.Cir., July 7, 1987

64 S.Ct. 281
Supreme Court of the United States

FEDERAL POWER COMMISSION et al.
v.
HOPE NATURAL GAS CO.
CITY OF CLEVELAND
v.
SAME.

Nos. 34 and 35.
|
Argued Oct. 20, 21, 1943.
|
Decided Jan. 3, 1944.

**Synopsis**
Separate proceedings before the Federal Power Commission by such Commission, by the City of Cleveland and the City of Akron, and by Pennsylvania Public Utility Commission wherein the State of West Virginia and its Public Service Commission were permitted to intervene concerning rates charged by Hope Natural Gas Company which were consolidated for hearing. An order fixing rates was reversed and remanded with directions by the Circuit Court of Appeals, 134 F.2d 287, and Federal Power Commission, City of Akron and Pennsylvania Public Utility Commission in one case and the City of Cleveland in another bring certiorari.

Reversed.

Mr. Justice REED, Mr. Justice FRANKFURTER and Mr. Justice JACKSON, dissenting.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

West Headnotes (26)

[1] **Public Utilities**Nature and extent in general

Rate-making is only one species of price-fixing which, like other applications of the police power, may reduce the value of the property regulated, but that does not render the regulation invalid.

25 Cases that cite this headnote

[2] **Public Utilities**Reasonableness of charges in general

Rates cannot be made to depend upon fair value, which is the end product of the process of rate-making and not the starting point, when the value of the going enterprise depends on earnings under whatever rates may be anticipated.

101 Cases that cite this headnote

[3] **Gas**Federal Power Commission

The rate-making function of the Federal Power Commission under the Natural Gas Act involves the making of pragmatic adjustments, and the Commission is not bound to the use of any single formula or combination of formulae in determining rates. Natural Gas Act, §§ 4(a), 5(a), 6, 15 U.S.C.A. §§ 717c(a), 717d(a), 717e.

48 Cases that cite this headnote

[4] **Gas**Scope of review and trial de novo

When order of Federal Power Commission fixing natural gas rates is challenged in the courts, the question is whether order viewed in its entirety meets the requirements of the Natural Gas Act. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

8 Cases that cite this headnote

**[5]** **Gas**—Reasonableness of Charges

Under the statutory standard that natural gas rates shall be "just and reasonable" it is the result reached and not the method employed that is controlling. Natural Gas Act §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

72 Cases that cite this headnote

**[6]** **Gas**—Scope of review and trial de novo

If the total effect of natural gas rates fixed by Federal Power Commission cannot be said to be unjust and unreasonable, judicial inquiry under the Natural Gas Act is at an end. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

77 Cases that cite this headnote

**[7]** **Gas**—Presumptions

An order of the Federal Power Commission fixing rates for natural gas is the product of expert judgment, which carries a presumption of validity, and one who would upset the rate must make a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

119 Cases that cite this headnote

**[8]** **Gas**—Reasonableness of Charges

The fixing of just and reasonable rates for natural gas by the Federal Power Commission involves a balancing of the investor and the consumer interests. Natural Gas Act, §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

57 Cases that cite this headnote

**[9]** **Gas**—Depreciation and depletion

As respects rates for natural gas, from the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business, which includes service on the debt and dividends on stock, and by such standard the return to the equity owner should be commensurate with the terms on investments in other enterprises having corresponding risks, and such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital. Natural Gas Act, §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

279 Cases that cite this headnote

**[10]** **Gas**—Depreciation and depletion

The fixing by the Federal Power Commission of a rate of return that permitted a natural gas company to earn $2,191,314 annually was supported by substantial evidence. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

3 Cases that cite this headnote

**[11]** **Gas**—Depreciation and depletion

Rates which enable a natural gas company to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed cannot be condemned as invalid, even though they might produce only a meager return on the so-called "fair value" rate base. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

164 Cases that cite this headnote

[12] **Gas**—Method of valuation

A return of only 3 27/100 per cent. on alleged rate base computed on reproduction cost new to natural gas company earning an annual average return of about 9 per cent. on average investment and satisfied with existing gas rates suggests an inflation of the base on which the rate had been computed, and justified Federal Power Commission in rejecting reproduction cost as the measure of the rate base. Natural Gas Act, §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

65 Cases that cite this headnote

[13] **Gas**—Depreciation and depletion

There is no constitutional requirement that owner who engages in a wasting-asset business of limited life shall receive at the end more than he has put into it, and such rule is applicable to a natural gas company since the ultimate exhaustion of its supply of gas is inevitable. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

1 Case that cites this headnote

[14] **Gas**—Depreciation and depletion

In fixing natural gas rate the basing of annual depreciation on cost is proper since by such procedure the utility is made whole and the integrity of its investment is maintained, and no more is required. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

13 Cases that cite this headnote

[15] **Gas**—Findings and orders

There are no constitutional requirements more exacting than the standards of the Natural Gas Act which are that gas rates shall be just and reasonable, and a rate order which conforms with the act is valid. Natural Gas Act, §§ 4(a), 5(a), 6, 19(b), 15 U.S.C.A. §§ 717c(a), 717d(a), 717e, 717r(b).

16 Cases that cite this headnote

[16] **Commerce**—Gas

The purpose of the Natural Gas Act was to provide through the exercise of the national power over interstate commerce an agency for regulating the wholesale distribution to public service companies of natural gas moving in interstate commerce not subject to certain types of state regulation, and the act was not intended to take any authority from state commissions or to usurp state regulatory authority. Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.

25 Cases that cite this headnote

[17] **Mines and Minerals**—Oil and gas

Under the Natural Gas Act, the Federal Power Commission has no authority over the production or gathering of natural gas. Natural Gas Act, § 1(b), 15 U.S.C.A. § 717(b).

14 Cases that cite this headnote

**[18]** **Gas**—In general; amount and regulation

The primary aim of the Natural Gas Act was to protect consumers against exploitation at the hands of natural gas companies and holding companies owning a majority of the pipe-line mileage which moved gas in interstate commerce and against which state commissions, independent producers and communities were growing quite helpless. Natural Gas Act, §§ 4, 6–10, 14, 15 U.S.C.A. §§ 717c, 717e–717i, 717m.

63 Cases that cite this headnote

**[19]** **Gas**—In general; amount and regulation

Apart from the express exemptions contained in § 7 of the Natural Gas Act considerations of conservation are material where abandonment or extensions of facilities or service by natural gas companies are involved, but exploitation of consumers by private operators through maintenance of high rates cannot be continued because of the indirect benefits derived therefrom by a state containing natural gas deposits. Natural Gas Act, §§ 4, 5, and § 7 as amended 15 U.S.C.A. §§ 717c, 717d, 717f.

23 Cases that cite this headnote

**[20]** **Commerce**—Gas

A limitation on the net earnings of a natural gas company from its interstate business is not a limitation on the power of the producing state, either to safeguard its tax revenues from such industry, or to protect the interests of those who sell their gas to the interstate operator, particularly where the return allowed the company by the Federal Power Commission was a net return after all such charges. Natural Gas Act, §§ 4, 5, and § 7, as amended, 15 U.S.C.A. §§ 717c, 717d, 717f.

10 Cases that cite this headnote

**[21]** **Gas**—Reasonableness of Charges

The Natural Gas Act granting Federal Power Commission power to fix "just and reasonable rates" does not include the power to fix rates which will disallow or discourage resales for industrial use. Natural Gas Act, §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

76 Cases that cite this headnote

**[22]** **Gas**—Reasonableness of Charges

The wasting-asset nature of the natural gas industry does not require the maintenance of the level of rates so that natural gas companies can make a greater profit on each unit of gas sold. Natural Gas Act, §§ 4(a), 5(a), 15 U.S.C.A. §§ 717c(a), 717d(a).

1 Case that cites this headnote

**[23]** **Federal Courts**—Presentation of Questions Below or on Review; Record; Waiver
**Federal Courts**—Scope and Extent of Review

Where the Federal Power Commission made no findings as to any discrimination or unreasonable differences in rates, and its failure was not challenged in the petition to review, and had not been raised or argued by any party, the problem of discrimination was not open to review by the Supreme Court on certiorari. Natural Gas Act, § 4(b), 15 U.S.C.A. § 717c(b).

18 Cases that cite this headnote

**[24]** **Constitutional Law**—Judicial encroachment on executive acts taken under statutory authority
**Gas**—Power to control and regulate

  

Congress has entrusted the administration of the Natural Gas Act to the Federal Power Commission and not to the courts, and apart from the requirements of judicial review, it is not for the Supreme Court to advise the Commission how to discharge its functions. Natural Gas Act, §§ 1 et seq., 19(b), 15 U.S.C.A. §§ 717 et seq., 717r(b).

13 Cases that cite this headnote

[25] Gas Decisions reviewable

Under the Natural Gas Act, where order sought to be reviewed does not of itself adversely affect complainant but only affects his rights adversely on the contingency of future administrative action, the order is not reviewable, and resort to the courts in such situation is either premature or wholly beyond the province of such courts. Natural Gas Act, § 19(b), 15 U.S.C.A. § 717r(b).

8 Cases that cite this headnote

[26] Gas Persons entitled to relief; parties

Findings of the Federal Power Commission on lawfulness of past natural gas rates, which the Commission was without power to enforce, were not reviewable under the Natural Gas Act giving any "party aggrieved" by an order of the Commission the right of review. Natural Gas Act, § 19(b), 15 U.S.C.A. § 717r(b).

28 Cases that cite this headnote

**Attorneys and Law Firms**

****283 *592** Mr. Francis M. Shea, Asst. Atty. Gen., for petitioners Federal Power Com'n and others.

***593** Mr. Spencer W. Reeder, of Cleveland, Ohio, for petitioner City of cleveland.

Mr. William B. Cockley, of Cleveland, Ohio, for respondent.

Mr. M. M. Neeley, of Charleston, W. Va., for State of West Virginia, as amicus curiae by special leave of Court.

**Opinion**

Mr. Justice DOUGLAS delivered the opinion of the Court.

The primary issue in these cases concerns the validity under the Natural Gas Act of 1938, 52 Stat. 821, 15 U.S.C. s 717 et seq., 15 U.S.C.A. s 717 et seq., of a rate order issued by the Federal Power Commission reducing the rates chargeable by Hope Natural Gas Co., 44 P.U.R.,N.S., 1. On a petition for review of the order made pursuant to s 19(b) of the Act, the ***594** Circuit Court of Appeals set it aside, one judge dissenting. 4 Cir., 134 F.2d 287. The cases ****284** are here on petitions for writs of certiorari which we granted because of the public importance of the questions presented. City of Cleveland v. Hope Natural Gas Co., 319 U.S. 735, 63 S.Ct. 1165.

Hope is a West Virginia corporation organized in 1898. It is a wholly owned subsidiary of Standard Oil Co. (N.J.). Since the date of its organization, it has been in the business of producing, purchasing and marketing natural gas in that state.[1] It sells some of that gas to local consumers in West Virginia. But the great bulk of it goes to five customer companies which receive it at the West Virginia line and distribute it in Ohio and in Pennsylvania.[2] In July, 1938, the cities of Cleveland and Akron filed complaints with the Commission charging that the rates collected by Hope from East Ohio Gas Co. (an affiliate of Hope which distributes gas in Ohio) were excessive and unreasonable. Later in 1938 the Commission on its own motion instituted an investigation to determine the reasonableness of all of Hope's interstate rates. In March ***595** 1939 the Public Utility Commission of Pennsylvania filed a complaint with the Commission charging that the rates collected by Hope from Peoples Natural Gas Co. (an affiliate of Hope distributing gas in Pennsylvania) and two non-affiliated companies were unreasonable. The City of Cleveland asked that the challenged rates be declared unlawful and that just and reasonable rates be determined from June 30, 1939 to the date of the Commission's order. The latter finding was requested in aid of state regulation and to afford the Public Utilities Commission of Ohio a proper basic for disposition of a fund collected by East Ohio under bond from Ohio consumers since June 30, 1939. The cases were consolidated and hearings were held.

On May 26, 1942, the Commission entered its order and made its findings. Its order required Hope to decrease its future interstate rates so as to reflect a reduction, on an annual basis of not less than $3,609,857 in operating revenues. And it established 'just and reasonable' average rates per m.c.f. for each of the five customer companies.[3] In response to the prayer of the City of Cleveland the Commission also made findings as to the lawfulness of past rates, although concededly it had no authority under the Act to fix past rates or to award reparations. 44 P.U.R.,U.S., at page 34. It found that the rates collected by Hope from East Ohio were unjust, unreasonable, excessive and therefore unlawful, by $830,892 during 1939, $3,219,551 during 1940, and $2,815,789 on an annual basis since 1940. It further found that just, reasonable, and lawful rates for gas sold by Hope to East Ohio for resale for ultimate public consumption were those required ***596** to produce $11,528,608 for 1939, $11,507,185 for 1940 and $11.910,947 annually since 1940.

The Commission established an interstate rate base of $33,712,526 which, it found, represented the 'actual legitimate cost' of the company's interstate property less depletion and depreciation and plus unoperated acreage, working capital and future net capital additions. The Commission, beginning with book cost, made ****285** certain adjustments not necessary to relate here and found the 'actual legitimate cost' of the plant in interstate service to be $51,957,416, as of December 31, 1940. It deducted accrued depletion and depreciation, which it found to be $22,328,016 on an 'economic-service-life' basis. And it added $1,392,021 for future net capital additions, $566,105 for useful unoperated acreage, and $2,125,000 for working capital. It used 1940 as a test year to estimate future revenues and expenses. It allowed over $16,000,000 as annual operating expenses—about $1,300,000 for taxes, $1,460,000 for depletion and depreciation, $600,000 for exploration and development costs, $8,500,000 for gas purchased. The Commission allowed a net increase of $421,160 over 1940 operating expenses, which amount was to take care of future increase in wages, in West Virginia property taxes, and in exploration and development costs. The total amount of deductions allowed from interstate revenues was $13,495,584.

Hope introduced evidence from which it estimated reproduction cost of the property at $97,000,000. It also presented a so-called trended 'original cost' estimate which exceeded $105,000,000. The latter was designed 'to indicate what the original cost of the property would have been if 1938 material and labor prices had prevailed throughout the whole period of the piece-meal construction of the company's property since 1898.' 44 P.U.R.,N.S., at pages 8, 9. Hope estimated by the 'percent condition' method accrued depreciation at about 35% of ***597** reproduction cost new. On that basis Hope contended for a rate base of $66,000,000. The Commission refused to place any reliance on reproduction cost new, saying that it was 'not predicated upon facts' and was 'too conjectural and illusory to be given any weight in these proceedings.' Id., 44 P.U.R.,U.S., at page 8. It likewise refused to give any 'probative value' to trended 'original cost' since it was 'not founded in fact' but was 'basically erroneous' and produced 'irrational results.' Id., 44 P.U.R., N.S., at page 9. In determining the amount of accrued depletion and depreciation the Commission, following Lindheimer v. Illinois Bell Telephone Co., 292 U.S. 151, 167-169, 54 S.Ct. 658, 664—666, 78 L.Ed. 1182; Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 592, 593, 62 S.Ct. 736, 745, 746, 86 L.Ed. 1037, based its computation on 'actual legitimate cost'. It found that Hope during the years when its business was not under regulation did not observe 'sound depreciation and depletion practices' but 'actually accumulated an excessive reserve'[4] of about $46,000,000. Id., 44 P.U.R.,N.S., at page 18. One member of the Commission thought that the entire amount of the reserve should be deducted from 'actual legitimate cost' in determining the rate base.[5] The majority of the ***598** Commission concluded, however, that where, as here, a business is brought under regulation for the first time and where incorrect depreciation and depletion practices have prevailed, the deduction of the reserve requirement (actual existing depreciation and depletion) rather than the excessive reserve should be made so as to ****286** lay 'a sound basis for future regulation and control of rates.' Id., 44 P.U.R.,N.S., at page 18. As we have pointed out, it determined accrued depletion and depreciation to be $22,328,016; and it allowed approximately $1,460,000 as the annual operating expense for depletion and depreciation.[6]

Hope's estimate of original cost was about $69,735,000—approximately $17,000,000 more than the amount found by the Commission. The item of $17,000,000 was made up largely of expenditures which prior to December 31, 1938, were charged to operating expenses. Chief among those expenditures was some $12,600,000 expended ***599** in well-drilling prior to 1923. Most of that sum was expended by Hope for labor, use of drilling-rigs, hauling, and similar costs of well-drilling. Prior to 1923 Hope followed the general practice of the natural gas industry and charged the cost of drilling wells to operating expenses. Hope continued that practice until the Public Service Commission of West Virginia in 1923 required it to capitalize such expenditures, as does the Commission under its present Uniform System of Accounts.[7] The Commission refused to add such items to the rate base stating that 'No greater injustice to consumers could be done than to allow items as operating expenses and at a later date include them in the rate base, thereby placing multiple charges upon the consumers.' Id., 44 P.U.R.,N.S., at page 12. For the same reason the Commission excluded from the rate base about $1,600,000 of expenditures on properties which Hope acquired from other utilities, the latter having charged those payments to operating expenses. The Commission disallowed certain other overhead items amounting to over $3,000,000 which also had been previously charged to operating expenses. And it refused to add some $632,000 as interest during construction since no interest was in fact paid.

Hope contended that it should be allowed a return of not less than 8%. The Commission found that an 8% return would be unreasonable but that 6 1/2% was a fair rate of return. That rate of return, applied to the rate base of $33,712,526, would produce $2,191,314 annually, as compared with the present income of not less than $5,801,171.

The Circuit Court of Appeals set aside the order of the Commission for the following reasons. (1) It held that the rate base should reflect the 'present fair value' of the ***600** property, that the Commission in determining the 'value' should have considered reproduction cost and trended original cost, and that 'actual legitimate cost' (prudent investment) was not the proper measure of 'fair value' where price levels had changed since the investment. (2) It concluded that the well-drilling costs and overhead items in the amount of some $17,000,000 should have been included in the rate base. (3) It held that accrued depletion and depreciation and the annual allowance for that expense should be computed on the basis of 'present fair value' of the property not on the basis of 'actual legitimate cost'.

****287** The Circuit Court of Appeals also held that the Commission had no power to make findings as to past rates in aid of state regulation. But it concluded that those findings were proper as a step in the process of fixing future rates. Viewed in that light, however, the findings were deemed to be invalidated by the same errors which vitiated the findings on which the rate order was based.

Order Reducing Rates. Congress has provided in s 4(a) of the Natural Gas Act that all natural gas rates subject to the jurisdiction of the Commission 'shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.' Sec. 5(a) gives the Commission the power, after hearing, to determine the 'just and reasonable rate' to be thereafter observed and to fix the rate by order. Sec. 5(a) also empowers the Commission to order a 'decrease where existing rates are unjust * * * unlawful, or are not the lowest reasonable rates.' And Congress has provided in s 19(b) that on review of these rate orders the 'finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive.' Congress, however, has provided no formula by which the 'just and reasonable' rate is to be determined. It has not filled in the ***601** details of the general prescription[8] of s 4(a) and s 5(a). It has not expressed in a specific rule the fixed principle of 'just and reasonable'.

[1] [2] When we sustained the constitutionality of the Natural Gas Act in the Natural Gas Pipeline Co. case, we stated that the 'authority of Congress to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the states under the Fourteenth to regulate the prices of commodities in intrastate commerce.' 315 U.S. at page 582, 62 S.Ct. at page 741, 86 L.Ed. 1037. Rate-making is indeed but one species of price-fixing. Munn v. Illinois, 94 U.S. 113, 134, 24 L.Ed. 77. The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid. Block v. Hirsh, 256 U.S. 135, 155—157, 41 S.Ct. 458, 459, 460, 65 L.Ed. 865, 16 A.L.R. 165; Nebbia v. New York, 291 U.S. 502, 523—539, 54 S.Ct. 505, 509—517, 78 L.Ed. 940, 89 A.L.R. 1469, and cases cited. It does, however, indicate that 'fair value' is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated.[9]

***602** [3] [4] [5] [6] [7] We held in Federal Power Commission v. Natural Gas Pipeline Co., supra, that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' Id., 315 U.S. at page 586, 62 S.Ct. at page 743, 86 L.Ed. 1037. And when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. Id., 315 U.S. at page 586, 62 S.Ct. at page 743, 86 L.Ed. 1037. Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. Cf. ****288** Los Angeles Gas & Electric Corp. v. Railroad Commission, 289 U.S. 287, 304, 305, 314, 53 S.Ct. 637, 643, 644, 647, 77 L.Ed. 1180; West Ohio Gas Co. v. Public Utilities Commission (No. 1), 294 U.S. 63, 70, 55 S.Ct. 316, 320, 79 L.Ed. 761; West v. Chesapeake & Potomac Tel. Co., 295 U.S. 662, 692, 693, 55 S.Ct. 894, 906, 907, 79 L.Ed. 1640 (dissenting opinion). It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Cf. Railroad Commission v. Cumberland Tel. & T. Co., 212 U.S. 414, 29 S.Ct. 357, 53 L.Ed. 577; Lindheimer v. Illinois Bell Tel. Co., supra, 292 U.S. at pages 164, 169, 54 S.Ct. at pages 663, 665, 78 L.Ed. 1182; Railroad Commission v. Pacific Gas & E. Co., 302 U.S. 388, 401, 58 S.Ct. 334, 341, 82 L.Ed. 319.

***603** [8] [9] The rate-making process under the Act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests. Thus we stated in the Natural Gas Pipeline Co. case that 'regulation does not insure that the business shall produce net revenues.' 315 U.S. at page 590, 62 S.Ct. at page 745, 86 L.Ed. 1037. But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. Cf. Chicago & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345, 346, 12 S.Ct. 400, 402, 36 L.Ed. 176. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. See State of Missouri ex rel. South-western Bell Tel. Co. v. Public Service Commission, 262 U.S. 276, 291, 43 S.Ct. 544, 547, 67 L.Ed. 981, 31 A.L.R. 807 (Mr. Justice Brandeis concurring). The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the Act as unjust and unreasonable from the investor or company viewpoint.

We have already noted that Hope is a wholly owned subsidiary of the Standard Oil Co. (N.J.). It has no securities outstanding except stock. All of that stock has been owned by Standard since 1908. The par amount presently outstanding is approximately $28,000,000 as compared with the rate base of $33,712,526 established by ***604** the Commission. Of the total outstanding stock $11,000,000 was issued in stock dividends. The balance, or about $17,000,000, was issued for cash or other assets. During the four decades of its operations Hope has paid over $97,000,000 in cash dividends. It had, moreover, accumulated by 1940 an earned surplus of about $8,000,000. It had thus earned the total investment in the company nearly seven times. Down to 1940 it earned over 20% per year on the average annual amount of its capital stock issued for cash or other assets. On an average invested capital of some $23,000,000 Hope's average earnings have been about 12% a year. And during this period it had accumulated in addition reserves for depletion and depreciation of about $46,000,000. Furthermore, during 1939, 1940 and 1941, Hope paid dividends of 10% on its stock. And in the year 1942, during about half of which the lower rates were in effect, it paid dividends of 7 1/2%. From 1939-1942 its earned surplus increased from $5,250,000 to about $13,700,000, i.e., to almost half the par value of its outstanding stock.

As we have noted, the Commission fixed a rate of return which permits Hope to earn $2,191,314 annually. In determining that amount it stressed the importance of maintaining the financial integrity of the ****289** company. It considered the financial history of Hope and a vast array of data bearing on the natural gas industry, related businesses, and general economic conditions. It noted that the yields on better issues of bonds of natural gas companies sold in the last few years were 'close to 3 per cent', 44 P.U.R.,N.S., at page 33. It stated that the company was a 'seasoned enterprise whose risks have been minimized' by adequate provisions for depletion and depreciation (past and present) with 'concurrent high profits', by 'protected established markets, through affiliated distribution companies, in populous and industralized areas', and by a supply of gas locally to meet all requirements, ***605** 'except on certain peak days in the winter, which it is feasible to supplement in the future with gas from other sources.' Id., 44 P.U.R.,N.S., at page 33. The Commission concluded, 'The company's efficient management, established markets, financial record, affiliations, and its prospective business place it in a strong position to attract capital upon favorable terms when it is required.' Id., 44 P.U.R.,N.S., at page 33.

  

[10] [11] [12] In view of these various considerations we cannot say that an annual return of $2,191,314 is not 'just and reasonable' within the meaning of the Act. Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called 'fair value' rate base. In that connection it will be recalled that Hope contended for a rate base of $66,000,000 computed on reproduction cost new. The Commission points out that if that rate base were accepted, Hope's average rate of return for the four-year period from 1937-1940 would amount to 3.27%. During that period Hope earned an annual average return of about 9% on the average investment. It asked for no rate increases. Its properties were well maintained and operated. As the Commission says such a modest rate of 3.27% suggests an 'inflation of the base on which the rate has been computed.' Dayton Power & Light Co. v. Public Utilities Commission, 292 U.S. 290, 312, 54 S.Ct. 647, 657, 78 L.Ed. 1267. Cf. Lindheimer v. Illinois Bell Tel. Co., supra, 292 U.S. at page 164, 54 S.Ct. at page 663, 78 L.Ed. 1182. The incongruity between the actual operations and the return computed on the basis of reproduction cost suggests that the Commission was wholly justified in rejecting the latter as the measure of the rate base.

In view of this disposition of the controversy we need not stop to inquire whether the failure of the Commission to add the $17,000,000 of well-drilling and other costs to ***606** the rate base was consistent with the prudent investment theory as developed and applied in particular cases.

[13] [14] [15] Only a word need be added respecting depletion and depreciation. We held in the Natural Gas Pipeline Co. case that there was no constitutional requirement 'that the owner who embarks in a wasting-asset business of limited life shall receive at the end more than he has put into it.' 315 U.S. at page 593, 62 S.C. at page 746, 86 L.Ed. 1037. The Circuit Court of Appeals did not think that that rule was applicable here because Hope was a utility required to continue its service to the public and not scheduled to end its business on a day certain as was stipulated to be true of the Natural Gas Pipeline Co. But that distinction is quite immaterial. The ultimate exhaustion of the supply is inevitable in the case of all natural gas companies. Moreover, this Court recognized in Lindheimer v. Illinois Bell Tel. Co., supra, the propriety of basing annual depreciation on cost.[10] By such a procedure the ****290** utility is made whole and the integrity of its investment maintained.[11] No more is required.[12] We cannot approve the contrary holding ***607** of United Railways & Electric Co. v. West, 280 U.S. 234, 253, 254, 50 S.Ct. 123, 126, 127, 74 L.Ed. 390. Since there are no constitutional requirements more exacting than the standards of the Act, a rate order which conforms to the latter does not run afoul of the former.

The Position of West Virginia. The State of West Virginia, as well as its Public Service Commission, intervened in the proceedings before the Commission and participated in the hearings before it. They have also filed a brief amicus curiae here and have participated in the argument at the bar. Their contention is that the result achieved by the rate order 'brings consequences which are unjust to West Virginia and its citizens' and which 'unfairly depress the value of gas, gas lands and gas leaseholds, unduly restrict development of their natural resources, and arbitrarily transfer their properties to the residents of other states without just compensation therefor.'

West Virginia points out that the Hope Natural Gas Co. holds a large number of leases on both producing and unoperated properties. The owner or grantor receives from the operator or grantee delay rentals as compensation for postponed drilling. When a producing well is successfully brought in, the gas lease customarily continues indefinitely for the life of the field. In that case the operator pays a stipulated gas-well rental or in some cases a gas royalty equivalent to one-eighth of the gas marketed.[13] Both the owner and operator have valuable property interests in the gas which are separately taxable under West Virginia law. The contention is that the reversionary interests in the leaseholds should be represented in the rate proceedings since it is their gas which is being sold in interstate ***608** commerce. It is argued, moreover, that the owners of the reversionary interests should have the benefit of the 'discovery value' of the gas leaseholds, not the interstate consumers. Furthermore, West Virginia contends that the Commission in fixing a rate for natural gas produced in that State should consider the effect of the rate order on the economy of West Virginia. It is pointed out that gas is a wasting asset with a rapidly diminishing supply. As a result West Virginia's gas deposits are becoming increasingly valuable. Nevertheless the rate fixed by the Commission reduces that value. And that reduction, it is said, has severe repercussions on the economy of the State. It is argued in the first place that as a result of this rate reduction Hope's West Virginia property taxes may be decreased in view of the relevance which earnings have under West Virginia law in the assessment of property for tax purposes.[14] Secondly, it is pointed out that West Virginia has a production tax[15] on the 'value' of the gas exported from the State. And we are told that for purposes of that tax 'value' becomes under West Virginia

  

law 'practically the substantial equivalent of market value.' Thus West Virginia argues that undervaluation of Hope's gas leaseholds will cost the State many thousands of dollars in taxes. The effect, it is urged, is to impair West Virginia's tax structure for the benefit of Ohio and Pennsylvania consumers. West Virginia emphasizes, moreover, its deep interest in the conservation of its natural resources including its natural gas. It says that a reduction of the value of these leasehold values will jeopardize these conservation policies in three respects: (1) ****291** exploratory development of new fields will be discouraged; (2) abandonment of lowyield high-cost marginal wells will be hastened; and (3) secondary recovery of oil will be hampered. ***609** Furthermore, West Virginia contends that the reduced valuation will harm one of the great industries of the State and that harm to that industry must inevitably affect the welfare of the citizens of the State. It is also pointed out that West Virginia has a large interest in coal and oil as well as in gas and that these forms of fuel are competitive. When the price of gas is materially cheapened, consumers turn to that fuel in preference to the others. As a result this lowering of the price of natural gas will have the effect of depreciating the price of West Virginia coal and oil.
West Virginia insists that in neglecting this aspect of the problem the Commission failed to perform the function which Congress entrusted to it and that the case should be remanded to the Commission for a modification of its order.[16]

We have considered these contentions at length in view of the earnestness with which they have been urged upon us. We have searched the legislative history of the Natural Gas Act for any indication that Congress entrusted to the Commission the various considerations which West Virginia has advanced here. And our conclusion is that Congress did not.
**[16] [17]** We pointed out in Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U.S. 498, 506, 62 S.Ct. 384, 387, 86 L.Ed. 371, that the purpose of the Natural Gas Act was to provide, 'through the exercise of the national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation.' As stated in the House Report the 'basic purpose' of this legislation was 'to occupy' the field in which such cases as ***610** State of Missouri v. Kansas Natural Gas Co., 265 U.S. 298, 44 S.Ct. 544, 68 L.Ed. 1027, and Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83, 47 S.Ct. 294, 71 L.Ed. 549, had held the States might not act. H.Rep. No. 709, 75th Cong., 1st Sess., p. 2. In accomplishing that purpose the bill was designed to take 'no authority from State commissions' and was 'so drawn as to complement and in no manner usurp State regulatory authority.' Id., p. 2. And the Federal Power Commission was given no authority over the 'production or gathering of natural gas.' s 1(b).

**[18]** The primary aim of this legislation was to protect consumers against exploitation at the lands of natural gas companies. Due to the hiatus in regulation which resulted from the Kansas Natural Gas Co. case and related decisions state commissions found it difficult or impossible to discover what it cost interstate pipe-line companies to deliver gas within the consuming states; and thus they were thwarted in local regulation. H.Rep., No. 709, supra, p. 3. Moreover, the investigations of the Federal Trade Commission had disclosed that the majority of the pipe-line mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipe-line transportation, had been acquired by a handful of holding companies.[17] State commissions, independent producers, and communities having or seeking the service were growing quite helpless against these combinations.[18] These were the types of problems with which those participating in the hearings were pre-occupied.[19] Congress addressed itself to those specific evils.

***611** The Federal Power Commission was given ****292** broad powers of regulation. The fixing of 'just and reasonable' rates (s 4) with the powers attendant thereto[20] was the heart of the new regulatory system. Moreover, the Commission was given certain authority by s 7(a), on a finding that the action was necessary or desirable 'in the public interest,' to require natural gas companies to extend or improve their transportation facilities and to sell gas to any authorized local distributor. By s 7(b) it was given control over the abandonment of facilities or of service. And by s 7(c), as originally enacted, no natural gas company could undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas was already being served by another company, or sell any natural gas in such a market, without obtaining a certificate of public convenience and necessity from the Commission. In passing on such applications for certificates of convenience and necessity the Commission was told by s 7(c), as originally enacted, that it was 'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.' The latter provision was deleted from s 7(c) when that subsection was amended by the Act of February 7, 1942, 56 Stat. 83. By that amendment limited grandfather rights were granted companies desiring to extend their facilities and services over the routes or within the area which they were already serving. Moreover, s 7(c) was broadened so as to require certificates ***612** of public convenience and necessity not only where the extensions were being made to markets in which natural gas was already being sold by another company but in other situations as well.

**[19]** These provisions were plainly designed to protect the consumer interests against exploitation at the hands of private natural gas companies. When it comes to cases of abandonment or of extensions of facilities or service, we may assume that, apart from the express exemptions[21] contained in s 7, considerations of conservation are material to the issuance of certificates of public convenience and necessity. But the Commission was not asked here for a certificate of public convenience and necessity under s 7 for any proposed construction or extension. It was faced with a determination of the amount which a private operator should be allowed to earn from the sale of natural gas across state lines through an established distribution system. Secs. 4 and 5, not s 7, provide the standards for that determination. We cannot find in the words of the Act or in its history the slightest intimation or suggestion that the exploitation of consumers by private operators through the maintenance of high rates should be allowed to continue provided the producing states obtain indirect benefits from it. That apparently was the Commission's view of the matter, for the same arguments advanced here were presented to the Commission and not adopted by it.

We do not mean to suggest that Congress was unmindful of the interests of the producing states in their natural gas supplies when it drafted the Natural Gas Act. As we have said, the Act does not intrude on the domain traditionally reserved for control by state commissions; and the Federal Power Commission was given no authority over ***613** 'the production or gathering of natural gas.' s 1(b). In addition, Congress recognized the legitimate interests of the States in the conservation of natural gas. By s 11 Congress instructed the Commission to make reports on compacts between two or more States dealing with the conservation, production and transportation of natural gas.[22] The Commission was also ****293** directed to recommend further legislation appropriate or necessary to carry out any proposed compact and 'to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distribution of natural gas.' s 11(a). Thus Congress was quite aware of the interests of the producing states in their natural gas supplies.[23] But it left the protection of ***614** those interests to measures other than the maintenance of high rates to private companies. If the Commission is to be compelled to let the stockholders of natural gas companies have a feast so that the producing states may receive crumbs from that table, the present Act must be redesigned. Such a project raises questions of policy which go beyond our province.

**[20]** It is hardly necessary to add that a limitation on the net earnings of a natural gas company from its interstate business is not a limitation on the power of the producing state either to safeguard its tax revenues from that industry[24] or to protect the interests of those who sell their gas to the interstate operator.[25] The return which ****294** the Commission ***615** allowed was the net return after all such charges.

It is suggested that the Commission has failed to perform its duty under the Act in that it has not allowed a return for gas production that will be enough to induce private enterprise to perform completely and efficiently its functions for the public. The Commission, however, was not oblivious of those matters. It considered them. It allowed, for example, delay rentals and exploration and development costs in operating expenses.[26] No serious attempt has been made here to show that they are inadequate. We certainly cannot say that they are, unless we are to substitute our opinions for the expert judgment of the administrators to whom Congress entrusted the decision. Moreover, if in light of experience they turn out to be inadequate for development of new sources of supply, the doors of the Commission are open for increased allowances. This is not an order for all time. The Act contains machinery for obtaining rate adjustments. s 4.

**[21] [22]** But it is said that the Commission placed too low a rate on gas for industrial purposes as compared with gas for domestic purposes and that industrial uses should be discouraged. It should be noted in the first place that the rates which the Commission has fixed are Hope's interstate wholesale rates to distributors not interstate rates to industrial users[27] and domestic consumers. We hardly ***616** can assume, in view of the history of the Act and its provisions, that the resales intrastate by the customer companies which distribute the gas to ultimate consumers in Ohio and Pennsylvania are subject to the rate-making powers of the Commission.[28] But in any event those rates are not in issue here. Moreover, we fail to find in the power to fix 'just and reasonable' rates the power to fix rates which will disallow or discourage resales for industrial use. The Committee Report stated that the Act provided 'for regulation along recognized and more or less standardized lines' and that there was 'nothing novel in its provisions'. H.Rep.No.709, supra, p. 3. Yet if we are now to tell the Commission to fix the rates so as to discourage particular uses, we would indeed be injecting into a rate case a 'novel' doctrine which has no express statutory sanction. The same would be true if we were to hold that the wasting-asset nature of the industry required the maintenance of the level of rates so that natural gas companies could make a greater profit on each unit of gas sold. Such theories of rate-making for this industry may or may not be desirable. The difficulty is that s 4(a) and s 5(a) contain only the conventional standards of rate-making for natural gas companies.[29] The ***617** Act of February 7, 1942, by broadening s 7 gave the Commission some additional authority to deal with the conservation aspects of the problem.[30] But s 4(a) and s 5(a) were not changed. If the standard ****295** of 'just and reasonable' is to sanction the maintenance of high rates by a natural gas company because they restrict the use of natural gas for certain purposes, the Act must be further amended.

[23] [24] It is finally suggested that the rates charged by Hope are discriminatory as against domestic users and in favor of industrial users. That charge is apparently based on s 4(b) of the Act which forbids natural gas companies from maintaining 'any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.' The power of the Commission to eliminate any such unreasonable differences or discriminations is plain. s 5(a). The Commission, however, made no findings under s 4(b). Its failure in that regard was not challenged in the petition to review. And it has not been raised or argued here by any party. Hence the problem of discrimination has no proper place in the present decision. It will be time enough to pass on that issue when it is presented to us. Congress has entrusted the administration of the Act to the Commission not to the courts. Apart from the requirements of judicial review it is not ***618** for us to advise the Commission how to discharge its functions.

Findings as to the Lawfulness of Past Rates. As we have noted, the Commission made certain findings as to the lawfulness of past rates which Hope had charged its interstate customers. Those findings were made on the complaint of the City of Cleveland and in aid of state regulation. It is conceded that under the Act the Commission has no power to make reparation orders. And its power to fix rates admittedly is limited to those 'to be thereafter observed and in force.' s 5(a). But the Commission maintains that it has the power to make findings as to the lawfulness of past rates even though it has no power to fix those rates.[31] However that may be, we do not think that these findings were reviewable under s 19(b) of the Act. That section gives any party 'aggrieved by an order' of the Commission a review 'of such order' in the circuit court of appeals for the circuit where the natural gas company is located or has its principal place of business or in the United States Court of Appeals for the District of Columbia. We do not think that the findings in question fall within that category.

[25] [26] The Court recently summarized the various types of administrative action or determination reviewable as orders under the Urgent Deficiencies Act of October 22, ***619** 1913, 28 U.S.C. ss 45, 47a, 28 U.S.C.A. ss 45, 47a, and kindred statutory provisions. Rochester Tel. Corp. v. United States, 307 U.S. 125, 59 S.Ct. 754, 83 L.Ed. 1147. It was there pointed out that where 'the order sought to be reviewed does not of itself adversely affect complainant but only affects his rights adversely on the contingency of future administrative action', it is not reviewable. Id., 307 U.S. at page 130, 59 S.Ct. at page 757, 83 L.Ed. 1147. The Court said, 'In view of traditional conceptions of federal judicial power, resort to the courts in these situations is either premature or wholly beyond their province.' ****296** Id., 307 U.S. at page 130, 59 S.Ct. at page 757, 83 L.Ed. 1147. And see United States v. Los Angeles & S.L.R. Co., 273 U.S. 299, 309, 310, 47 S.Ct. 413, 414, 415, 71 L.Ed. 651; Shannahan v. United States, 303 U.S. 596, 58 S.Ct. 732, 82 L.Ed. 1039. These considerations are apposite here. The Commission has no authority to enforce these findings. They are 'the exercise solely of the function of investigation.' United States v. Los Angeles & S.L.R. Co., supra, 273 U.S. at page 310, 47 S.Ct. at page 414, 71 L.Ed. 651. They are only a preliminary, interim step towards possible future action—action not by the Commission but by wholly independent agencies. The outcome of those proceedings may turn on factors other than these findings. These findings may never result in the respondent feeling the pinch of administrative action.

Reversed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

Opinion of Mr. Justice BLACK and Mr. Justice MURPHY.

We agree with the Court's opinion and would add nothing to what has been said but for what is patently a wholly gratuitous assertion as to Constitutional law in the dissent of Mr. Justice FRANKFURTER. We refer to the statement that 'Congressional acquiescence to date in the doctrine of Chicago, etc., R. Co. v. Minnesota, supra (134 U.S. 418, 10 S.Ct. 462, 702, 33 L.Ed. 970), may fairly be claimed.' That was the case in which a majority of this Court was finally induced to expand the meaning ***620** of 'due process' so as to give courts power to block efforts of the state and national governments to regulate economic affairs. The present case does not afford a proper occasion to discuss the soundness of that doctrine because, as stated in Mr. Justice FRANKFURTER'S dissent, 'That issue is not here in controversy.' The salutary practice whereby courts do not discuss issues in the abstract applies with peculiar force to Constitutional questions. Since, however, the dissent adverts to a highly controversial due process doctrine and implies its acceptance by Congress, we feel compelled to say that we do not understand that Congress voluntarily has acquiesced in a Constitutional principle of government that courts, rather than legislative bodies, possess final authority over regulation of economic affairs. Even this Court has not always fully embraced that principle, and we wish to repeat that we have never acquiesced in it, and do not now. See Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 599-601, 62 S.Ct. 736, 749, 750, 86 L.Ed. 1037.

Mr. Justice REED, dissenting.

This case involves the problem of rate making under the Natural Gas Act. Added importance arises from the obvious fact that the principles stated are generally applicable to all federal agencies which are entrusted with the determination of rates for utilities. Because my views differ somewhat from those of my brethren, it may be of some value to set them out in a summary form.

The Congress may fix utility rates in situations subject to federal control without regard to any standard except the constitutional standards of due process and for taking private property for public use without just compensation. Wilson v. New, 243 U.S. 332, 350, 37 S.Ct. 298, 302, 61 L.Ed. 755, L.R.A.1917E, 938, Ann.Cas.1918A, 1024. A Commission, however, does not have this freedom of action. Its powers are limited not only by the constitutional standards but also by the standards of the delegation. Here the standard added by the Natural Gas Act is that the rate be 'just ***621** and reasonable.'[1] Section 6[2] ****297** throws additional light on the meaning of these words.

When the phrase was used by Congress to describe allowable rates, it had relation to something ascertainable. The rates were not left to the whim of the Commission. The rates fixed would produce an annual return and that annual return was to be compared with a theoretical just and reasonable return, all risks considered, on the fair value of the property used and useful in the public service at the time of the determination.

Such an abstract test is not precise. The agency charged with its determination has a wide range before it could properly be said by a court that the agency had disregarded statutory standards or had confiscated the property of the utility for public use. Cf. Chicago, M. & St. P.R. Co. v. Minnesota, 134 U.S. 418, 461—466, 10 S.Ct. 462, 702, 703—705, 33 L.Ed. 970, dissent. This is as Congress intends. Rates are left to an experienced agency particularly competent by training to appraise the amount required.

The decision as to a reasonable return had not been a source of great difficulty, for borrowers and lenders reached such agreements daily in a multitude of situations; and although the determination of fair value had been troublesome, its essentials had been worked out in fairness to investor and consumer by the time of the enactment ***622** of this Act. Cf. Los Angeles G. & E. Corp. v. Railroad Comm., 289 U.S. 287, 304 et seq., 53 S.Ct. 637, 643 et seq., 77 L.Ed. 1180. The results were well known to Congress and had that body desired to depart from the traditional concepts of fair value and earnings, it would have stated its intention plainly. Helvering v. Griffiths, 318 U.S. 371, 63 S.Ct. 636.

It was already clear that when rates are in dispute, 'earnings produced by rates do not afford a standard for decision.' 289 U.S. at page 305, 53 S.Ct. at page 644, 77 L.Ed. 1180. Historical cost, prudent investment and reproduction cost[3] were all relevant factors in determining fair value. Indeed, disregarding the pioneer investor's risk, if prudent investment and reproduction cost were not distorted by changes in price levels or technology, each of them would produce the same result. The realization from the risk of an investment in a speculative field, such as natural gas utilities, should be reflected in the present fair value.[4] The amount of evidence to be admitted on any point was of course in the agency's reasonable discretion, and it was free to give its own weight to these or other factors and to determine from all the evidence its own judgment as to the necessary rates.

***623** I agree with the Court in not imposing a rule of prudent investment alone in determining the rate base. This leaves the Commission free, as I understand it, to use any available evidence for its finding of fair value, including both prudent investment and the cost of installing at the present time an efficient system for furnishing the needed utility service.

My disagreement with the Court arises primarily from its view that it makes no **298 difference how the Commission reached the rate fixed so long as the result is fair and reasonable. For me the statutory command to the Commission is more explicit. Entirely aside from the constitutional problem of whether the Congress could validly delegate its rate making power to the Commission, in toto and without standards, it did legislate in the light of the relation of fair and reasonable to fair value and reasonable return. The Commission must therefore make its findings in observance of that relationship.

The Federal Power Commission did not, as I construe their action, disregard its statutory duty. They heard the evidence relating to historical and reproduction cost and to the reasonable rate of return and they appraised its weight. The evidence of reproduction cost was rejected as unpersuasive, but from the other evidence they found a rate base, which is to me a determination of fair value. On that base the earnings allowed seem fair and reasonable. So far as the Commission went in appraising the property employed in the service, I find nothing in the result which indicates confiscation, unfairness or unreasonableness. Good administration of rate making agencies under this method would avoid undue delay and render revaluations unnecessary except after violent fluctuations of price levels. Rate making under this method has been subjected to criticism. But until Congress changes the standards for the agencies, these rate making bodies should continue the conventional theory of rate *624 making. It will probably be simpler to improve present methods than to devise new ones.

But a major error, I think was committed in the disregard by the Commission of the investment in exploratory operations and other recognized capital costs. These were not considered by the Commission because they were charged to operating expenses by the company at a time when it was unregulated. Congress did not direct the Commission in rate making to deduct from the rate base capital investment which had been recovered during the unregulated period through excess earnings. In my view this part of the investment should no more have been disregarded in the rate base than any other capital investment which previously had been recovered and paid out in dividends or placed to surplus. Even if prudent investment throughout the life of the property is accepted as the formula for figuring the rate base, it seems to me illogical to throw out the admittedly prudent cost of part of the property because the earnings in the unregulated period had been sufficient to return the prudent cost to the investors over and above a reasonable return. What would the answer be under the theory of the Commission and the Court, if the only prudent investment in this utility had been the seventeen million capital charges which are now disallowed?

For the reasons heretofore stated, I should affirm the action of the Circuit Court of Appeals in returning the proceeding to the Commission for further consideration and should direct the Commission to accept the disallowed capital investment in determining the fair value for rate making purposes.

Mr. Justice FRANKFURTER, dissenting.

My brother JACKSON has analyzed with particularity the economic and social aspects of natural gas as well as *625 the difficulties which led to the enactment of the Natural Gas Act, especially those arising out of the abortive attempts of States to regulate natural gas utilities. The Natural Gas Act of 1938 should receive application in the light of this analysis, and Mr. Justice JACKSON has, I believe, drawn relevant inferences regarding the duty of the Federal Power Commission in fixing natural gas rates. His exposition seems to me unanswered, and I shall say only a few words to emphasize my basic agreement with him.

For our society the needs that are met by public utilities are as truly public services as the traditional governmental functions of police and justice. They are not less so when these services are rendered by private enterprise under governmental regulation. Who ultimately determines the ways of regulation, is the decisive aspect in the public supervision of privately-owned utilities. Foreshadowed nearly sixty years ago, Railroad Commission Cases (Stone v. Farmers' Loan & Trust Co.), 116 U.S. 307, 331, 6 S.Ct. 334, 344, 388, 1191, 29 L.Ed. 636, it was decided more than fifty **299 years ago that the final say under the Constitution lies with the judiciary and not the legislature. Chicago, etc., R. Co. v. Minnesota , 134 U.S. 418, 10 S.Ct. 462, 702, 33 L.Ed. 970.

While legal issues touching the proper distribution of governmental powers under the Constitution may always be raised, Congressional acquiescence to date in the doctrine of Chicago, etc., R. Co. v. Minnesota, supra, may fairly be claimed. But in any event that issue is not here in controversy. As pointed out in the opinions of my brethren, Congress has given only limited authority to the Federal Power Commission and made the exercise of that authority subject to judicial review. The Commission is authorized to fix rates chargeable for natural gas. But the rates that it can fix must be 'just and reasonable'. s 5 of the Natural Gas Act, 15 U.S.C. s 717d, 15 U.S.C.A. s 717d. Instead of making the Commission's rate determinations final, Congress *626 specifically provided for court review of such orders. To be sure, 'the finding of the Commission as to the facts, if supported by substantial evidence' was made 'conclusive', s 19 of the Act, 15 U.S.C. s 717r; 15 U.S.C.A. s 717r. But obedience of the requirement of Congress that rates be 'just and reasonable' is not an issue of fact of which the Commission's own determination is conclusive. Otherwise, there would be nothing for a court to review except questions of compliance with the procedural provisions of the Natural Gas Act. Congress might have seen fit so to cast its legislation. But it has not done so. It has committed to the administration of the Federal Power Commission the duty of applying standards of fair dealing and of reasonableness relevant to the purposes expressed by the Natural Gas Act. The requirement that rates must be 'just and reasonable' means just and reasonable in relation to appropriate standards. Otherwise Congress would have directed the Commission to fix such rates as in the judgment of the Commission are just and reasonable; it would not have also provided that such determinations by the Commission are subject to court review.

To what sources then are the Commission and the courts to go for ascertaining the standards relevant to the regulation of natural gas rates? It is at this point that Mr. Justice JACKSON'S analysis seems to me pertinent. There appear to be two alternatives. Either the fixing of natural gas rates must be left to the unguided discretion of the Commission so long as the rates it fixes do not reveal a glaringly had prophecy of the ability of a regulated utility to continue its service in the future. Or the Commission's rate orders must be founded on due consideration of all the elements of the public interest which the production and distribution of natural gas involve just because it is natural gas. These elements are reflected in the Natural Gas Act, if that Act be applied as an entirety. See, for ***627** instance, ss 4(a)(b)(c)(d), 6, and 11, 15 U.S.C. ss 717c(a)(b)(c)(d), 717e, and 717j, 15 U.S.C.A. ss 717c(a—d), 717e, 717j. Of course the statute is not concerned with abstract theories of ratemaking. But its very foundation is the 'public interest', and the public interest is a texture of multiple strands. It includes more than contemporary investors and contemporary consumers. The needs to be served are not restricted to immediacy, and social as well as economic costs must be counted.

It will not do to say that it must all be left to the skill of experts. Expertise is a rational process and a rational process implies expressed reasons for judgment. It will little advance the public interest to substitute for the hodge-podge of the rule in Smyth v. Ames, 169 U.S. 466, 18 S.Ct. 418, 42 L.Ed. 819, an encouragement of conscious obscurity or confusion in reaching a result, on the assumption that so long as the result appears harmless its basis is irrelevant. That may be an appropriate attitude when state action is challenged as unconstitutional. Cf. Driscoll v. Edison Light & Power Co., 307 U.S. 104, 59 S.Ct. 715, 83 L.Ed. 1134. But it is not to be assumed that it was the design of Congress to make the accommodation of the conflicting interests exposed in Mr. Justice JACKSON'S opinion the occasion for a blind clash of forces or a partial assessment of relevant factors, either before the Commission or here.

The objection to the Commission's action is not that the rates it granted were too low but that the range of its vision was too narrow. And since the issues before the Commission involved no less than the ****300** total public interest, the proceedings before it should not be judged by narrow conceptions of common law pleading. And so I conclude that the case should be returned to the Commission. In order to enable this Court to discharge its duty of reviewing the Commission's order, the Commission should set forth with explicitness the criteria by which it is guided ***628** in determining that rates are 'just and reasonable', and it should determine the public interest that is in its keeping in the perspective of the considerations set forth by Mr. Justice JACKSON.

By Mr. Justice JACKSON.

Certainly the theory of the court below that ties rate-making to the fair-value-reproduction-cost formula should be overruled as in conflict with Federal Power Commission v. Natural Gas Pipeline Co.[1] But the case should, I think, be the occasion for reconsideration of our rate-making doctrine as applied to natural gas and should be returned to the Commission for further consideration in the light thereof.

The Commission appears to have understood the effect of the two opinions in the Pipeline case to be at least authority and perhaps direction to fix natural gas rates by exclusive application of the 'prudent investment' rate base theory. This has no warrant in the opinion of the Chief Justice for the Court, however, which released the Commission from subservience to 'any single formula or combination of formulas' provided its order, 'viewed in its entirety, produces no arbitrary result.' 315 U.S. at page 586, 62 S.Ct. at page 743, 86 L.Ed. 1037. The minority opinion I understood to advocate the 'prudent investment' theory as a sufficient guide in a natural gas case. The view was expressed in the court below that since this opinion was not expressly controverted it must have been approved.[2] I disclaim this imputed ***629** approval with some particularity, because I attach importance at the very beginning of federal regulation of the natural gas industry to approaching it as the performance of economic functions, not as the performance of legalistic rituals.

  

I.

Solutions of these cases must consider eccentricities of the industry which gives rise to them and also to the Act of Congress by which they are governed.

The heart of this problem is the elusive, exhaustible, and irreplaceable nature of natural gas itself. Given sufficient money, we can produce any desired amount of railroad, bus, or steamship transportation, or communications facilities, or capacity for generation of electric energy, or for the manufacture of gas of a kind. In the service of such utilities one customer has little concern with the amount taken by another, one's waste will not deprive another, a volume of service and be created equal to demand, and today's demands will not exhaust or lessen capacity to serve tomorrow. But the wealth of Midas and the wit of man cannot produce or reproduce a natural gas field. We cannot even reproduce the gas, for our manufactured product has only about half the heating value per unit of nature's own.[3]

****301** Natural gas in some quantity is produced in twenty-four states. It is consumed in only thirty-five states, and is ***630** available only to about 7,600,000 consumers.[4] Its availability has been more localized than that of any other utility service because it has depended more on the caprice of nature.

The supply of the Hope Company is drawn from that old and rich and vanishing field that flanks the Appalachian mountains. Its center of production is Pennsylvania and West Virginia, with a fringe of lesser production in New York, Ohio, Kentucky, Tennessee, and the north end of Alabama. Oil was discovered in commercial quantities at a depth of only 69 1/2 feet near Titusville, Pennsylvania, in 1859. Its value then was about $16 per barrel.[5] The oil branch of the petroleum industry went forward at once, and with unprecedented speed. The area productive of oil and gas was roughed out by the drilling of over 19,000 'wildcat' wells, estimated to have cost over $222,000,000. Of these, over 18,000 or 94.9 per cent, were 'dry holes.' About five per cent, or 990 wells, made discoveries of commercial importance, 767 of them resulting chiefly in oil and 223 in gas only.[6] Prospecting for many years was a search for oil, and to strike gas was a misfortune. Waste during this period and even later is appalling. Gas was regarded as having no commercial value until about 1882, in which year the total yield was valued only at about $75,000.[7] Since then, contrary to oil, which has become cheaper gas in this field has pretty steadily advanced in price.

While for many years natural gas had been distributed on a small scale for lighting,[8] its acceptance was slow, ***631** facilities for its utilization were primitive, and not until 1885 did it take on the appearance of a substantial industry.[9] Soon monopoly of production or markets developed.[10] To get gas from the mountain country, where it was largely found, to centers of population, where it was in demand, required very large investment. By ownership of such facilities a few corporate systems, each including several companies, controlled access to markets. Their purchases became the dominating factor in giving a market value to gas produced by many small operators. Hope is the market for over 300 such operators. By 1928 natural gas in the Appalachian field commanded an average price of 21.1 cents per m.c.f. at points of production and was bringing 45.7 cents at points of consumption.[11] The companies which controlled markets, however, did not rely on gas purchases alone. They acquired and held in fee or leasehold great acreage in territory proved by 'wildcat' drilling. These large marketing system companies as well as many small independent owners and operators have carried on the commercial development of proved territory. The development risks appear from the estimate that up to 1928, 312,318 proved area wells had been sunk in the Appalachian field of which 48,962, or 15.7 per cent, failed to produce oil or gas in commercial quantity.[12]

***632** With the source of supply thus tapped to serve centers of large demand, like Pittsburgh, Buffalo, Cleveland, Youngstown, Akron, and other industrial communities, the distribution of natural gas fast became big business. Its advantages as a ****302** fuel and its price commended it, and the business yielded a handsome return. All was merry and the goose hung high for consumers and gas companies alike until about the time of the first. World War. Almost unnoticed by the consuming public, the whole Appalachian field passed its peak of production and started to decline. Pennsylvania, which to 1928 had given off about 38 per cent of the natural gas from this field, had its peak in 1905; Ohio, which had produced 14 per cent, had its peak in 1915; and West Virginia, greatest producer of all, with 45 per cent to its credit, reached its peak in 1917.[13]

Western New York and Eastern Ohio, on the fringe of the field, had some production but relied heavily on imports from Pennsylvania and West Virginia. Pennsylvania, a producing and exporting state, was a heavy consumer and supplemented her production with imports from West Virginia. West Virginia was a consuming state, but the lion's share of her production was exported. Thus the interest of the states in the North Appalachian supply was in conflict.

  

Competition among localities to share in the failing supply and the helplessness of state and local authorities in the presence of state lines and corporate complexities is a part of the background of federal intervention in the industry.[14] West Virginia took the boldest measure. It legislated a priority in its entire production in favor of its own inhabitants. That was frustrated by an injunction ***633** from this Court.[15] Throughout the region clashes in the courts and conflicting decisions evidenced public anxiety and confusion. It was held that the New York Public Service Commission did not have power to classify consumers and restrict their use of gas.[16] That Commission held that a company could not abandon a part of its territory and still serve the rest.[17] Some courts admonished the companies to take action to protect consumers.[18] Several courts held that companies, regardless of failing supply, must continue to take on customers, but such compulsory additions were finally held to be within the Public Service Commission's discretion.[19] There were attempts to throw up franchises and quit the service, and municipalities resorted to the courts with conflicting results.[20] Public service commissions of consuming states were handicapped, for they had no control of the supply.[21]

****303 *634** Shortages during World War I occasioned the first intervention in the natural gas industry by the Federal Government. Under Proclamation of President Wilson the United States Fuel Administrator took control, stopped extensions, classified consumers and established a priority for domestic over industrial use.[22] After the war federal control was abandoned. Some cities once served with natural gas became dependent upon mixed gas of reduced heating value and relatively higher price.[23]

Utilization of natural gas of highest social as well as economic return is domestic use for cooking and water ***635** heating, followed closely by use for space heating in homes. This is the true public utility aspect of the enterprise, and its preservation should be the first concern of regulation. Gas does the family cooking cheaper than any other fuel.[24] But its advantages do not end with dollars and cents cost. It is delivered without interruption at the meter as needed and is paid for after it is used. No money is tied up in a supply, and no space is used for storage. It requires no handling, creates no dust, and leaves no ash. It responds to thermostatic control. It ignites easily and immediately develops its maximum heating capacity. These incidental advantages make domestic life more liveable.

Industrial use is induced less by these qualities than by low cost in competition with other fuels. Of the gas exported from West Virginia by the Hope Company a very substantial part is used by industries. This wholesale use speeds exhaustion of supply and displaces other fuels. Coal miners and the coal industry, a large part of whose costs are wages, have complained of unfair competition from low-priced industrial gas produced with relatively little labor cost.[25]

Gas rate structures generally have favored industrial users. In 1932, in Ohio, the average yield on gas for domestic consumption was 62.1 cents per m.c.f. and on industrial, ***636** 38.7. In Pennsylvania, the figures were 62.9 against 31.7. West Virginia showed the least spread, domestic consumers paying 36.6 cents; and industrial, 27.7.[26] Although this spread is less than ****304** in other parts of the United States,[27] it can hardly be said to be self-justifying. It certainly is a very great factor in hastening decline of the natural gas supply.

About the time of World War I there were occasional and short-lived efforts by some hard-pressed companies to reverse this discrimination and adopt graduated rates, giving a low rate to quantities adequate for domestic use and graduating it upward to discourage industrial use.[28] ***637** These rates met opposition from industrial sources, of course, and since diminished revenues from industrial sources tended to increase the domestic price, they met little popular or commission favor. The fact is that neither the gas companies nor the consumers nor local regulatory bodies can be depended upon to conserve gas. Unless federal regulation will take account of conservation, its efforts seem, as in this case, actually to constitute a new threat to the life of the Appalachian supply.

II.

Congress in 1938 decided upon federal regulation of the industry. It did so after an exhaustive investigation of all aspects including failing supply and competition for the use of natural gas intensified by growing scarcity.[29] Pipelines from the Appalachian area to markets were in the control of a handful of holding company systems.[30] This created a highly concentrated control of the producers' market and of the consumers' supplies. While holding companies dominated both production and distribution they segregated those activities in separate ***638** subsidiaries,[31] the effect of which, if not the purpose, was to isolate ****305** some end of the business from the reach of any one state commission. The cost of natural gas to consumers moved steadily upwards over the years, out of proportion to prices of oil, which, except for the element of competition, is produced under somewhat comparable conditions. The public came to feel that the companies were exploiting the growing scarcity of local gas. The problems of this region had much to do with creating the demand for federal regulation.

The Natural Gas Act declared the natural gas business to be 'affected with a public interest,' and its regulation 'necessary in the public interest.'[32] Originally, and at the time this proceeding was commenced and tried, it also declared 'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.'[33] While this was later dropped, there is nothing to indicate that it was not and is not still an accurate statement of purpose of the Act. Extension or improvement of facilities may be ordered when 'necessary or desirable in the public interest,' abandonment of facilities may be ordered when the supply is 'depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity ***639** permit' abandonment and certain extensions can only be made on finding of 'the present or future public convenience and necessity.'[34] The Commission is required to take account of the ultimate use of the gas. Thus it is given power to suspend new schedules as to rates, charges, and classification of services except where the schedules are for the sale of gas 'for resale for industrial use only,'[35] which gives the companies greater freedom to increase rates on industrial gas than on domestic gas. More particularly, the Act expressly forbids any undue preference or advantage to any person or 'any unreasonable difference in rates * * * either as between localities or as between classes of service.'[36] And the power of the Commission expressly includes that to determine the 'just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force.'[37]

In view of the Court's opinion that the Commission in administering the Act may ignore discrimination, it is interesting that in reporting this Bill both the Senate and the House Committees on Interstate Commerce pointed out that in 1934, on a nationwide average the price of natural gas per m.c.f. was 74.6 cents for domestic use, 49.6 cents for commercial use, and 16.9 for industrial use.[38] I am not ready to think that supporters of a bill called attention to the striking fact that householders were being charged five times as much for their gas as industrial users only as a situation which the Bill would do nothing to remedy. On the other hand the Act gave to the Commission what the Court aptly describes as 'broad powers of regulation.'

***640** III.

This proceeding was initiated by the Cities of Cleveland and Akron. They alleged that the price charged by Hope for natural gas 'for resale to domestic, commercial and small industrial consumers in Cleveland and elsewhere is excessive, unjust, unreasonable, greatly in excess of the price charged by Hope to nonaffiliated companies at wholesale for resale to domestic, commercial and small industrial consumers, and greatly in excess of the price charged by Hope to East Ohio for resale to certain favored industrial consumers in Ohio, and therefore is further unduly discriminatory between consumers and between classes of service' (italics supplied). The company answered admitting differences in prices to affiliated and nonaffiliated companies and justifying them by differences in conditions of delivery. ****306** As to the allegation that the contract price is 'greatly in excess of the price charged by Hope to East Ohio for resale to certain favored industrial consumers in Ohio,' Hope did not deny a price differential, but alleged that industrial gas was not sold to 'favored consumers' but was sold under contract and schedules filed with and approved by the Public Utilities Commission of Ohio, and that certain conditions of delivery made it not 'unduly discriminatory.'

The record shows that in 1940 Hope delivered for industrial consumption 36,523,792 m.c.f. and for domestic and commercial consumption, 50,343,652 m.c.f. I find no separate figure for domestic consumption. It served 43,767 domestic consumers directly, 511,521 through the East Ohio Gas Company, and 154,043 through the Peoples Natural Gas Company, both affiliates owned by the same parent. Its special contracts for industrial consumption, so far as appear, are confined to about a dozen big industries.

***641** Hope is responsible for discrimination as exists in favor of these few industrial consumers. It controls both the resale price and use of industrial gas by virtue of the very interstate sales contracts over which the Commission is exercising its jurisdiction.

Hope's contract with East Ohio Company is an example. Hope agrees to deliver, and the Ohio Company to take, '(a) all natural gas requisite for the supply of the domestic consumers of the Ohio Company; (b) such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the Hope Company by the Ohio Company, or companies which it supplies with natural gas, for the sale of gas upon special terms and conditions for manufacturing purposes.' The Ohio company is required to read domestic customers' meters once a month and meters of industrial customers daily and to furnish all meter readings to Hope. The Hope Company is to have access to meters of all consumers and to all of the Ohio Company's accounts. The domestic consumers of the Ohio Company are to be fully supplied in preference to consumers purchasing for manufacturing purposes and 'Hope Company can be required to supply gas to be used for manufacturing purposes only where the same is sold under special contracts which have first been submitted to and approved in writing by the Hope Company and which expressly provide that natural gas will be supplied thereunder only in so far as the same is not necessary to meet the requirements of domestic consumers supplied through pipe lines of the Ohio Company.' This basic contract was supplemented from time to time, chiefly as to price. The last amendment was in a letter from Hope to East Ohio in 1937. It contained a special discount on industrial gas and a schedule of special industrial contracts, Hope reserving the right to make eliminations therefrom and agreeing that others might be added from time to ***642** time with its approval in writing. It said, 'It is believed that the price concessions contained in this letter, while not based on our costs, are under certain conditions, to our mutual advantage in maintaining and building up the volumes of gas sold by us (italics supplied).'[39]

****307** The Commission took no note of the charges of discrimination and made no disposition of the issue tendered on this point. It ordered a flat reduction in the price per m.c.f. of all gas delivered by Hope in interstate commerce. It made no limitation, condition, or provision as to what classes of consumers should get the benefit of the reduction. While the cities have accepted and are defending the reduction, it is my view that the discrimination of which they have complained is perpetuated and increased by the order of the Commission and that it violates the Act in so doing.

The Commission's opinion aptly characterizes its entire objective by saying that 'bona fide investment figures now become all-important in the regulation of rates.' It should be noted that the all-importance of this theory is not the result of any instruction from Congress. When the Bill to regulate gas was first before Congress it contained ***643** the following: 'In determining just and reasonable rates the Commission shall fix such rate as will allow a fair return upon the actual legitimate prudent cost of the property used and useful for the service in question.' H.R. 5423, 74th Cong., 1st Sess. Title III, s 312(c). Congress rejected this language. See H.R. 5423, s 213 (211(c)), and H.R. Rep. No. 1318, 74th Cong., 1st Sess. 30.

The Commission contends nevertheless that the 'all important' formula for finding a rate base is that of prudent investment. But it excluded from the investment base an amount actually and admittedly invested of some $17,000,000. It did so because it says that the Company recouped these expenditures from customers before the days of regulation from earnings above a fair return. But it would not apply all of such 'excess earnings' to reduce the rate base as one of the Commissioners suggested. The reason for applying excess earnings to reduce the investment base roughly from $69,000,000 to $52,000,000 but refusing to apply them to reduce it from that to some $18,000,000 is not found in a difference in the character of the earnings or in their reinvestment. The reason assigned is a difference in bookkeeping treatment many years before the Company was subject to regulation. The $17,000,000, reinvested chiefly in well drilling, was treated on the books as expense. (The Commission now requires that drilling costs be carried to capital account.) The allowed rate base thus actually was determined by the Company's bookkeeping, not its investment. This attributes a significance to formal classification in account keeping that seems inconsistent with rational rate regulation.[40] Of ***644** course, the ****308** Commission would not and should not allow a rate base to be inflated by bookkeeping which had improperly capitalized expenses. I have doubts about resting public regulation upon any rule that is to be used or not depending on which side it favors.

***645** The Company on the other hand, has not put its gas fields into its calculations on the present-value basis, although that, it contends, is the only lawful rule for finding a rate base. To do so would result in a rate higher than it has charged or proposes as a matter of good business to charge.

The case before us demonstrates the lack of rational relationship between conventional rate-base formulas and natural gas production and the extremities to which regulating bodies are brought by the effort to rationalize them. The Commission and the Company each stands on a different theory, and neither ventures to carry its theory to logical conclusion as applied to gas fields.

IV.

This order is under judicial review not because we interpose constitutional theories between a State and the business it seeks to regulate, but because Congress put upon the federal courts a duty toward administration of a new federal regulatory Act. If we are to hold that a given rate is reasonable just because the Commission has said it was reasonable, review becomes a costly, time-consuming pageant of no practical value to anyone. If on the other hand we are to bring judgment of our own to the task, we should for the guidance of the regulators and the regulated reveal something of the philosophy, be it legal or economic or social, which guides us. We need not be slaves to a formula but unless we can point out a rational way of reaching our conclusions they can only be accepted as resting on intuition or predilection. I must admit that I possess no instinct jby which to know the 'reasonable' from the 'unreasonable' in prices and must seek some conscious design for decision.

The Court sustains this order as reasonable, but what makes it so or what could possibly make it otherwise, ***646** I cannot learn. It holds that: 'it is the result reached not the method employed which is controlling'; 'the fact that the method employed to reach that result may contain infirmities is not then important' and it is not 'important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at.' The Court does lean somewhat on considerations of capitalization and dividend history and requirements for dividends on outstanding stock. But I can give no real weight to that for it is generally and I think deservedly in discredit as any guide in rate cases.[41]

Our books already contain so much talk of methods of rationalizing rates that we must appear ambiguous if we announce results without our working methods. We are confronted with regulation of a unique type of enterprise which I think requires considered rejection of much conventional utility doctrine and adoption of concepts of 'just and reasonable' rates and practices and of the 'public interest' that will take account of the peculiarities of the business.

The Court rejects the suggestions of this opinion. It says that the Committees in reporting the bill which became the Act said it provided 'for regulation along recognized and more or less standardized lines' and that there was 'nothing novel in its provisions.' So saying it sustains a rate calculated on a novel variation of a rate base theory which itself had at the time of enactment of the legislation been recognized only in dissenting opinions. Our difference seems to be between unconscious innovation,[42] and the purposeful ****309** and deliberate innovation I ***647** would make to meet the necessities of regulating the industry before us.

Hope's business has two components of quite divergent character. One, while not a conventional common-carrier undertaking, is essentially a transportation enterprise consisting of conveying gas from where it is produced to point of delivery to the buyer. This is a relatively routine operation not differing substantially from many other utility operations. The service is produced by an investment in compression and transmission facilities. Its risks are those of investing in a tested means of conveying a discovered supply of gas to a known market. A rate base calculated on the prudent investment formula would seem a reasonably satisfactory measure for fixing a return from that branch of the business whose service is roughly proportionate to the capital invested. But it has other consequences which must not be overlooked. It gives marketability and hence 'value' to gas owned by the company and gives the pipeline company a large power over the marketability and hence 'value' of the production of others.

The other part of the business—to reduce to possession an adequate supply of natural gas—is of opposite character, being more erratic and irregular and unpredictable in relation to investment than any phase of any other utility business. A thousand feet of gas captured and severed from real estate for delivery to consumers is recognized under our law as property of much the same nature as a ton of coal, a barrel of oil, or a yard of sand. The value to be allowed for it is the real battleground between the investor and consumer. It is from this part of the business that the chief difference between the parties as to a proper rate base arises.

It is necessary to a 'reasonable' price for gas that it be anchored to a rate base of any kind? Why did courts in the first place begin valuing 'rate bases' in order to 'value' something else? The method came into vogue ***648** in fixing rates for transportation service which the public obtained from common carriers. The public received none of the carriers' physical property but did make some use of it. The carriage was often a monopoly so there were no open market criteria as to reasonableness. The 'value' or 'cost' of what was put to use in the service by the carrier was not a remote or irrelevant consideration in making such rates. Moreover the difficulty of appraising an intangible service was thought to be simplified if it could be related to physical property which was visible and measurable and the items of which might have market value. The court hoped to reason from the known to the unknown. But gas fields turn this method topsy turvy. Gas itself is tangible, possessible, and does have a market and a price in the field. The value of the rate base is more elusive than that of gas. It consists of intangibles—leaseholds and freeholds—operated and unoperated—of little use in themselves except as rights to reach and capture gas. Their value lies almost wholly in predictions of discovery, and of price of gas when captured, and bears little relation to cost of tools and supplies and labor to develop it. Gas is what Hope sells and it can be directly priced more reasonably and easily and accurately than the components of a rate base can be valued. Hence the reason for resort to a roundabout way of rate base price fixing does not exist in the case of gas in the field.

But if found, and by whatever method found, a rate base is little help in determining reasonableness of the price of gas. Appraisal of present value of these intangible rights to pursue fugitive gas depends on the value assigned to the gas when captured. The 'present fair value' rate base, generally in ill repute,[43] is not even **310 urged by the gas company for valuing its fields.

***649** The prudent investment theory has relative merits in fixing rates for a utility which creates its service merely by its investment. The amount and quality of service rendered by the usual utility will, at least roughly, be measured by the amount of capital it puts into the enterprise. But it has no rational application where there is no such relationship between investment and capacity to serve. There is no such relationship between investment and amount of gas produced. Let us assume that Doe and Roe each produces in West Virginia for delivery to Cleveland the same quantity of natural gas per day. Doe, however, through luck or foresight or whatever it takes, gets his gas from investing $50,000 in leases and drilling. Roe drilled poorer territory, got smaller wells, and has invested $250,000. Does anybody imagine that Roe can get or ought to get for his gas five times as much as Doe because he has spent five times as much? The service one renders to society in the gas business is measured by what he gets out of the ground, not by what he puts into it, and there is little more relation between the investment and the results than in a game of poker.

Two-thirds of the gas Hope handles it buys from about 340 independent producers. It is obvious that the principle of rate-making applied to Hope's own gas cannot be applied, and has not been applied, to the bulk of the gas Hope delivers. It is not probable that the investment of any two of these producers will bear the same ratio to their investments. The gas, however, all goes to the same use, has the same utilization value and the same ultimate price.

To regulate such an enterprise by undiscriminatingly transplanting any body of rate doctrine conceived and ***650** adapted to the ordinary utility business can serve the 'public interest' as the Natural Gas Act requires, if at all, only by accident. Mr. Justice Brandeis, the pioneer juristic advocate of the prudent investment theory for man-made utilities, never, so far as I am able to discover, proposed its application to a natural gas case. On the other hand, dissenting in Commonwealth of Pennsylvania v. West Virginia, he reviewed the problems of gas supply and said, 'In no other field of public service regulation is the controlling body confronted with factors so baffling as in the natural gas industry, and in none is continuous supervision and control required in so high a degree.' 262 U.S. 553, 621, 43 S.Ct. 658, 674, 67 L.Ed. 1117, 32 A.L.R. 300. If natural gas rates are intelligently to be regulated we must fit our legal principles to the economy of the industry and not try to fit the industry to our books.

As our decisions stand the Commission was justified in believing that it was required to proceed by the rate base method even as to gas in the field. For this reason the Court may not merely wash its hands of the method and rationale of rate making. The fact is that this Court, with no discussion of its fitness, simply transferred the rate base method to the natural gas industry. It happened in Newark Natural Gas & Fuel Co. v. City of Newark, Ohio, 1917, 242 U.S. 405, 37 S.Ct. 156, 157, 61 L.Ed. 393, Ann.Cas.1917B, 1025, in which the company wanted 25 cents per m.c.f., and under the Fourteenth Amendment challenged the reduction to 18 cents by ordinance. This Court sustained the reduction because the court below 'gave careful consideration to the questions of the value of the property * * * at the time of the inquiry,' and whether the rate 'would be sufficient to provide a fair return on the value of the property.' The Court said this method was 'based upon principles thoroughly established by repeated secisions of this court,' citing many cases, not one of which involved natural gas or a comparable wasting natural resource. Then came issues as to state power to ***651** regulate as affected by the commerce clause. Public Utilities Commission v. Landon, 1919, 249 U.S. 236, 39 S.Ct. 268, 63 L.Ed. 577; Pennsylvania Gas Co. v. Public Service Commission, 1920, 252 U.S. 23, 40 S.Ct. 279, 64 L.Ed. 434. These questions settled, the Court again was called upon in natural gas cases to consider state rate-making claimed to be invalid under the Fourteenth Amendment. United Fuel Gas Co. v. Railroad Commission of Kentucky, 1929, 278 U.S. 300, 49 S.Ct. 150, 73 L.Ed. 390; United Fuel Gas Company v. Public Service Commission of West Virginia, 1929, 278 U.S. 322, 49 S.Ct. 157, 73 L.Ed. 402. Then, as now, the differences were 'due **311 chiefly to the difference in value ascribed by each to the gas rights and leaseholds.' 278 U.S. 300, 311, 49 S.Ct. 150, 153, 73 L.Ed. 390. No one seems to have questioned that the rate base method must be pursued and the controversy was at what rate base must be used. Later the 'value' of gas in the field was questioned in determining the amount a regulated company should be allowed to pay an affiliate therefor—a state determination also reviewed under the Fourteenth Amendment. Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 1934, 292 U.S. 290, 54 S.Ct. 647, 78 L.Ed. 1267; Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 1934, 292 U.S. 398, 54 S.Ct. 763, 78 L.Ed. 1327, 91 A.L.R. 1403. In both cases, one of which sustained, and one of which struck down a fixed rate the Court assumed the rate base method, as the legal way of testing reasonableness of natural gas prices fixed by public authority, without examining its real relevancy to the inquiry.

Under the weight of such precedents we cannot expect the Commission to initiate economically intelligent methods of fixing gas prices. But the Court now faces a new plan of federal regulation based on the power to fix the price at which gas shall be allowed to move in interstate commerce. I should now consider whether these rules devised under the Fourteenth Amendment are the exclusive tests of a just and reasonable rate under the federal statute, inviting reargument directed to that point ***652** if necessary. As I see it now I would be prepared to hold that these rules do not apply to a natural gas case arising under the Natural Gas Act.

Such a holding would leave the Commission to fix the price of gas in the field as one would fix maximum prices of oil or milk or coal, or any other commodity. Such a price is not calculated to produce a fair return on the synthetic value of a rate base of any individual producer, and would not undertake to assure a fair return to any producer. The emphasis would shift from the producer to the product, which would be regulated with an eye to average or typical producing conditions in the field.

Such a price fixing process on economic lines would offer little temptation to the judiciary to become back seat drivers of the price fixing machine. The unfortunate effect of judicial intervention in this field is to divert the attention of those engaged in the process from what is economically wise to what is legally permissible. It is probable that price reductions would reach economically unwise and self-defeating limits before they would reach constitutional ones. Any constitutional problems growing out of price fixing are quite different than those that have heretofore been considered to inhere in rate making. A producer would have difficulty showing the invalidity of such a fixed price so long as he voluntarily continued to sell his product in interstate commerce. Should he withdraw and other authority be invoked to compel him to part with his property, a different problem would be presented.

Allowance in a rate to compensate for gas removed from gas lands, whether fixed as of point of production or as of point of delivery, probably best can be measured by a functional test applied to the whole industry. For good or ill we depend upon private enterprise to exploit these natural resources for public consumption. The function which an allowance for gas in the field should perform ***653** for society in such circumstances is to be enough and no more than enough to induce private enterprise completely and efficiently to utilize gas resources, to acquire for public service any available gas or gas rights and to deliver gas at a rate and for uses which will be in the future as well as in the present public interest.

The Court fears that 'if we are now to tell the Commission to fix the rates so as to discourage particular uses, we would indeed be injecting into a rate case a 'novel' doctrine * * *.' With due deference I suggest that there is nothing novel in the idea that any change in price of a service or commodity reacts to encourage or discourage its use. The question is not whether such consequences will or will not follow; the question is whether effects must be suffered blindly or may be intelligently selected, whether price control shall have targets at which it deliberately aims or shall be handled like a gun in the hands of one who does not know it is loaded.

We should recognize 'price' for what it is—a tool, a means, an expedient. In public ****312** hands it has much the same economic effects as in private hands. Hope knew that a concession in industrial price would tend to build up its volume of sales. It used price as an expedient to that end. The Commission makes another cut in that same price but the Court thinks we should ignore the effect that it will have on exhaustion of supply. The fact is that in natural gas regulation price must be used to reconcile the private property right society has permitted to vest in an important natural resource with the claims of society upon it—price must draw a balance between wealth and welfare.

To carry this into techniques of inquiry is the task of the Commissioner rather than of the judge, and it certainly is no task to be solved by mere bookkeeping but requires the best economic talent available. There would doubtless be inquiry into the price gas is bringing in the ***654** field, how far that price is established by arms' length bargaining and how far it may be influenced by agreements in restraint of trade or monopolistic influences. What must Hope really pay to get and to replace gas it delivers under this order? If it should get more or less than that for its own, how much and why? How far are such prices influenced by pipe line access to markets and if the consumers pay returns on the pipe lines how far should the increment they cause go to gas producers? East Ohio is itself a producer in Ohio.[44] What do Ohio authorities require Ohio consumers to pay for gas in the field? Perhaps these are reasons why the Federal Government should put West Virginia gas at lower or at higher rates. If so what are they? Should East Ohio be required to exploit its half million acres of unoperated reserve in Ohio before West Virginia resources shall be supplied on a devalued basis of which that State complains and for which she threatens measures of self keep? What is gas worth in terms of other fuels it displaces?

A price cannot be fixed without considering its effect on the production of gas. Is it an incentive to continue to exploit vast unoperated reserves? Is it conducive to deep drilling tests the result of which we may know only after trial? Will it induce bringing gas from afar to supplement or even to substitute for Appalachian gas?[45] Can it be had from distant fields as cheap or cheaper? If so, that competitive potentiality is certainly a relevant consideration. Wise regulation must also consider, as a private buyer would, what alternatives the producer has ***655** if the price is not acceptable. Hope has intrastate business and domestic and industrial customers. What can it do by way of diverting its supply to intrastate sales? What can it do by way of disposing of its operated or reserve acreage to industrial concerns or other buyers? What can West Virginia do by way of conservation laws, severance or other taxation, if the regulated rate offends? It must be borne in mind that while West Virginia was prohibited from giving her own inhabitants a priority that discriminated against interstate commerce, we have never yet held that a good faith conservation act, applicable to her own, as well as to others, is not valid. In considering alternatives, it must be noted that federal regulation is very incomplete, expressly excluding regulation of 'production or gathering of natural gas,' and that the only present way to get the gas seems to be to call it forth by price inducements. It is plain that there is a downward economic limit on a safe and wise price.

But there is nothing in the law which compels a commission to fix a price at that 'value' which a company might give to its product by taking advantage of scarcity, or monopoly of supply. The very purpose of fixing maximum prices is to take away from the seller his opportunity to get all that otherwise the market would award him for his goods. This is a constitutional use of the power to fix maximum prices, ****313** Block v. Hirsh, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865, 16 A.L.R. 165; Marcus Brown Holding Co. v. Feldman, 256 U.S. 170, 41 S.Ct. 465, 65 L.Ed. 877; International Harvester Co. v. Kentucky, 234 U.S. 216, 34 S.Ct. 853, 58 L.Ed. 1284; Highland v. Russell Car & Snow Plow Co., 279 U.S. 253, 49 S.Ct. 314, 73 L.Ed. 688, just as the fixing of minimum prices of goods in interstate commerce is constitutional although it takes away from the buyer the advantage in bargaining which market conditions would give him. United States v. Darby, 312 U.S. 100, 657, 61 S.Ct. 451, 85 L.Ed. 609, 132 A.L.R. 1430; Mulford v. Smith, 307 U.S. 38, 59 S.Ct. 648, 83 L.Ed. 1092; United States v. Rock Royal Co-operative, Inc., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 60 S.Ct. 907, 84 L.Ed. 1263. The Commission has power to fix ***656** a price that will be both maximum and minimum and it has the incidental right, and I think the duty, to choose the economic consequences it will promote or retard in production and also more importantly in consumption, to which I now turn.

If we assume that the reduction in company revenues is warranted we then come to the question of translating the allowed return into rates for consumers or classes of consumers. Here the Commission fixed a single rate for all gas delivered irrespective of its use despite the fact that Hope has established what amounts to two rates—a high one for domestic use and a lower one for industrial contracts.[46] The Commission can fix two prices for interstate gas as readily as one—a price for resale to domestic users and another for resale to industrial users. This is the pattern Hope itself has established in the very contracts over which the Commission is expressly given jurisdiction. Certainly the Act is broad enough to permit two prices to be fixed instead of one, if the concept of the 'public interest' is not unduly narrowed.

The Commission's concept of the public interest in natural gas cases which is carried today into the Court's opinion was first announced in the opinion of the minority in the Pipeline case. It enumerated only two 'phases of the public interest: (1) the investor interest; (2) the consumer interest,' which it emphasized to the exclusion of all others. 315 U.S. 575, 606, 62 S.Ct. 736, 753, 86 L.Ed. 1037. This will do well enough in dealing with railroads or utilities supplying manufactured gas, electric, power, a communications service or transportation, where utilization of facilities does not impair their future usefulness. Limitation of supply, however, brings into a natural gas case another phase of the public interest that to my mind overrides both the owner ***657** and the consumer of that interest. Both producers and industrial consumers have served their immediate private interests at the expense of the long-range public interest. The public interest, of course, requires stopping unjust enrichment of the owner. But it also requires stopping unjust impoverishment of future generations. The public interest in the use by Hope's half million domestic consumers is quite a different one from the public interest in use by a baker's dozen of industries.

Prudent price fixing it seems to me must at the very threshold determine whether any part of an allowed return shall be permitted to be realized from sales of gas for resale for industrial use. Such use does tend to level out daily and seasonal peaks of domestic demand and to some extent permits a lower charge for domestic service. But is that a wise way of making gas cheaper when, in comparison with any substitute, gas is already a cheap fuel? The interstate sales contracts provide that at times when demand is so great that there is not enough gas to go around domestic users shall first be served. Should the operation of this preference await the day of actual shortage? Since the propriety of a preference seems conceded, should it not operate to prevent the coming of a shortage as well as to mitigate its effects? Should industrial use jeopardize tomorrow's service to householders any more than today's? If, however, it is decided to cheapen domestic use by resort to industrial sales, should they be limited to the few uses ****314** for which gas has special values or extend also to those who use it only because it is cheaper than competitive fuels?[47] And how much cheaper should industrial ***658** gas sell than domestic gas, and how much advantage should it have over competitive fuels? If industrial gas is to contribute at all to lowering domestic rates, should it not be made to contribute the very maximum of which it is capable, that is, should not its price be the highest at which the desired volume of sales can be realized?

If I were to answer I should say that the household rate should be the lowest that can be fixed under commercial conditions that will conserve the supply for that use. The lowest probable rate for that purpose is not likely to speed exhaustion much, for it still will be high enough to induce economy, and use for that purpose has more nearly reached the saturation point. On the other hand the demand for industrial gas at present rates already appears to be increasing. To lower further the industrial rate is merely further to subsidize industrial consumption and speed depletion. The impact of the flat reduction ***659** of rates ordered here admittedly will be to increase the industrial advantages of gas over competing fuels and to increase its use. I think this is not, and there is no finding by the Commission that it is, in the public interest.

There is no justification in this record for the present discrimination against domestic users of gas in favor of industrial users. It is one of the evils against which the Natural Gas Act was aimed by Congress and one of the evils complained of here by Cleveland and Akron. If Hope's revenues should be cut by some $3,600,000 the whole reduction is owing to domestic users. If it be considered wise to raise part of Hope's revenues by industrial purpose sales, the utmost possible revenue should be raised from the least consumption of gas. If competitive relationships to other fuels will permit, the industrial price should be substantially advanced, not for the benefit of the Company, but the increased revenues from the advance should be applied to reduce domestic rates. For in my opinion the 'public interest' requires that the great volume of gas now being put to uneconomic industrial use should either be saved for its more important future domestic use or the present domestic user should have the full benefit of its exchange value in reducing his present rates.

Of course the Commission's power directly to regulate does not extend to the fixing of rates at which the local company shall sell to consumers. Nor is such power required to accomplish the purpose. As already pointed out, the very contract the Commission is altering classifies the gas according to the purposes for which it is to be resold and provides differentials between the two classifications. It would only be necessary for the Commission to order ****315** that all gas supplied under paragraph (a) of Hope's contract with the East Ohio Company shall be ***660** at a stated price fixed to give to domestic service the entire reduction herein and any further reductions that may prove possible by increasing industrial rates. It might further provide that gas delivered under paragraph (b) of the contract for industrial purposes to those industrial customers Hope has approved in writing shall be at such other figure as might be found consistent with the public interest as herein defined. It is too late in the day to contend that the authority of a regulatory commission does not extend to a consideration of public interests which it may not directly regulate and a conditioning of its orders for their protection. Interstate Commerce Commission v. Railway Labor Executives Ass'n, 315 U.S. 373, 62 S.Ct. 717, 86 L.Ed. 904; United States v. Lowden, 308 U.S. 225, 60 S.Ct. 248, 84 L.Ed. 208.

Whether the Commission will assert its apparently broad statutory authorization over prices and discriminations is, of course, its own affair, not ours. It is entitled to its own notion of the 'public interest' and its judgment of policy must prevail. However, where there is ground for thinking that views of this Court may have constrained the Commission to accept the rate-base method of decision and a particular single formula as 'all important' for a rate base, it is appropriate to make clear the reasons why I, at least, would not be so understood. The Commission is free to face up realistically to the nature and peculiarity of the resources in its control, to foster their duration in fixing price, and to consider future interests in addition to those of investors and present consumers. If we return this case it may accept or decline the proffered freedom. This problem presents the Commission an unprecedented opportunity if it will boldly make sound economic considerations, instead of legal and accounting theories, the foundation of federal policy. I would return the case to the Commission and thereby be clearly quit of what now may appear to be some responsibility for perpetrating a shortsighted pattern of natural gas regulation.

  

**All Citations** 193

320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333, 51 P.U.R.(NS)

Footnotes

1 Hope produces about one-third of its annual gas requirements and purchases the rest under some 300 contracts.

2 These five companies are the East Ohio Gas Co., the Peoples Natural Gas Co., the River Gas Co., the Fayette County Gas Co., and the Manufacturers Light & Heat Co. The first three of these companies are, like Hope, subsidiaries of Standard Oil Co. (N.J.). East Ohio and River distribute gas in Ohio, the other three in Pennsylvania. Hope's approximate sales in m.c.f. for 1940 may be classified as follows:

Local West Virginia

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|---|---|
| sales | 11,000,000 |
| East Ohio | 40,000,000 |
| Peoples | 10,000,000 |
| River | 400,000 |
| Fayette | 860,000 |
| Manufacturers | 2,000,000 |

Local West Virginia

Hope's natural gas is processed by Hope Construction & Refining Co., an affiliate, for the extraction of gasoline and butane. Domestic Coke Corp., another affiliate, sells coke-oven gas to Hope for boiler fuel.

3 These required minimum reductions of 7¢ per m.c.f. from the 36.5¢ and 35.5¢ rates previously charged East Ohio and Peoples, respectively, and 3¢ per m.c.f. from the 31.5¢ rate previously charged Fayette and Manufacturers.

4 The book reserve for interstate plant amounted at the end of 1938 to about $18,000,000 more than the amount determined by the Commission as the proper reserve requirement. The Commission also noted that 'twice in the past the company has transferred amounts aggregating $7,500,000 from the depreciation and depletion reserve to surplus. When these latter

adjustments are taken into account, the excess becomes $25,500,000, which has been exacted from the ratepayers over and above the amount required to cover the consumption of property in the service rendered and thus to keep the investment unimpaired.' 44 P.U.R.,N.S., at page 22.

5 That contention was based on the fact that 'every single dollar in the depreciation and depletion reserves' was taken 'from gross operating revenues whose only source was the amounts charged customers in the past for natural gas. It is, therefore, a fact that the depreciation and depletion reserves have been contributed by the customers and do not represent any investment by Hope.' Id., 44 P.U.R.,N.S., at page 40. And see Railroad Commission v. Cumberland Tel. & T. Co., 212 U.S. 414, 424, 425, 29 S.Ct. 357, 361, 362, 53 L.Ed. 577; 2 Bonbright, Valuation of Property (1937), p. 1139.

6 The Commission noted that the case was 'free from the usual complexities involved in the estimate of gas reserves because the geologists for the company and the Commission presented estimates of the remaining recoverable gas reserves which were about one per cent apart.' 44 P.U.R.,N.S., at pages 19, 20.

The Commission utilized the 'straight-line-basis' for determining the depreciation and depletion reserve requirements. It used estimates of the average service lives of the property by classes based in part on an inspection of the physical condition of the property. And studies were made of Hope's retirement experience and maintenance policies over the years. The average service lives of the various classes of property were converted into depreciation rates and then applied to the cost of the property to ascertain the portion of the cost which had expired in rendering the service.

The record in the present case shows that Hope is on the lookout for new sources of supply of natural gas and is contemplating an extension of its pipe line into Louisiana for that purpose. The Commission recognized in fixing the rates of depreciation that much material may be used again when various present sources of gas supply are exhausted, thus giving that property more than scrap value at the end of its present use.

7 See Uniform System of Accounts prescribed for Natural Gas Companies effective January 1, 1940, Account No. 332.1.

8 Sec. 6 of the Act comes the closest to supplying any definite criteria for rate making. It provides in subsection (a) that, 'The Commission may investigate the ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.' Subsection (b) provides that every natural-gas company on request shall file with the Commission a statement of the 'original cost' of its property and shall keep the Commission informed regarding the 'cost' of all additions, etc.

9 We recently stated that the meaning of the word 'value' is to be gathered 'from the purpose for which a valuation is being made. Thus the question in a valuation for rate making is how much a utility will be allowed to earn. The basic question in a valuation for reorganization purposes is how much the enterprise in all probability can earn.' Institutional Investors v. Chicago, M., St. P. & P.R. Co., 318 U.S. 523, 540, 63 S.Ct. 727, 738.

10 Chief Justice Hughes said in that case (292 U.S. at pages 168, 169, 54 S.Ct. at page 665, 78 L.Ed. 1182): 'If the predictions of service life were entirely accurate and retirements were made when and as these predictions were precisely fulfilled, the depreciation reserve would represent the consumption of capital, on a cost basis, according to the method which spreads that loss over the respective service periods. But if the amounts charged to operating expenses and credited to the account for depreciation reserve are excessive, to that extent subscribers for the telephone service are required to provide, in effect, capital contributions, not to make good losses incurred by the utility in the service rendered and thus to keep its investment unimpaired,

  

but to secure additional plant and equipment upon which the utility expects a return.'

11 See Mr. Justice Brandeis (dissenting) in United Railways & Electric Co. v. West, 280 U.S. 234, 259—288, 50 S.Ct. 123, 128—138, 74 L.Ed. 390, for an extended analysis of the problem.

12 It should be noted that the Act provides no specific rule governing depletion and depreciation. Sec. 9(a) merely states that the Commission 'may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas.'

13 See Simonton, The Nature of the Interest of the Grantee Under an Oil and Gas Lease (1918), 25 W.Va.L.Quar. 295.

14 West Penn Power Co. v. Board of Review, 112 W.Va. 442, 164 S.E. 862.

15 W.Va.Rev.Code of 1943, ch. 11. Art. 13, ss 2a, 3a.

16 West Virginia suggests as a possible solution (1) that a 'going concern value' of the company's tangible assets be included in the rate base and (2) that the fair market value of gas delivered to customers be added to the outlay for operating expenses and taxes.

17 S.Doc. 92, Pt. 84-A, ch. XII, Final Report, Federal Trade Commission to the Senate pursuant to S.Res.No. 83, 70th Cong., 1st Sess.

18 S.Doc. 92, Pt. 84-A, chs. XII, XIII, op. cit., supra, note 17.

19 See Hearings on H.R. 11662, Subcommittee of House Committee on Interstate & Foreign Commerce, 74th Cong., 2d Sess.; Hearings on H.R. 4008, House Committee on Interstate & Foreign Commerce, 75th Cong., 1st Sess.

20 The power to investigate and ascertain the 'actual legitimate cost' of property (s 6), the requirement as to books and records (s 8), control over rates of depreciation (s 9), the requirements for periodic and special reports (s 10), the broad powers of investigation (s 14) are among the chief powers supporting the rate making function.

21 Apart from the grandfather clause contained in s 7(c), there is the provision of s 7(f) that a natural gas company may enlarge or extend its facilities with the 'service area' determined by the Commission without any further authorization.

22 See P.L. 117, approved July 7, 1943, 57 Stat. 383 containing an 'Interstate Compact to Conserve Oil and Gas' between Oklahoma,

Texas, New Mexico, Illinois, Colorado, and Kansas.

23 As we have pointed out, s 7(c) was amended by the Act of February 7, 1942, 56 Stat. 83, so as to require certificates of public convenience and necessity not only where the extensions were being made to markets in which natural gas was already being sold by another company but to other situations as well. Considerations of conservation entered into the proposal to give the Act that broader scope. H.Rep.No. 1290, 77th Cong. 1st Sess., pp. 2, 3. And see Annual Report, Federal Power Commission (1940) pp. 79, 80; Baum, The Federal Power Commission and State Utility Regulation (1942), p. 261.

The bill amending s 7(c) originally contained a subsection (h) reading as follows: 'Nothing contained in this section shall be construed to affect the authority of a State within which natural gas is produced to authorize or require the construction or extension of facilities for the transportation and sale of such gas within such State: Provided, however, That the Commission, after a hearing upon complaint or upon its own motion, may by order forbid any intrastate construction or extension by any natural-gas company which it shall find will prevent such company from rendering adequate service to its customers in interstate or foreign commerce in territory already being served.' See Hearings on H.R. 5249, House Committee on Interstate & Foreign Commerce, 77th Cong., 1st Sess., pp. 7, 11, 21, 29, 32, 33. In explanation of its deletion the House Committee Report stated, pp. 4, 5: 'The increasingly important problems raised by the desire of several States to regulate the use of the natural gas produced therein in the interest of consumers within such States, as against the Federal power to regulate interstate commerce in the interest of both interstate and intrastate consumers, are deemed by the committee to warrant further intensive study and probably a more retailed and comprehensive plan for the handling thereof than that which would have been provided by the stricken subsection.'

24 We have noted that in the annual operating expenses of some $16,000.000 the Commission included West Virginia and federal taxes. And in the net increase of $421,160 over 1940 operating expenses allowed by the Commission was some $80,000 for increased West Virginia property taxes. The adequacy of these amounts has not been challenged here.

25 The Commission included in the aggregate annual operating expenses which it allowed some $8,500,000 for gas purchased. It also allowed about $1,400,000 for natural gas production and about $600,000 for exploration and development.

It is suggested, however, that the Commission in ascertaining the cost of Hope's natural gas production plant proceeded contrary to s 1(b) which provides that the Act shall not apply to 'the production or gathering of natural gas'. But such valuation, like the provisions for operating expenses, is essential to the rate-making function as customarily performed in this country. Cf. Smith, The Control of Power Rates in the United States and England (1932), 159 The Annals 101. Indeed s 14(b) of the Act gives the Commission the power to 'determine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases.'

26 See note 25, supra.

27 The Commission has expressed doubts over its power to fix rates on 'direct sales to industries' from interstate pipelines as distinguished from 'sales for resale to the industrial customers of distributing companies.' Annual Report, Federal Power Commission (1940), p. 11.

28 Sec. 1(b) of the Act provides: 'The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to

  

the production or gathering of natural gas.' And see s 2(6), defining a 'natural-gas company', and H.Rep.No. 709, supra, pp. 2, 3.

29 The wasting-asset characteristic of the industry was recognized prior to the Act as requiring the inclusion of a depletion allowance among operating expenses. See Columbus Gas & Fuel Co. v. Public Utilities Commission, 292 U.S. 398, 404, 405, 54 S.Ct. 763, 766, 767, 78 L.Ed. 1327, 91 A.L.R. 1403. But no such theory of rate-making for natural gas companies as is now suggested emerged from the cases arising during the earlier period of regulation.

30 The Commission has been alert to the problems of conservation in its administration of the Act. It has indeed suggested that it might be wise to restrict the use of natural gas 'by functions rather than by areas.' Annual Report (1940) p. 79.

The Commission stated in that connection that natural gas was particularly adapted to certain industrial uses. But it added that the general use of such gas 'under boilers for the production of steam' is 'under most circumstances of very questionable social economy.' Ibid.

31 The argument is that s 4(a) makes 'unlawful' the charging of any rate that is not just and reasonable. And s 14(a) gives the Commission power to investigate any matter 'which it may find necessary or proper in order to determine whether any person has violated' any provision of the Act. Moreover, s 5(b) gives the Commission power to investigate and determine the cost of production or transportation of natural gas in cases where it has 'no authority to establish a rate governing the transportation or sale of such natural gas.' And s 17(c) directs the Commission to 'make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies.' For a discussion of these points by the Commission see 44 P.U.R.,N.S., at pages 34, 35.

1 Natural Gas Act, s 4(a), 52 Stat. 821, 822, 15 U.S.C. s 717c(a), 15 U.S.C.A. s 717c(a).

2 52 Stat. 821, 824, 15 U.S.C. s 717e, 15 U.S.C.A. s 717e:

'(a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

'(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.'

3 'Reproduction cost' has been variously defined, but for rate making purposes the most useful sense seems to be, the minimum amount necessary to create at the time of the inquiry a modern plant capable of rendering equivalent service. See I Bonbright, Valuation of Property (1937) 152. Reproduction cost as the cost of building a replica of an obsolescent plant is not of real significance.

'Prudent investment' is not defined by the Court. It may mean the sum originally put in the enterprise, either with or without additional amounts from excess earnings reinvested in the business.

4 It is of no more than bookkeeping significance whether the Commission allows a rate of return commensurate with the risk of the original investment or the lower rate based on current risk and a capitalization reflecting the established earning power of a successful company and the probable cost of duplicating its services. Cf. American T. & T. Co. v. United States, 299 U.S. 232, 57

  

S.Ct. 170, 81 L.Ed. 142. But the latter is the traditional method.

1 315 U.S. 575, 62 S.Ct. 736, 86 L.Ed. 1037.

2 Judge Dobie, dissenting below, pointed out that the majority opinion in the Pipeline case 'contains no express discussion of the Prudent Investment Theory' and that the concurring opinion contained a clear one, and said, 'It is difficult for me to believe that the majority of the Supreme Court, believing otherwise, would leave such a statement unchallenged.' (134 F.2d 287, 312.) The fact that two other Justices had as matter of record in our books long opposed the reproduction cost theory of rate bases and had commented favorably on the prudent investment theory may have influenced that conclusion. See opinion of Mr. Justice Frankfurter in Driscoll v. Edison Light & Power Co., 307 U.S. 104, 122, 59 S.Ct. 715, 724, 83 L.Ed. 1134, and my brief as Solicitor General in that case. It should be noted, however, that these statements were made, not in a natural gas case, but in an electric power case—a very important distinction, as I shall try to make plain.

3 Natural gas from the Appalachian field averages about 1050 to 1150 B.T.U. content, while by-product manufactured gas is about 530 to 540. Moody's Manual of Public Utilities (1943) 1350; Youngberg, Natural Gas (1930) 7.

4 Sen.Rep. No. 1162, 75th Cong., 1st Sess., 2.

5 Arnold and Kemnitzer, Petroleum in the United States and Possessions (1931) 78.

6 Id. at 62-63.

7 Id. at 61.

8 At Fredonia, New York, in 1821, natural gas was conveyed from a shallow well to some thirty people. The lighthouse at Barcelona Harbor, near what is now Westfield, New York, was at about that time and for many years afterward lighted by gas that issued from a crevice. Report on Utility Corporations by Federal Trade Commission, Sen.Doc. 92, Pt. 84-A, 70th Cong., 1st Sess., 8-9.

9 In that year Pennsylvania enacted 'An Act to provide for the incorporation and regulation of natural gas companies.' Penn.Laws 1885, No. 32, 15 P.S. s 1981 et seq.

10 See Steptoe and Hoffheimer's Memorandum for Governor Cornwell of West Virginia (1917) 25 West Virginia Law Quarterly 257; see also Report on Utility Corporations by Federal Trade Commission, Sen.Doc. No. 92, Pt. 84-A, 70th Cong., 1st Sess.

11 Arnold and Kemnitzer, Petroleum in the United States and Possessions (1931) 73.

12 Id. at 63.

13 Id. at 64.

14 See Report on Utility Corporations by Federal Trade Commission, Sen.Doc. No. 92, Pt. 84-A, 70th Cong., 1st Sess.

15 Commonwealth of Pennsylvania v. West Virginia, 262 U.S. 553, 43 S.Ct. 658, 67 L.Ed. 1117, 32 A.L.R. 300. For conditions there which provoked this legislation, see 25 West Virginia Law Quarterly 257.

16 People ex rel. Pavilion Natural Gas Co. v. Public Service Commission, 188 App.Div. 36, 176 N.Y.S. 163.

17 Village of Falconer v. Pennsylvania Gas Company, 17 State Department Reports, N.Y., 407.

18 See, for example, Public Service Commission v. Iroquois Natural Gas Co., 108 Misc. 696, 178 N.Y.S. 24; Park Abbott Realty Co. v. Iroquois Natural Gas Co., 102 Misc. 266, 168 N.Y.S. 673; Public Service Commission v. Iroquois Natural Gas Co., 189 App.Div. 545, 179 N.Y.S. 230.

19 People ex rel. Pennsylvania Gas Co. v. Public Service Commission, 196 App.Div. 514, 189 N.Y.S. 478.

20 East Ohio Gas Co. v. Akron, 81 Ohio St. 33, 90 N.E. 40, 26 L.R.A., N.S., 92, 18 Ann.Cas. 332; Village of New-comerstown v. Consolidated Gas Co., 100 Ohio St. 494, 127 N.E. 414; Gress v. Village of Ft. Laramie, 100 Ohio St. 35, 125 N.E. 112, 8 A.L.R. 242; City of Jamestown v. Pennsylvania Gas Co., D.C., 263 F. 437; Id., D.C., 264 F. 1009. See, also, United Fuel Gas Co. v. Railroad Commission, 278 U.S. 300, 308, 49 S.Ct. 150, 152, 73 L.Ed. 390.

21 The New York Public Service Commission said: 'While the transportation of natural gas through pipe lines from one state to another state is interstate commerce * * *, Congress has not taken over the regulation of that particular industry. Indeed, it has expressly excepted it from the operation of the Interstate Commerce Commissions Law (Interstate Commerce Commissions Law, section 1). It is quite clear, therefore, that this Commission can not require a Pennsylvania corporation producing gas in Pennsylvania to transport it and deliver it in the State of New York, and that the Interstate Commerce Commission is likewise powerless. If there exists such a power, and it seems that there does, it is a power vested in Congress and by it not yet exercised. There is no available source of supply for the Crystal City Company at present except through purchasing from the Porter Gas Company. It is possible that this Commission might fix a price at which the Potter Gas Company should sell if it sold at all, but as the Commission can not require it to supply gas in the State of New York, the exercise of such a power to fix the price, if such power exists, would merely say, sell at this price or keep out of the State.' Lane v. Crystal City Gas Co., 8 New York Public Service Comm.Reports, Second District, 210, 212.

22 Proclamation by the President of September 16, 1918; Rules and Regulations of H. A. Garfield, Fuel Administrator, September 24,

  

1918.

23 For example, the Iroquois Gas Corporation which formerly served Buffalo, New York, with natural gas ranging from 1050 to 1150 b.t.u. per cu. ft., now mixes a by-product gas of between 530 and 540 b.t.u. in proportions to provide a mixed gas of about 900 b.t.u. per cu. ft. For space heating or water heating its charges range from 65 cents for the first m.c.f. per month to 55 cents for all above 25 m.c.f. per month. Moody's Manual of Public Utilities (1943) 1350.

24 The United States Fuel Administration made the following cooking value comparisons, based on tests made in the Department of Home Economics of Ohio State University:

Natural gas at 1.12 per M. is equivalent to coal at $6.50 per ton.

Natural gas at 2.00 per M. is equivalent to gasoline at 27¢ per gal.

Natural gas at 2.20 per M. is equivalent to electricity at 3¢ per k.w.h.

Natural gas at 2.40 per M. is equivalent to coal oil at 15¢ per gal.

Use and Conservation of Natural Gas, issued by U.S. Fuel Administration (1918) 5.

25 See Brief on Behalf jof Legislation Imposing an Excise Tax on Natural Gas, submitted to N.R.A. by the United Mine Workers of America and the National Coal Association.

26 Brief of National Gas Association and United Mine Workers, supra, note 26, pp. 35, 36, compiled from Bureau of Mines Reports.

27 From the source quoted in the preceding note the spread elsewhere is shown to be:

| State | Industrial | Domestic |
| --- | --- | --- |
| Illinois............................................................................. | 29.2 | 1.678 |
| Louisiana......................................................................... | 10.4 | 59.7 |
| Oklahoma ........................................................................ | 11.2 | 41.5 |
| Texas ................................................................................ | 13.1 | 59.7 |

  

| | | |
|---|---|---|
| Alabama | 17.8 | 1.227 |
| Georgia | 22.9 | 1.043 |

28 In Corning, New York, rates were initiated by the Crystal City Gas Company as follows: 70¢ for the first 5,000 cu. ft. per month; 80¢ from 5,000 to 12,000; $1 for all over 12,000. The Public Service Commission rejected these rates and fixed a flat rate of 58¢ per m.c.f. Lane v. Crystal City Gas Co., 8 New York Public Service Comm. Reports, Second District, 210.

The Pennsylvania Gas Company (National Fuel Gas Company group) also attempted a sliding scale rate for New York consumers, net per month as follows: First 5,000 feet, 35¢; second 5,000 feet, 45¢; third 5,000 feet, 50¢; all above 15,000, 55¢. This was eventually abandoned, however. The company's present scale in Pennsylvania appears to be reversed to the following net monthly rate; first 3 m.c.f., 75¢; next 4 m.c.f., 60¢; next 8 m.c.f., 55¢; over 15 m.c.f., 50¢ . Moody's Manual of Public Utilities (1943) 1350. In New York it now serves a mixed gas.

For a study of effect of sliding scale rates in reducing consumption see 11 Proceedings of Natural Gas Association of America (1919) 287.

29 See Report on Utility Corporations by Federal Trade Commission, Sen. Doc. 92, Pt. 84-A, 70th Cong., 1st Sess.

30 Four holding company systems control over 55 per cent of all natural gas transmission lines in the United States. They are Columbia Gas and Electric Corporation, Cities Service Co., Electric Bond and Share Co., and Standard Oil Co. of New Jersey. Columbia alone controls nearly 25 per cent, and fifteen companies account for over 80 per cent of the total. Report on Utility Corporations by Federal Trade Commission, Sen. Doc. 92, Pt. 84-A, 70th Cong., 1st Sess., 28.

In 1915, so it was reported to the Governor of West Virginia, 87 per cent of the total gas production of that state was under control of eight companies. Steptoe and Hoffheimer, Legislative Regulation of Natural Gas Supply in West Virginia, 17 West Virginia Law Quarterly 257, 260. Of these, three were subsidiaries of the Columbia system and others were subsidiaries of larger systems. In view of inter-system sales and interlocking interests it may be doubted whether there is much real competition among these companies.

31 This pattern with its effects on local regulatory efforts will be observed in our decisions. See United Fuel Gas Co. v. Railroad Commission, 278 U.S. 300, 49 S.Ct. 150, 73 L.Ed. 390; United Fuel Gas Co. v. Public Service Commission, 278 U.S. 322, 49 S.Ct. 157, 73 L.Ed. 402; Dayton Power & Light v. Public Utilities Commission, 292 U.S. 290, 54 S.Ct. 647, 78 L.Ed. 1267; Columbus Gas & Fuel Co. v. Public Utilities Commission, 292 U.S. 398, 54 S.Ct. 763, 78 L.Ed. 1327, 91 A.L.R. 1403, and the present case.

32 15 U.S.C. s 717(a), 15 U.S.C.A. s 717(a). (Italics supplied throughout this paragraph.)

33 s 7(c), 52 Stat. 825, 15 U.S.C.A. s 717f(c).

34 15 U.S.C. s 717f, 15 U.S.C.A. s 717f.

35 Id., s 717c(e).

36 Id., s 717c(b).

37 Id., s 717d(a).

38 Sen. Rep. No. 1162, 75th Cong., 1st Sess. 2.

39 The list of East Ohio Gas Company's special industrial contracts thus expressly under Hope's control and their demands are as follows:

40 To make a fetish of mere accounting is to shield from examination the deeper causes, forces, movements, and conditions which should govern rates. Even as a recording of current transactions, bookkeeping is hardly an exact science. As a representation of the condition and trend of a business, it uses symbols of certainty to express values that actually are in constant flux. It may be said that in commercial or investment banking or any business extending credit success depends on knowing what not to believe in accounting. Few concerns go into bankruptcy or reorganization whose books do not show them solvent and often even profitable. If one cannot rely on accountancy accurately to disclose past or current conditions of a business, the fallacy of using it as a sole guide to future price policy ought to be apparent. However, our quest for certitude is so ardent that we pay an irrational reverence to a technique which uses symbols of certainty, even though experience again and again warns us that they are delusive. Few writers have ventured to challenge this American idolatry, but see Hamilton, Cost as a standard for Price, 4 Law and Contemporary Problems 321, 323-25. He observes that 'As the apostle would put it, accountancy is all things to all men. * * * Its purpose determines the character of a system of accounts.' He analyzes the hypothetical character of accounting and says 'It was no eternal mold for pecuniary verities handed down from on high. It was—like logic or algebra, or the device of analogy in the law—an ingenious contrivance of the human mind to serve a limited and practical purpose.' 'Accountancy is far from being a pecuniary expression of all that is industrial reality. It is an instrument, highly selective in its application, in the service of the institution of money making.' As to capital account he observes 'In an enterprise in lusty competition with others of its kind, survival is the thing and the system of accounts has its focus in solvency. * * * Accordingly depreciation, obsolescence, and other factors which carry no immediate threat are matters of lesser concern and the capital account is likely to be regarded as a secondary phenomenon. * * * But in an enterprise, such as a public utility, where continued survival seems assured, solvency is likely to be taken for granted. * * * A persistent and ingenious attention is likely to be directed not so much to securing the upkeep of the physical property as to making it certain that capitalization fails in not one whit to give full recognition to every item that should go into the account.'

41 See 2 Bonbright, Valuation of Property (1937) 1112.

42 Bonbright says, '* * * the vice of traditional law lies, not in its adoption of excessively rigid concepts of value and rules of valuation, but rather in its tendency to permit shifts in meaning that are inept, or else that are ill-defined because the judges that make them will not openly admit that they are doing so.' Id., 1170.

43 'The attempt to regulate rates by reference to a periodic or occasional reappraisal of the properties has now been tested long enough to confirm the worst fears of its critics. Unless its place is taken by some more promising scheme of rate control, the days of private ownership under government regulation may be numbered.' 2 Bonbright, Valuation of Property (1937) 1190.

  

44 East Ohio itself owns natural gas rights in 550,600 acres, 518,526 of which are reserved and 32,074 operated, by 375 wells. Moody's Manual of Public Utilities (1943) 5.

45 Hope has asked a certificate of convenience and necessity to lay 1140 miles of 22-inch pipeline from Hugoton gas fields in southwest Kansas to West Virginia to carry 285 million cu. ft. of natural gas per day. The cost was estimated at $51,000,000. Moody's Manual of Public Utilities (1943) 1760.

46 I find little information as to the rates for industries in the record and none at all in such usual sources as Moody's Manual.

47 The Federal Power Commission has touched upon the problem of conservation in connection with an application for a certificate permitting construction of a 1500-mile pipeline from southern Texas to New York City and says: 'The Natural Gas Act as presently drafted does not enable the Commission to treat fully the serious implications of such a problem. The question should be raised as to whether the proposed use of natural gas would not result in displacing a less valuable fuel and create hardships in the industry already supplying the market, while at the same time rapidly depleting the country's natural-gas reserves. Although, for a period of perhaps 20 years, the natural gas could be so priced as to appear to offer an apparent saving in fuel costs, this would mean simply that social costs which must eventually be paid had been ignored.

'Careful study of the entire problem may lead to the conclusion that use of natural gas should be restricted by functions rather than by areas. Thus, it is especially adapted to space and water heating in urban homes and other buildings and to the various industrial heat processes which require concentration of heat, flexibility of control, and uniformity of results. Industrial uses to which it appears particularly adapted include the treating and annealing of metals, the operation of kilns in the ceramic, cement, and lime industries, the manufacture of glass in its various forms, and use as a raw material in the chemical industry. General use of natural gas under boilers for the production of steam is, however, under most circumstances of very questionable social economy.' Twentieth Annual Report of the Federal Power Commission (1940) 79.

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# Exhibit C

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**Docket No. 44280**

**In Re:** **Georgia Power Company's 2022 Rate Case**

## ORDER ADOPTING SETTLEMENT AGREEMENT AS MODIFIED

Record Submitted: November 30, 2022 Decided: December 20, 2022

## APPEARANCES

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**BY THE COMMISSION:**

## I. GEORGIA POWER COMPANY'S 2022 RATE CASE STATEMENT OF PROCEEDINGS

Pursuant to the Rate Plan approved by the Georgia Public Service Commission ("Commission") in the February 6, 2020 Order Adopting Settlement Agreement as Modified, in Docket No. 42516, Georgia Power Company's 2019 Rate Case, the Commission ordered Georgia Power Company ("Georgia Power" or "Company") to file, by July 1, 2022, a general rate case to address any changes in revenue requirements which may have occurred during the three-year period of this Rate Plan as follows:

> *The Commission finds that a three-year term for the Settlement Agreement as Modified ending December 31, 2022 is reasonable. By July 1, 2022, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The test period utilized by the Company in its rate case filing shall be from August 1, 2022 to July 31, 2023. The Company may propose to continue, modify or discontinue this Alternate Rate Plan. The*

*Company shall also file projected revenue requirements for calendar years 2023, 2024, and 2025.*

To accommodate preferred hearing dates and provide Public Interest Advocacy Staff ("PIA Staff") adequate time to issue discovery prior to the Company's direct hearings, the Company agreed to move its planned filing date from July 1, 2022 to Friday, June 24, 2022.

Accordingly, the Company submitted its filing, including all direct testimony, on June 24, 2022, with proposed rate changes to become effective August 1, 2022. The Commission issued a Procedural and Scheduling Order which, due to the complexity of the matters to be addressed in this docket, suspended the use of the proposed rate changes as contemplated by O.C.G.A. § 46-2-25 for a five-month period ending January 1, 2023, and declared the proceeding to be a contested case pursuant to O.C.G.A. § 50-13-13. Additionally, the Order deemed the proceeding "complex litigation" as that phrase is used in O.C.G.A. § 9-11-33(a).

Georgia Power's 2022 Rate Case filing requested approval to continue the three-year Alternate Rate Plan ("ARP") structure and requested a levelized rate increase of $852 million in 2023, and additional step increases of $107 million and $45 million to be effective January 1, 2024 and 2025, respectively. Hearings on Georgia Power's direct case in support of its filing were held September 27-29, 2022.

In addition to the Commission's PIA Staff, which has a statutory right to participate in this proceeding, a number of interested parties filed interventions. These interested parties included Americans for Affordable Clean Energy ("AACE"); Chargepoint, Inc.; the Commercial Group; Concerned Ratepayers of Georgia; Cypress Creek Renewables; EVgo Services, LLC; Georgia Association of Manufacturers ("GAM"); Georgia Coalition of Local Governments ("the Coalition"); Georgia Conservation Voters[1]; Georgia Interfaith Power & Light, Inc. ("GIPL"); Georgia Solar Energy Association ("GA Solar"); Georgia Solar Energy Industries Association ("GSEIA"), Solar Energy Industries Association ("SEIA"), and Vote Solar; Georgia Watch; Interstate Gas Supply, Inc.; The Kroger Co. ("Kroger"); Lightstar Renewables, LLC[2]; Metropolitan Atlanta Rapid Transit Authority ("MARTA"); Resource Supply Management ("RSM"); Sierra Club; Southern Alliance for Clean Energy, Inc. ("SACE") and Southface Energy Institute ("Southface"); Southern Renewable Energy Association ("SREA"); the U.S. Department of Defense (on behalf of all Other Federal Executive Agencies) ("DOD/FEA"); and Utility Management Services ("UMS"). Thereafter, on October 20, 2022, PIA Staff and Intervenors filed testimony and exhibits presenting their respective direct cases. With the exception of Concerned

[1] The Commission consolidated several intervenors into a single group known in this case as Georgia Conservation Voters. Any intervenor in the group consolidated that did not want to be a part had the right to appear as a public witness.

[2] The Commission rejected Lightstar Renewables, LLC motion to intervene as the matters they addressed were unrelated to this proceeding.

Ratepayers of Georgia, Cypress Creek Renewables, LLC, Georgia Watch, Interstate Gas Supply, Inc., the Kroger Co., Resource Supply Management, Sierra Club, and Southern Renewable Energy Association, all other parties to this case filed direct testimony in this proceeding on October 20, 2022. Hearings on PIA Staff and Intervenors' direct cases were held November 8-10, 2022.

Consistent with the Commission's Final Order in Georgia Power's 2022 Integrated Resource Plan, Docket No. 44160, the Company filed its supplemental direct testimony, in accordance with the Second Amended Procedure and Scheduling Order, in relation to the Renewable/Non-Renewable-10 ("RNR") tariff on October 20, 2022. The Company filed errata to their supplemental testimony on November 21, 2022. PIA Staff, Georgia Coalition of Local Governments, GIPL, GA Solar, GSEIA, SEIA, Vote Solar, and Southface Energy Institute and Southern Renewable Energy Association filed their supplemental direct testimonies regarding the RNR tariff on November 18, 2022.

The Company filed its rebuttal testimony on November 18, 2022, in response to the positions advocated by PIA Staff and various intervenors. The Company filed its supplemental rebuttal testimony related to the RNR tariff on November 23, 2022. The Company presented its rebuttal case on November 29-30, 2022. Following the Company's rebuttal case, the Commission conducted hearings on PIA Staff and Intervenors' supplemental direct testimony. Following the hearings on PIA Staff and Intervenors supplemental direct testimony, the Commission conducted hearings on the Company's supplemental rebuttal testimony at which time the hearings were concluded. On December 8, 2022, parties in this matter filed proposed orders and briefs.

At each phase of the hearings of evidence in this case the Commission also heard from numerous public witnesses who expressed their views on the Company's application, either individually or on behalf of specific groups.

## II. LEGAL AUTHORITY AND JURISDICTION

The Commission has general supervisory authority over electric utilities. O.C.G.A. § 46-2-20 and 21. The Commission has the exclusive power to determine just, and reasonable rates and charges made by Georgia Power Company. O.C.G.A. § 46-2-23(a). Unless the Commission has otherwise authorized the change, Georgia Power Company must provide thirty (30) days' notice to the Commission and to the public of any proposed change to any rate, charge, classification, or service subject to the jurisdiction of the Commission. O.C.G.A. § 46-2-25(a). The Commission is authorized to suspend the operation of any new schedule and defer the use of such rate, charge, classification, or service for a period not to exceed five months.

## III. COMMISSION ACTION

Following its rebuttal testimony, PIA Staff filed a proposed Settlement Agreement with the Company intended to resolve the issues in the case except for three policy issues left to Commission discretion: 1) the earnings band to be applied for Annual Surveillance Report purposes; 2) the pricing for the Community Solar Program; and 3) the additional amount to be paid for export solar energy pursuant to the RNR tariff. In addition to PIA Staff and the Company, the following intervenors were also parties to the proposed Settlement Agreement: AACE, Chargepoint, Inc., EVgo Services, LLC, GAM, MARTA, DOD/FEA, UMS, the Commercial Group, and Kroger.

Among other provisions, the proposed Settlement provided for: approving twenty five percent (25%) of the Company's proposed Electric Vehicle Make Ready Program; approving sixty percent (60%) of the Company's proposed Grid Investment Plan ("GIP"); reducing Operation and Maintenance ("O&M") expenses by an additional $180 million dollars over three years; setting the Residential Service Tariff ("R rate") as the default rate for all residential premises; allowing for the 5,000 monthly net metering rooftop solar customers to be grandfathered in while providing that new RNR Tariff customers be reimbursed at a rate of avoided cost plus an additional amount to be set by the Commission; and increasing the Qualified Senior Citizen Discount by six dollars ($6.00) per month.

The Proposed Agreement provided for the continuation of the ECCR Tariff which would collect certain environmental costs that will be incurred by the Company including compliance with Coal Combustion Residual Asset Retirement Obligations ("CCR ARO").

At its regular Administrative Session held on December 20, 2022, the Commission voted to adopt a Commissioner Motion ("Motion") to accept the Settlement Agreement with certain modifications set forth in the Motion (referred to herein as the "Proposed Agreement or Settlement Agreement as Modified.").

## IV. FINDINGS OF FACT

1.

The Commission finds that the resolution of the matters raised in this docket, as provided in the Settlement Agreement as Modified, (Attached as Exhibit I) is appropriate and in the best interest of the State of Georgia. It is supported by testimony and other evidence in the record and will result in just and reasonable rates. In discussing the individual components of the Settlement Agreement as Modified, the Commission remains mindful that the Proposed Agreement reflected a compromise among a number of parties with disparate interest, and that the Settlement Agreement as Modified must be considered as a whole. It is plain from reviewing the resolution that no party to the proceeding, including every party that signed on to the Proposed Agreement, prevailed on every issue. However, the Settlement Agreement as Modified offers a fair resolution to the full range of issues presented in this docket.

2.

As set forth in the Motion, the Commission finds that rates shall be set using a 10.50% ROE, which appropriately balances the interests of the Company and its customers, and which the Commission finds to be just and reasonable. The difference between the respective ROE recommendations of Georgia Power and those of PIA Staff and other Intervenors represented the largest dollar amount of any single issue in the case. Georgia Power recommended a ROE of 11% based upon the analysis and recommendation of witness James Coyne. This ROE was within Mr. Coyne's range of 8.99% to 13.55% and intended to ensure the Company's continued access to capital markets.

Staff witness Mike Gorman recommended a return on common equity of 9.45%, within the range of 9.00% to 9.90%. Tr. 3515, Gorman recommended rate of return of 6.83% and 6.84% for the test year ending July 31, 2023, and calendar year 2023, respectively. *Id.* Based on a capital structure reflecting a 51% common equity ratio, Gorman recommended an overall rate of return of 6.57% and 6.61% for 2024 and 2025, respectively. *Id.*

GIPL supported Staff's recommendation stating that the ROE and capital structure strike the right balance between Company profits and reasonable rate. (GIPIL Brief, p.4).

The Commercial Group recommended that the Commission set an ROE for Georgia Power that would balance the interests of ratepayers and the utility and be low enough to help Georgia remain competitive in attracting and keeping businesses in the state; and that any earnings band should be directly tied to the ROE set in this proceeding. (Commercial Group Brief, p. 8).

Georgia Watch agreed with Staff and other intervenors that the Company's ROE should be lowered to an amount more consistent with the average of their peers. Georgia Watch suggested that a reduction from the current 10.5 percent profit to 10 or 9.5 percent ROE would allow the Company an opportunity to earn a fair return while reducing the impact of its proposed rate increase on their captive ratepayers. In addition, Georgia Watch agreed with Staff that any earnings above the band in 2023 should be applied to recovery of deferred costs and regulatory assets. (Direct Testimony Smith, Trokey, page 132, lines5-7) (Georgia Watch Brief p.2). GSEIA, SEIA, and Vote Solar recommended the Commission set the ROE band to +/- 50 basis points.

The GAM witness testified that a 9.83% ROE setpoint gives Georgia Power more than an adequate opportunity to earn a fair return. (LaConte Direct Testimony, p. 9).

DOD/FEA suggested an authorized ROE of 9.47% (DOD/FEA Brief p. 9). For the earnings band around the target ROE, DOD/FEA recommended it be established at 100 basis points, as originally designed when the ARP was first approved, and eliminate or reduce the 20% of earnings retained by the Company for amounts above the earnings ROE band. (*Id.* p.2).

The Commission finds and concludes that a continued ROE of 10.5% will allow the Company continued access to the capital markets at competitive rates and will allow the Company to construct the infrastructure necessary to serve customers and comply with environmental regulations. Accordingly, the Commission finds the Proposed Agreement's ROE for setting rates of 10.50% is reasonable and in the public interest.

3.

The Commission approves a capital structure of 56% equity and 44% long term debt for the test period as put forth in the Proposed Agreement. Georgia Power proposed that a capital structure containing approximately 44% debt and 56% common equity be used for ratemaking purposes in this proceeding. This is a continuation of the proposed capital structure approved in the 2019 Georgia Power Rate case.

Staff agreed with the request 56% common equity structure for 2023. However, Staff recommended that the Commission lower the Company's equity ratio to 51% common equity for 2024 and 2025 after Vogtle Units 3 and 4 are placed in-service, consistent with the ratio approved in the 2013 Rate Case.

GAM pointed out that the average common equity ratio for vertically integrated investor-owned utilities in 2022 is 51.58%. (LaConte Direct Testimony, p. 20).

GIPL recommended an increase in the Company's proposed common equity ratio to 61.7%, which was justified due to their much lower recommended ROE of 5.54%. (GIPL Brief, p. 2).

Based on the evidence presented and the totality of the Proposed Settlement Agreement, the Commission finds and concludes that a capital structure of 56% common equity level is just and reasonable and will help to mitigate the risk of a credit rating downgrade.

4.

Provision 3 of the Proposed Settlement Agreement approves the Company's filing with the following modifications to the revenue requirement. The agreed upon adjustments to the Company's request are set forth in the values in the table below and detailed on Exhibit A of Attachment 1 to this Order. The agreed upon adjustments by category and amount include the following:

a. The Company agrees to reduce the requested GIP spend by 40% over the term of this ARP, as shown in the table below and on Exhibit A of Attachment 1.

b. The Company agrees to reduce EV Make Ready spend by 65% over the term of this ARP, as shown in the table below and on Exhibit A of Attachment 1.[3]

c. The Company will not move forward with a full Distributed Energy Resource Management System ("DERMS") at this time. To prepare the electric system for higher levels of distributed energy resources ("DER"), the Company will be allowed to begin the following preliminary steps, which will include system modifications to allow for modeling and visibility of DER, integration of these modifications with the Company's real-time operations platforms such as EMS, DMS, and SCADA, and the establishment of DER remote configuration capabilities. The Company will report back to the Commission in the 2025 Integrated Resource Plan on the development of these systems and the need for any further system modifications to plan for DER integration. The investments made pursuant to this Paragraph will be amortized over 10 years.

d. In addition to the categories listed in the table below, Staff recommended several other adjustments to operations and maintenance ("O&M") expenses in this case. The Stipulating Parties agreed that the only specific adjustments being made are those identified in the table below. For purposes of settlement and compromise, the Company agreed to further reduce the revenue requirement associated with miscellaneous O&M expenses by $30 million each year, which is not allocated to any particular expense.

| | | |
|---|---|---|
| | Stock-Based Compensation | Ln 21 |
| | Energy Direct Premium Packages | Ln 4 |
| | Executive Financial Planning | Ln 7 |
| | O&M Scrap Sales Proceeds | Ln 5 |
| | Wireless Co-Location Revenues (80/20 sharing) | Ln 6 |
| | Depreciation Expense and Accumulated Depreciation - New Depreciation Rates | Lns 10 - 14 |
| | Depreciation Expense Reduction for Plant Scherer Units 1-3 and common, and Plant Bowen Units 1-2 (12 years) | Ln 9 |
| | Reduce projected Storm Damage Accrual to $31M per year | Ln 20 |

[3] The Motions adopted by the Commission in this matter change the EV Make Ready reduction from 65% to 35%.

| | | |
|---|---|---|
| | CCR ARO recovery methodology to remain consistent with the 2019 base rate case Order except for a four, rather than three, year amortization period. | Ln 18 |
| 65%[4] | Electric Vehicle Make Ready Program | Ln 19 |
| 75% | O&M Expense - Electric Vehicle Make Ready Program | Ln 19 |
| 40% | Grid Investment Plan (Transmission and Distribution Plant Investment), and related Depreciation Expense and Accumulated Depreciation and ADIT | Ln 16 |
| 60% | Preliminary system modifications for Distributed Energy Resource Management System (DERMS) and related Amortization (10-years) and Accumulated Amortization and ADIT | Ln 17 |
| | Depreciation Expense - Depreciation Rates Correction for Ft Benning and Ft Gordon | Ln 15 |
| | Property Tax Expense | Ln 22 |
| | Income Tax Credits Related to the Inflation Reduction Act, including Commission approval to opt out of normalization requirements for specified battery energy storage facilities | Ln 8 |

The Company had proposed to levelized its requested rate increase. The Company argued that customers are fairly compensated for the projected over-collection in the first two years of the levelization. For the projected advancement of revenues in 2023 and 2024, the Company would defer the amount as a regulatory liability, reducing retail rate base and giving customers credit on the advanced amount based on the Company's full weighted average cost of capital. This proposed deferral reduced the levelized revenue requirement requested by the Company and fully amortizes the advancement by the end of 2025.

PIA Staff recommended a step increase approach, which would increase customer rates by an increasing amount during each of the next three years and better align with the Company's demonstrated revenue deficiencies in 2024 and 2025.

Georgia Watch supported Staff's recommendation that the Commission disapprove the Company's requested ARP as filed in this case. Georgia Watch supported Staff's recommendation of no increase in base rates in 2023 and no levelized increases in 2024 and 2025. (Direct Testimony Smith, Trokey, page 133, lines 4-20). (Georgia Watch Brief p. 2).

[4] As noted in footnote 3, the Motions adopted by the Commission in this matter change the EV Make Ready reduction from 65% to 35%.

GAM disagreed with Georgia Power's levelized approach in the ARP. GAM further recommended that the Commission deny Georgia Power's accelerated recovery proposal and reaffirm that the Plant Scherer units will be recovered over their remaining useful lives as determined in the last rate case. (GAM Brief p.11).

Georgia Power's Grid Investment Plan as filed included a Distribution Investment Plan ("DIP") and a Transmission Investment Plan ("TIP"). Georgia Power proposed to continue its GIP in the amount of $2.3 billion from 2023 to 2025. Tr. 1563.

PIA Staff recommended that the Commission reject TIP in its entirety. PIA Staff recommended the Company should determine whether equipment should be replaced based on the objective, periodic, diagnostic testing the Company already employs. Staff also recommended that the Commission reject the circuit hardening and undergrounding packages, which make up approximately 85% of the DIP. In particular, PIA Staff argued that the Commission should reject DIP circuit hardening and undergrounding packages as cost-inefficient. For any components of DIP the Commission approves, Staff recommended that the Commission direct the Company to document SAIDI and SAIFI projections in 2032 and to hold the Company accountable for those projections. Tr. 1625. Staff recommended that the Company employ more aggressive vegetation management programs and more rigorous worst- performing circuit programs in place of their recommended DIP packages.

The Company argued that removing the circuit hardening and undergrounding packages would essentially forestall the purpose of the DIP, which focuses on ensuring lasting reliability improvements while minimizing the total cost to customers. In addition, the Company argued that worsening reliability for a subset of feeders (also referred to as circuits) will be more pronounced without these investment packages, leading to significant negative impacts on customer experience due to more frequent and longer outages, as well as increases in the economic cost incurred by customers.

PIA Staff opined that the cornerstone of the TIP is replacing equipment based on the age of the equipment as opposed to replacing it based on the equipment failing a diagnostic test. PIA Staff did not agree with the Company's position that such projections or analyses are impossible to provide.

PIA Staff stated that the actual operating condition of transmission and distribution ("T&D") equipment as measured by periodic, objective testing and inspection programs should be the primary drivers of replacement.

Georgia Power argued that the TIP focuses on replacing aging assets that have or will exceed their Company expected life by the end of the Grid Investment Plan period. As the Company explained, much of its transmission equipment is now approaching 50, 60, and 70 year lives. Based on the Company's experience, the likelihood of failure for the transmission assets included in the TIP will exponentially increase as the assets age beyond their expected life, and the reliability of the electric system could be negatively impacted as a result. According to the Company, replacing these aged assets will (1) reduce the number of emergency failures, (2) mitigate system operation reliability concerns, and (3) avoid higher maintenance and replacement costs while ensuring the safety of the general public and the Company's employees.

SREA urged the Commission to hire an independent transmission consultant to provide a report by July 1, 2024, that evaluates multiple scenarios of generation additions and retirements and measures multiple reliability, economic, and other quantifiable benefits associated with specific transmission project recommendations and order the Company to work with the Commission, Staff, stakeholders, and the hired consultant to provide the data and any other information necessary to complete the report. Additionally, SREA recommended the Commission open a new docket to evaluate the current transmission planning processes and evaluate recommendations for reform and improvements. (SREA Brief p. 1).

SACE and Southface suggested the Company work with Staff and stakeholders to develop a cost-benefit framework methodology for T&D investments. (SACE/Southface Brief p. 23).

With the exception of the costs associated with the EV Make Ready Program, the Commission finds the proposed revenue requirement modifications to be reasonable and appropriate and approves the adjustments in accordance with the Proposed Agreement. The Commission finds that a reduction in the Company's requested GIP spend by 40% over the term of this ARP is reasonable. With regards to the other modifications to O&M expenses and other costs made in Provision 3, the Commission finds that the modifications to the Company's findings are reasonable. The Commission authorizes Georgia Power to opt out of the IRS tax normalization requirements for the purposes of recognizing eligible Investment Tax Credits for specified battery energy storage facilities in accordance with the Inflation Reduction Act. The modification to the EV Make Ready Program will be further addressed below.

5.

The Proposed Agreement provides that, effective January 1, 2023, the Company shall increase its traditional base rate tariff to collect an additional $192 million, with additional adjustments in 2024 and 2025 of $273 million and $314 million respectively. (Proposed Agreement Provisions 4).

The Commission finds these base tariff changes to be reasonable based on the evidence presented, therefore, the changes are approved as provided for in the Proposed Agreement. Provided, however, that the increased approval amount for the EV Make Ready Program discussed in Paragraph 33 will increase these amounts slightly. When the Company makes its Compliance filing within thirty days of the date of this decision, the Company shall also file the updated amounts for the traditional base rate tariff adjustments.

6.

The Proposed Agreement provides that effective January 1, 2023, the Environmental Compliance Cost Recovery ("ECCR") tariff will be adjusted for traditional ECCR costs to reduce collections by $7 million and adjusted to reduce collections by an additional estimated $35 million effective January 1, 2024, and an additional estimated $9 million effective January 1, 2025. Additionally, effective January 1, 2023, the Coal Combustion Residual Asset Retirement Obligations ("CCR ARO") costs recovered in the ECCR tariff shall be adjusted to reduce collections by $13 million, and adjusted to collect an additional $101 million effective January 1, 2024, and an additional estimated $90 million effective January 1, 2025. The process for revising these estimates is described in Paragraph 8 (a) and (b) of the Proposed Agreement. As approved in the 2019 base rate case order in Docket No. 42516, ECCR shall continue to include the cost for compliance with CCR ARO. The projection of CCR ARO cost will be updated in 2023 and 2024 through compliance filings to set the actual ECCR tariff rates for 2024 and 2025. The Commission reserves the ability to make prudency determinations on the Company's coal ash related costs.

The Company and PIA Staff both agreed there should be a continuation of the CCR ARO cost recovery methodology approved in the 2019 Rate Case.

GAM Witness Pollock recommended the Company not be allowed to earn a return on the CCR ARO regulatory asset balance until securitization is authorized. GAM stated that fully embedded costs are recovered from the Customer Baseline Load ("CBL") portion of Real Time Pricing ("RTP") rates while RTP prices reflect marginal generation (capacity and energy) and transmission costs. GAM argued that to adopt the Watkins proposal would completely undermine RTP, which would no longer reflect marginal costs or real-time prices. (GAM Brief p. 9,13).

Sierra Club recommended that the Company be disallowed from recovering on any coal ash remediation that does not meet federal and state law requirements. They stated in their post hearing brief that the capping of coal ash which mixes with groundwater or mixed with water of any kind is violation of 40 C.F.R. § 257 Subpart D (the "CCR Rule") and Ga. Comp. R & Regs. 391-3-4-.10 ("Georgia CCR Regulations"). They asserted that the Company's current plan allows Coal Ash to remain saturated and in contact with groundwater and since this violates both federal and state regulations, the costs of such remediation should be deemed imprudent and disallowed for recovery. Sierra Club stated that despite the testimony of the Company's witness, the EPA's decision should not be interpreted as only applying to a specific instance in Ohio. They reiterated that if applied to the current coal ash remediation plan, the Company should not be allowed to recover on remediation plans that are not in compliance with federal or state regulations. They further recommended that the Commission should reserve a decision on the recovery of costs associated with the Hammond AP-3 until a final permit is issued. In accordance with the Proposed Agreement, the Commission is reserving the ability to make prudency determinations on the Company's coal ash related costs until after a determination of the lawfulness of the Company's Coal Ash remediation plan is made.

Resource Supply Management recommends that the Commission not allow the Company to recover on closed assets. (RSM Brief p. 2).

This Commission has carefully considered the evidence and testimony presented on these issues and finds that it is just and reasonable for Georgia Power to recover CCR ARO compliance costs as provided for in the Proposed Agreement. The Commission finds that it is appropriate to retain the ability to determine prudency on this spending until a later date, as contemplated by the Proposed Agreement.

7.

Provision 6 of the Proposed Agreement states that effective January 1, 2023, Georgia Power shall collect an additional $37 million through the Demand Side Management ("DSM") tariffs, and as adjusted during the term of this ARP based on the DSM true up process agreed to by the Company and Staff with a projected increase of $27 million effective January 1, 2024, and a projected decrease of $2 million effective January 1, 2025.

The Commission finds that Provision 6 is a reasonable and appropriate approach to the DSM tariff, as adjusted during the ARP.

8.

Provision 7 of the Proposed Agreement that effective January 1, 2023, the Municipal Franchise Fee ("MFF") tariff will be increased to collect an additional $5 million effective January 1, 2023, an additional estimated $9 million effective January 1, 2024, and an additional estimated $9 million effective January 1, 2025, which dollar amount will change as total revenue adjustments change as allowed by this ARP, as well as with any future Fuel Cost Recovery ("FCR") changes and future Nuclear Construction Cost Recovery ("NCCR") changes.

The Commission finds that this provision acceptable and adopts it as part of this Order. Provided, however, that the increased approval amount for the EV Make Ready Program discussed in Paragraph 33 may increase these amounts slightly. When the Company makes its Compliance filing within thirty days of the date of this decision, the Company shall also file any updated amounts for the MFF adjustments.

9.

Consistent with the 2019 base rate case order in Docket No. 42516, for purposes of the 2024 and 2025 rate adjustments, Provision 8 of the Proposed Agreement provides that the Company shall make compliance filings of the updated tariffs at least ninety (90) days prior to the effective date of the tariffs. The Company's compliance filings will include the following updates:

a) Effective January 1, 2024, (i) the traditional base tariffs shall be adjusted to collect an additional $273 million; (ii) the ECCR tariff shall be adjusted based upon the Compliance filing with updated CCR ARO costs as filed in the most recent semi-annual report for calendar year 2023; (iii) the DSM tariffs shall be adjusted to reflect the DSM costs for calendar year 2024 as approved in Docket No. 44161 and as adjusted based on the DSM true up process agreed to by the Company and Staff; and (iv) the MFF tariff shall be adjusted to collect the MFF cost incurred by the Company. The 2024 increase to traditional base rate tariffs, ECCR tariff, and DSM tariffs will use the most current kWh sales forecast for the applicable year to set the rates.

b) Effective January 1, 2025, (i) the traditional base tariffs shall be adjusted to collect an additional $314 million; (ii) the ECCR tariff shall be adjusted based upon the Compliance filing with updated CCR ARO costs as filed in the most recent semi-annual report for calendar year 2024; (iii) the DSM tariffs shall be adjusted to reflect the DSM costs for calendar year 2025 as approved in Docket No. 44161 and as adjusted based on the DSM true up process agreed to by the Company and Staff; and (iv) the MFF tariff shall be adjusted to collect the MFF cost incurred by the Company. The 2025 increase to traditional base rate tariffs, ECCR tariff, and DSM tariffs will use the most current kWh sales forecast for the applicable year to set the rates.

The Commission finds that requirement that compliance filings of the updated tariffs which must be submitted at least ninety (90) days prior to the effective date of the tariffs as filed in the Proposed Agreement is reasonable and is hereby approved.

10.

The structure of the earnings band was set aside from the Proposed Agreement for Commission decision as a policy issue. Provision 9 provides for ASR purposes, beginning January 1, 2023, the earnings band shall be set at __% to __% ROE, to be decided by the Commission, and the Company shall report earnings based on the actual historic cost of debt and capital structure described in Paragraph 2. The Company will not file a general rate case unless its calendar year retail earnings are projected to be less than the bottom end of the band. (Agreement Provision 9)

At the December 20, 2022 Administrative session, Chair Pridemore offered a motion to set the earnings band from 9.5% to 11.9% ROE. The motion passed 4-1. The Commission finds this motion includes a just, reasonable and appropriate ROE earnings band that is in the public interest.

11.

The Stipulation stated that subsequent to finalization of Staff's review of the respective ASR, any excess retail revenues above the top end of the earnings band will be shared, with seventy percent (70%) being applied to regulatory assets in the following priority: Accumulated CCR ARO; Retired Generating Plant; and Obsolete Inventory, ten percent (10%) being directly refunded to customers, allocated on a percentage basis to all customer groups including the base revenue contribution of RTP incremental usage, and the remaining twenty percent (20%) retained by the Company.

At the December 20, 2022 Administrative Session, Chair Pridemore offered a motion modifying the sharing mechanism offered by the Stipulation. The motion stated that forty percent (40%) of earnings above the band would be applied to regulatory assets, forty percent (40%) would be directly refunded to customers and twenty percent (20%) would be retained by the Company. The motion passed unanimously. The Commission finds that this motion represents a just, reasonable and appropriate allocation of any excess retail revenues.

12.

Pursuant to Provision 11, the Company will make its ASR filings for this ARP by March 15th of the following year. The Commission will consider the ASR filing and determine any direct refunds and reduction of regulatory assets by December 31st of that year.

The Commission finds that the ASR filing dates for review are appropriate and are hereby approved.

13.

The Company anticipates sharing revenues above the approved ROE band for 2022 with customers under the current ARP. For purposes of settlement, the Company will expedite sharing to provide the return of the estimated amount of customer sharing in the first quarter of 2023. Any revision, if needed, to the estimated amount of sharing will be adjusted once the Commission finalizes its review of the 2022 ASR. The customers' portion of sharing shall be applied in the manner ordered in the 2019 rate case in Docket No. 42516. (Provision 12 of the Settlement Agreement).

The Commission finds that Proposed Agreement Provision 12 is reasonable and is approved.

14.

The Commission finds that for book accounting and ASR purposes, the schedule for the Nuclear Decommissioning Trust - Tax Funding (reference the attached "Proposed Supplemental Order - Nuclear Decommissioning Costs") shall be approved. (Agreement Provision 13).

15.

Provision 14 of the Agreement provides that any additional tax benefits related to the Inflation Reduction Act, the Infrastructure and Investment Jobs Act, or any additional state or federal regulations shall accrue as a regulatory liability.

The Commission finds this to be the appropriate regulatory treatment of any state of federal regulation.

16.

The Proposed Agreement states that in the event that the Company determines that an asset is impaired or the Commission approves the retirement of a retail generation asset as a result of any environmental regulation or legislation, the Company may request that costs associated with such impairment or retirement be deferred as a regulatory asset. (Agreement Provision 15).

The Commission finds this provision of the Proposed Agreement to be reasonable and is hereby approved.

17.

Provision 16 of the Agreement provides that the Interim Cost Recovery ("ICR") mechanism as initially approved in the 2010 Rate Case in Docket No. 31958 is continued throughout the term of this ARP utilizing the earnings band set by the Commission in this case.

The Commission finds that the Provision is reasonable, and it is therefore, approved.

18.

Provision 17 of the Agreement provides beginning in 2023, with the adjustment to traditional base rate tariffs, except as otherwise provided in this Stipulation, the rate increase shall be applied to each traditional base rate on an equal percentage basis. The energy, demand, and basic service charge components of each base rate shall all be adjusted equally. Except as otherwise provided in this Stipulation, the Company will not apply any increase to the basic service charges for the tariffs that had this component adjusted to the full amount of the customer-related costs in the 2019 base rate case or apply an increase to the basic service charge for the domestic and small business rate groups.

GIPL urged the Commission to deny the Company's proposed basic service charge increase for residential customers because the current charge already recovers costs in excess of the Company's truly customer-related costs, and the Company's cost of service analysis shows a decrease rather than an increase in customer-related costs. (GIPL Witness Barnes Testimony at 54-61).

DOD/FEA encouraged the Commission to move toward cost-based rates rather that applying an across-the-board rate increase to all rate classes using guidance from GPC's filed Class Cost of Service Study ("CCOSS"), using the 4-Coincident Peak ("4-CP") allocation for production costs; (Exhibit GPC 31-LPE-5 and Exhibit GPC 32-LPE-6).

After careful consideration, the Commission finds that adjusting traditional rate base tariff as set forth in the Proposed Settlement Agreement is just and reasonable.

19.

The Commission finds it reasonable for tariffs within the Medium and Large Business rate groups to receive an equal adjustment to the energy, demand, and basic service charge components. (Agreement Provision 18).

20.

MARTA asked the Commission to grant its request to exempt the ET Tariff from any rate increase as part of Georgia Power's 2022 Rate Case stating that its investment in its infrastructure and public transportation services, particularly rail services, have a great multiplying effect on economic development in Georgia and the Atlanta region, increasing Georgia Power's electric sales to new customers and spreading the cost of service. (MARTA Brief p. 13).

The Commission finds it appropriate for Georgia Power to allocate the Electric Transportation ("ET") tariff on 50% of the base rate increase. The revenue deficiency for this adjustment will be accounted for within the Government/Institutional tariff group. (Agreement Provision 19).

21.

Provision 20 of the Agreement states that the Company will move the Medium Business and Large Business rate groups closer to parity, beginning in 2023, rates in the Medium Business and Large Business rate groups will receive 85% of the overall base rate increase with the resulting revenue deficiency being spread to other rate groups excluding the Small Business, Lighting, Agricultural, and Marginal Rate groups, which will receive the overall base rate increase.

The Commercial Group requested the Commission move class rates closer to parity noting that now, Medium Business and Large Business class rates are substantially above-cost. The Commercial Group stated that if the Commission expands TOU-FD eligibility to include unaffiliated restaurants, the Commission should contain any revenue erosion from such expansion to the TOU-FD rate itself. (Commercial Group Brief, p.1).

GAM supported the movement of the rate classes closer to parity consistent with principles of cost causation, fairness and gradualism. (GAM Brief, p.11).

RSM recommended the Company use their Cost-of-Service study in order to create their rate design proposals. It argued that commercial customers rates be set to the demand costs rather than collecting part of its fixed costs in a volumetric manner. It pointed that out that the Company is correctly setting the residential rates to collect demand costs after the old rates were being collected volumetrically.

The Commission finds the Company's move to bring Medium and Large Business rate groups closer to parity reasonable and approves Provision 20 of the Agreement.

22.

Pursuant to Provision 21 of the Settlement Agreement, the Company agrees to work with the Department of Defense to investigate a Backup rider for customers on the Real Time Pricing rate who install customer-owned generation that normally operates at least 6,000 hours per year. The Company will meet with the DOD within 90 days of the final Order in the case to begin that collaboration.

DOD/FEA recommended that to ensure that the customer capacity is reliable and to prevent cost-shifting onto other customers, it requested that RTP customers be given the option to subscribe to and pay for GPC Backup ("BU") services by changing the Applicability Section of the BU rate schedule to allow RTP customers to enroll, and to specify the rates that would apply to RTP BU customers. With BU service firming up the reliability and cost recovery from RTP customer generation, such a customer should qualify for a CBL reduction. (DOD/FEA Brief p. 5).

The Commission encourages this collaborative arrangement between the DOD/FEA and approves this Provision of the Settlement Agreement.

23.

In Provision 22, Georgia Power and Staff agreed that the Residential Service tariff ("R rate") will be the default rate for all residential premises.

Staff and numerous intervenors all proposed the same or similar recommendations. Staff, GIPL, and other intervenors all submitted extensive testimony demonstrating that Schedule TOU-RD has been significantly more expensive for customers than other available rates and that demand rates are inferior to volumetric time-of-use rates for providing efficient and actionable price signals to residential customers.

GIPL encouraged the Commission to order the Company to return to using the basic volumetric residential tariff, Schedule R, as the default rate and halt use of the complicated demand charge tariff, Schedule TOU-RD, as the default tariff for new residential premises. In the alternative, if the Commission prefers a time-varying rate as the default for new premises, it should set the time-of-use nights & weekends tariff, Schedule TOU-REO. (GIPL Brief p. 2-3).

Georgia Watch stated that the residential R-tariff should remain the default rate for all customers. Customers in newly constructed dwellings already defaulted onto the Company's TOU-RD rate should receive notification of the likelihood they have or will experience higher bills due to this rate.

The Coalition asserted that the standard R tariff should be maintained and become the default rate for both newly constructed and pre-existing premises. If the TOU-RD rate is maintained, the Coalition stated, it should not be the default for any customers, should be fully optional, and should be adjusted so that the demand charge will only apply to peak hours (i.e. between 2 pm and 7 pm on non-holiday weekdays between June and September). Additionally, the Coalition supported PIA Staff's recommendation that the Company be ordered to create a rate comparison tool for all residential customers to better enable them to select the best rate for their usage and demand profile. (Coalition Brief p. 13)

The Commission finds that the evidence supports that the R rate should and shall be the default rate for all residential premises as laid out in Provision 22.

24.

Provision 23 of the Agreement states that the Company will maintain the R rate as a rate option available to all residential customers. In addition, there will be an elimination of the declining-block rates during the non-summer months to a flat rate for all kWh usage. The relationship between the summer and non-summer base rate energy charge revenues will be maintained.

The Commission supports the maintenance of the R rate as a rate option and the relationship between the summer and non-summer base rate energy charge revenues and approves this measure.

25.

The Proposed Agreement provides that the Stipulating Parties agree that within ninety (90) days of the Final Order in this docket, the Company and Staff will collaborate on a process to consider potential options for the expansion of income qualified discount opportunities to assist customers. (Provision 24). This process will allow for interested stakeholders to provide input on the options to be considered. Stipulating Parties further agree that within 270 days of the Final Order in this docket, the Company, after considering input from interested stakeholders, will report back to the Commission on their findings and may recommend additional action. Any potential program options must consider cost impacts to non-participating customers as well as the impacts of any revenue erosion.

The Commission finds that this provision is reasonable and is approved.

26.

Provision 25 of Proposed Agreement provides that the Company will agree to file quarterly reports regarding the location, peak demand, usage, and revenue of the Charge It Electric Vehicle rider.

The Commission finds this provision to be just and reasonable.

27.

The Proposed Agreement provided that the Company will withdraw proposed Section F.9 of the Company's Rules and Regulations for Electric Service and will work with the Georgia

Association of Manufacturers and Staff to identify alternative language, which will be filed with the Company's compliance filing in this case. (Agreement Provision 26).

The Commission finds this provision to be just and reasonable.

28.

The Proposed Agreement, No. 27, provided that the interconnection fee found in Section G of the Company's Rules and Regulations for Electric Service for customer generators smaller than 250 kW will be $100 for residential customers and $200 for commercial and industrial customers. The Company's proposed modification to the language in Section G.3 will limit the Company's communication with and control of the customer's generator to those capabilities provided in IEEE 1547-2018 (or as it is subsequently amended) and will only apply to new interconnecting customer generators at or above 250 kW and existing interconnected customer generators who expand or modify their generation facility.

Staff, SACE and Southface urged the Commission reduce the proposed interconnection fee for the RNR tariff to the $100 recommendation of PIA Staff and waive this fee for income-qualified customers. (SACE Brief p.5).

The Commission finds the interconnection fee structure included in Provision 27 of the Proposed Agreement to be just and reasonable.

29.

The Proposed Agreement provided that the pricing for the Community Solar program, the Stipulating parties agree that this is a policy issue for Commission determination. Depending on the Commission's intent for the program. The Company's proposed $27.99 per block for residential customers and $29.99 for commercial customers and Staff's proposed $20 per block for residential customers and $22 for commercial customers. (Provision 28).

The Coalition supported PIA staff's proposed price of $20 for residential customers and $22 for commercial customers, which it believes, strikes a more appropriate balance in terms of allocating costs and benefits and creates a more attractive program. The Company's argument that bill savings are not the purpose of the program should be rejected. The Coalition argued that the Commission has the authority and opportunity to revisit the purpose of the program in this rate case and create an offering that provides customers the opportunity to support the growth of renewable energy on Georgia Power's system and realize bill savings. (Coalition Brief p. 8).

At the December 20, 2022 Administrative Session, Commissioner Johnson made a motion to modify Paragraph 28 of the Stipulation. The motion set the pricing for the Community Solar program at $24 per block for residential customers and $25 per block for commercial customers. The motion was adopted unanimously. After weighing the arguments, the Commission finds that the motion is a just and reasonable resolution to this issue.

30.

The Proposed Agreement in Provision 29 stated that the Time of Use – Food and Drink ("TOU-FD") rate shall remain available to all food services and drinking places identified as 722 of the North American Industry Classification System ("NAICS") through December 31, 2025. During the term of the ARP, qualifying food services and drinking places will be accepted on TOU-FD on a first come, first allowed basis until the number of accounts on the rate equals 6,000. Any revenue erosion from the TOU-FD rate conversion during the term of the ARP will be captured in a regulatory asset account and recovered through rates in 2024 and 2025. All revenue loss resulting from the implementation of this provision shall be recovered by the Company from the TOU-FD rate.

UMS, representing the restaurant and food services industry, proposed that Georgia Power should modify the TOU-FD rate by extending the deadline for new qualifying customers to enroll in the TOU-FD rate by (3) three years, from December 31, 2022, until December 31, 2025, and to revise the current language in the TOU-FD-7 tariff such that the revised language reads: "Qualifying accounts will be accepted on TOU-FD on a first come, first allowed basis until the number of accounts equals 6,000 or until December 31, 2025, whichever occurs first." UMS recommended the Commission maintain its discretion to consider the Georgia Power's concerns over possible rate impacts associated with TOU-FD and will apply revenue erosion associated with TOU-FD back to TOU-FD in future rate case proceedings before the Commission. (UMS Proposed Order p. 1).

The Commission finds that the Proposed Agreement provides for a just and reasonable settlement of this issue.

31.

In the Proposed Agreement, the Company agreed to continue to make the Time of Use Residential Energy Only ("TOU-REO") rate available to customers. (Provision 30).

The Commission finds that this provision is just and reasonable.

32.

In the Proposed Agreement Provision 31, the Company agreed to rename the TOU-PEV tariff to clarify the broad availability of the tariff to Residential customers that do not own an electric vehicle.

The Commission finds that this clarification to the TOU-PEV tariff is just and reasonable.

33.

The Proposed Agreement stated that the Company's collective Electric Transportation program proposed in this case for investments in community electric vehicle ("EV") charging facilities and electric transportation infrastructure upgrades to support customer EV charging (i.e., Make Ready, infrastructure maintenance, administrative costs, Community Charging, and rebates) is approved, provided however, that the EV Make Ready program would be approved at a reduced rate from the requested budget level, and the program shall be modified to prioritize electrification of public fleets and publicly available charging.

The Make Ready program will now allow EV charging providers to participate under the following conditions: (i) they have the permission of the site host customer to operate on the site host customer's premises; (ii) they will coordinate with the site host and Georgia Power for purposes of the Make Ready program; (iii) Georgia Power is able to obtain all required easements and any other rights required to implement the Make Ready program; and (iv) Georgia Power retains final approval of Make Ready project design. In addition, Make Ready criteria and terms and conditions will be available on Georgia Power's website. A Term Sheet detailing the operation of the Company's Electric Transportation program is attached to the Stipulation. The Company agrees to develop reporting requirements for the Electric Transportation program to keep the Commission informed of the program's progress. The Company also agreed that charger locations under the Community Charging component of the program will be subject to a right of first refusal for private EV charging providers and further agrees to establish publicly available criteria for the Company's Community Charging locations as detailed in the Term Sheet, hereto attached as Attachment 2. The Charge It Electric Vehicle rider is approved and will be available to all existing and new EV charging providers.

Additionally, the Company will work with Staff and the EV parties signing the Stipulation to review and design an alternate commercial EV rate in addition to the Charge It Electric Vehicle rider, which will enable the Company to collect the costs to provide electric service to EV charging providers through a transparent pricing structure and support the growth of EV commercial charging investments. The alternative design should primarily collect costs through a volumetric structure but may also allow for some collection of costs – such as distribution costs – through demand charges. In developing the rate, the parties will consider a variety of rate designs to ensure the best rate solution is developed. The Company will file an alternative EV charging rate within six months of the execution of the Final Order in this docket. The Company's Electric Transportation program and alternative charging rate(s) will be reviewed by the Commission in the next base rate case.

During the hearings, the Company clarified its recommendation to increase the dollar amount that ratepayers will have to pay for capital expenditures related to EV transportation. These expenditures include (1) investments in EV charging facilities and infrastructure upgrades, (2) administrative cost recovery, (3) infrastructure maintenance, and (4) rebates to accommodate the growth of EV transportation. Tr. 78. Specifically, the Company requested $30 million per year for EV capital infrastructure spending for plan years 2023 through 2025, nearly quintupling the $8 million approved for such expenditures in the 2019 rate case. Tr. 1315-17. The majority of that request, $27 million per year, is for the Company's Make Ready program. *Id.* The remaining $3 million is for infrastructure upgrades for the Community Charging program. Tr. 1324.

Staff recommended that the Commission deny the Company their proposed increase to the Make Ready Program. (Staff Brief p. 19).

ChargePoint supported Georgia Power's proposal to invest in EV charging facilities and infrastructure upgrades, as long as site hosts that participate in the make ready and community charging infrastructure programs continue to be able to choose their preferred charging equipment. (ChargePoint Brief, p.1).

Sierra Club recommended that the Company's investment in EV charging infrastructure is reasonable and prudent and should be approved. They stated the Make Ready Program will benefit all ratepayers, is in the public interest, and the need will not be met by private investors. Sierra Club asserted that the Make Ready Program also supplies the infrastructure that the Clean School Bus Program does not cover. Sierra Club argued that Governments across the state are transitioning to electric vehicles and providing the public for access points to charge would be in the public interest. (Direct Testimony of C. Nicholas Deffley and David Nifong p. 4.)

Resource Supply Management recommended the Company not be allowed to compete with private investors who do not receive subsidization from other non-EV user and that the new EV rate should be available to both new and existing customers. (RSM p. 3).

At the December 20, 2022 Administrative Session, Commissioner Echols offered a motion modifying the Stipulation. The motion modified paragraph 32 of the Stipulation such that the EV Make Ready Program shall be approved at 65% of the Company's requested budget level. This increased the Proposed Agreement from 25% of the requested budget to 65% of the requested budget. The motion was approved unanimously. The Commission finds that Commissioner Echols' Motion offers a just and reasonable outcome to this issue.

Commissioner Echols' motion also amended the Electric Transportation program Term Sheet to include "franchise automobile dealers" in part one under Public Facing Projects. The Company shall file a revised Term Sheet to reflect this addition within 30 days of the date of this order.

34.

The Proposed Agreement includes a provision that the monthly netting pilot will remain capped at 5,000 customers. The Proposed Agreement further states that the 5,000 customers currently on monthly netting will be grandfathered for 15 years effective January 1, 2023.

To address the potential for continued behind the meter consumer complaints the Company and Staff agreed to collaborate with interested stakeholders to determine whether a more formal framework for the Commission's referral of consumer complaints to the Consumer Protection Division of the Georgia Attorney General's Office is needed. The Proposed Agreement states Staff and the Company may make recommendations to the Commission as deemed appropriate for improvements in the process. Further, Staff and the Company shall also continue to review additional ways to improve consumer protection.

During the hearings, Staff recommended that the Commission remove the cap on Renewable and Non- Renewable ("RNR") Monthly-Netting.

GIPL recommended the Commission expand the monthly netting program for rooftop solar customer suggesting the Commission limit participation to 3% of the Company's 2021 peak load and revisit the program when participation approaches the limit. (GIPL Brief p. 13).

SACE and Southface urged the Commission to reinstate the RNR monthly netting uncapped for three years during which time the Company must: a) hold workshops with relevant stakeholders to: (i) consider alternative compensation rates for excess generation; (ii) monitor industry developments and local consumer protections; and (iii) engage with and educate Georgia Power's customers on the benefits of behind-the-meter solar and the recently restored 30% investment tax credit available to Georgia's taxpayers; b) conduct a cost-of-service study and provide it to Commissioners, PSC Staff, and interested stakeholders prior to the 2025 Rate Case; and c) reduce the proposed interconnection fee for the RNR tariff to the $100 recommendation of PIA Staff and waive this fee for income-qualified customers. (SACE Brief p.5).

GA Solar recommended that the Commission both continue and expand the Company's monthly netting program.

The Coalition urged the Commission to maintain monthly netting for three years and initiate a collaborative stakeholder process to determine a future successor tariff. (Coalition Brief p. 7)

The Commission finds that continuation of the cap on the number of participants on the monthly net metering program as set forth in the Proposed Agreement is just and reasonable.

35.

The Commission finds that increasing the Income Qualified Senior Citizen Discount by $6 per month, as included in the Proposed Agreement (Provision 34), is just and reasonable as there has not been an increase to the discount in several years.

36.

Provision 36 of the Proposed Agreement states that the Company's ASR filings Operating Income statement (Section 2 Page 2) will include a separate line item for fuel in Operating Revenues and Operating Expenses. The Company will modify future ASRs Average Rate Base (Section 2 Page 1) to include the following separate line items under Plant-in-Service: Steam – Coal, Steam – Gas, Combined Cycle, Combustion Turbine, Solar, and Other. In order to effectuate an efficient filing of the ASR, the Commission finds this reasonable.

37.

The Commission finds it appropriate that the Company be required to file semi-annual reports on the GIP starting with the period January 1 – June 30, 2023. Staff and the Company will collaborate on the formatting and content of these reports. Staff and the Company will agree to collaborate on what, if any, additional reporting is necessary to address transmission and distribution capital investment. (Provision 37).

38.

In conjunction with the ongoing level of review and analysis required by this Proposed Agreement (Provision 38), Georgia Power will agree to pay for any reasonably necessary specialized assistance to Staff in an amount not to exceed $400,000 annually. This amount paid by Georgia Power under this Paragraph shall be deemed as a necessary cost of providing service and the Company shall be entitled to recover the full amount of any costs charged to the utility. Due to the high costs associated with the ongoing review and analysis needed by the Proposed Agreement, the Commission finds this provision just and reasonable.

39.

GAM witness Pollock testified that the Commission should consider any and all innovative ways to reduce rate impacts for customers while still providing for the financial integrity of Georgia Power. GAM testified to the benefits of securitization financing that could help address some of the extraordinary costs like coal ash cleanup and early coal plant retirement when plants are no longer used and useful. Mr. Pollock described securitization thusly:

Securitization is a financing mechanism that provides timely recovery of certain regulatory assets by issuing a type of debt that would significantly lower the carrying costs of the assets relative to the costs that would be incurred using traditional ratemaking practices. Specifically, a special purpose entity would be created whose sole purpose is to issue transition bonds that are used solely for purposes of reducing the amount of recoverable regulatory assets and any other amounts as determined by the Commission through the refinancing or retirement of utility debt or equity. This special purpose entity would be entitled to the revenues collected by the utility through a separate cost recovery mechanism in an amount sufficient to timely recovery of the debt services associated with securitization bonds.

GAM noted that Securitization legislation was introduced in the 2022 Session of the General Assembly and is likely to be introduced again. In addition to providing up-front cash recovery of costs to Georgia Power, GAM contended, securitization can benefit ratepayers by significantly reducing rate impacts on both a nominal and net-present-value basis. (Pollock Direct Testimony, pp. 11-12).

Resource Supply Management recommended that the Commission cut revenues by disallowance rather than by allowing securitization. They state that most companies would be forced to write off obsolete and non-useful assets.

The Proposed Agreement does not include this adjustment and the Commission finds that the Settlement Agreement as Modified is reasonable as a whole. Additionally, the Commission notes that there is currently no securitization statute applicable. Therefore, GAM and Resource Supply Management's recommendations are denied.

40.

One of the issues that the Proposed Agreement left to Commission discretion was the amount the Company would agree to pay for excess generation for RNR customers.

Staff stated that if the Commission decides that it would prefer instantaneous net metering, that the rate the Company pays for excess generation be set at the retail rate less 3 cents per kWh beginning January 1, 2023. During the hearings, Staff stated that this issue is a policy decision for the Commission. (Staff Brief p. 24)

SACE/Southface recommended that the Commission pay for excess distributed generation to the grid to be paid at retail rate. (SACE/Southface Brief p. 7).

The Coalition recommended that if the Commission proposes a solution other than monthly netting, it should offer additional support to low- and moderate-income customers, such as a low-income adder or rebate.

In their Brief, GIPL raised an argument claiming that the Georgia Cogeneration and Distributed Generation Act of 2001 O.C.G.A. § 46-3-50 et seq. ("Cogen Act") required monthly netting. After thoroughly reviewing this argument, the Commission has determined that this is not the case. While the Cogen Act allows for monthly netting, it does not require it. O.C.G.A. § 46-3-55(1)(B) states that "[w]hen the electricity supplied by the electric service provider exceeds the electricity generated by the customer's distributed generation, the electricity shall be billed by the electric service provider, *in accordance with tariffs filed with the commission.*" (emphasis added). The idea that if instantaneous netting were contemplated the bill would be written to make separate calculations between imports and exports of electricity is simply unfounded. The General Assembly made clear that these calculations can be made in accordance with tariffs filed with the Commission. *(Id.)*

O.C.G.A. § 46-3-55(1)(B), states that "the electricity" is billed in accordance with the tariffs. It does not restrict that to only "the ***net*** electricity." If the Commission were to determine, for instance, that over the course of each month the value of the electricity being placed on the system was the same as the cost of the electricity being provided by the system, monthly netting might be a reasonable way to design the tariff. But, that is not the case here. In this case, the Commission finds that monthly netting would overvalue the electricity that the customer is placing on the Company's system just as paying only avoided cost would undervalue it. Simply put, monthly netting is a possible way to structure the tariff; but, it is not the only way to structure the tariff.

GIPL also states that by using the term "billing period" in O.C.G.A. § 46-3-55 (1)(A), the General Assembly also meant that monthly netting is the only choice. However, this section does not address how the charge for the electricity that is measured during the billing period is actually calculated. O.C.G.A. § 46-3-55(1)(B) lays out the method for billing that amount of electricity which is measured, in accordance with tariffs filed with the Commission.

At the December 20, 2022 Administrative Session, Commissioner Shaw made a motion that for current and new customers on instantaneous net metering, the Company shall pay avoided cost plus an additional amount of 4 cents per kWh for excess generation beginning January 1, 2023. The additional amount shall be in place for three years and will be reviewed in the Company's 2025 base rate case. Prior to the next rate case, Staff and the Company shall collaborate to determine whether a monthly minimum bill for customers on the RNR tariff is appropriate. The motion was approved unanimously. After a thorough review of the arguments, the Commission finds that this motion represented a just and reasonable resolution to this issue.

41.

Georgia Power's basic service charge was moved to cost in the last rate case for PLM, customer-related costs for PLM have also increased since that time. The Kroger Co. claimed if the basic service charge for PLM is not increased in this proceeding it will no longer recover one hundred percent (100%) of customer-related costs and the PLM basic service charge will be too low relative to the PLM other rate elements, from a cost-of-service perspective. Therefore, Kroger contended that it is appropriate to apply a modest increase to the basic service charge along with the hours use energy/demand charges in this case in order to set the basic service charge for PLM at, or close to, cost. (Kroger Brief p.2).

The Proposed Agreement does not include this adjustment and the Commission finds that the Settlement Agreement as Modified is reasonable as a whole. Therefore, the Kroger Co.'s recommendation is denied.

42~~3~~.

With respect to Schedule Time of Use – Residential Demand ("TOU-RD") Staff and numerous intervenors all proposed the same or similar recommendations. Staff, GIPL, and other intervenors all submitted extensive testimony demonstrating that TOU-RD has been significantly more expensive for customers than other available rates and that demand rates are inferior to volumetric time-of-use rates for providing efficient and actionable price signals to residential customers. For example, GIPL Expert Witness Barnes demonstrated that Georgia Power's TOU-RD customers paid on average about $16/month more than they would have on the Schedule R tariff. Mr. Barnes's analysis showed that on an annual basis, the TOU-RD rate is roughly 4.8

cents/kWh higher than the average of other rates – a significant deviation considering that Georgia Power's average residential rate is about 13.9 cents/kWh. (GIPIL Brief, pp, 8-9).

GIPIL encouraged the Commission to order the Company to return to using the basic volumetric residential tariff, Schedule R, as the default rate and halt use of the complicated demand charge tariff, TOU-RD, as the default tariff for new residential premises. In the alternative, if the Commission prefers a time-varying rate as the default for new premises, it should set the time-of-use nights & weekends tariff, Schedule TOU-REO. (GIPIL Brief p. 2-3).

Georgia Watch stated that the residential R-tariff should remain the default rate for all customers. Customers in newly constructed dwellings already defaulted onto the Company's TOU-RD rate should receive notification of the likelihood they have or will experience higher bills due to the flawed design of this rate. (Georgia Watch Brief p. 2).

The Coalition asserted that if the TOU-RD rate is maintained, it should not be the default for any customers, should be fully optional, and should be adjusted so that the demand charge will only apply to peak hours (i.e. between 2 pm and 7 pm on non-holiday weekdays between June and September). Additionally, the Coalition supported PIA Staff's recommendation that the Company be ordered to create a rate comparison tool for all residential customers to better enable them to select the best rate for their usage and demand profile. (Coalition Brief p. 13)

The Proposed Agreement does not include the adjustment to the Schedule TOU-RD and the Commission finds that the Settlement Agreement as Modified is reasonable as a whole. Therefore, the intervenors' recommendations to adjust the rate are denied. However, the Commission is setting the R rate as the default rate.

43.

SACE recommended the Commission order Georgia power to identify, track, secure federal funding to lower costs to ratepayers across the proposed three-year ARP, during which time, the Company must:

a. Provide annual reviews of revenue requirements that identify cost savings available from federal funding in 2024 and 2025, within the three-year ARP.
b. Adopt an annual step increase with annual review and adjustment for savings from federally available funds instead of locking into the proposed levelized increase.
c. Develop federal funding tracking processes – agreed upon by the Commission and in collaboration with PIA Staff – which include anticipated funding as well as actual and estimated costs and benefits to customers and the Company.
d. Provide tax and other savings to benefit customers, including to offset anticipated rate and bill increases during the 2023-2025 period. (SACE Brief p. 6)

SACE recommend the Commission exempt low-income residential customers – at or below 200% of the Federal poverty level – from any rate increase associated with Plant Vogtle. SACE maintains that the Commission should consider the historic, disproportionate allocation of the Nuclear Construction Cost Recovery ("NCCR") rider when deciding the allocation of the rate increase it considers most equitable. (SACE Brief p. 6-7).

The Proposed Agreement does not include these adjustments and the Commission finds that the Settlement Agreement as Modified is reasonable as a whole. Therefore, SACE's recommendations are denied. While the Commission has not made a low-income adjustment specific to Plant Vogtle in this order, the Commission has increased the senior low income assistance.

44.

The Coalition recommended that the Commission direct the Company to replace or reprogram residential and commercial meters as needed to collect Hourly Usage Data with all reasonable haste and at the Company's cost. The Coalition stated it is not opposed to the limited exceptions defined by the Company in its rebuttal testimony. The Coalition also recommended that the My Power Usage platform be modified to make it easier for customers to export data in bulk (i.e. 8760 format as a .csv file). (Coalition Brief p. 9).

During the December 20, 2022 Administrative Session, Commissioner Johnson made a motion that the Company shall open a docket in calendar year 2023 to provide all residential and commercial customers with access to hourly usage data. This new docket should provide the cost to access data and an implementation timeline. The motion further ordered to the Company to replace or reprogram meters as necessary to ensure hourly interval data is easily accessible to all customer classes with Advanced Metering Infrastructure ("AMI") meters. This data would need to be exportable in bulk in a usable format, such as a .csv file. The motion states that this order will not apply to customers that have opted out of an AMI meter, unmetered accounts, Special Service accounts, or RTP customers. The Commission voted to approve this motion unanimously. The Commission finds that this requirement would be in the public interest and reasonable.

45.

The Commission finds that a three-year term for the Settlement Agreement as Modified ending December 31, 2025 is reasonable. By July 1, 2025, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The test period utilized by the Company in its rate case filing shall be from August 1, 2025 to July 31, 2026. The Company may propose to continue, modify or discontinue this Alternate Rate Plan. The Company shall also file projected revenue requirements for calendar years 2026, 2027, and 2028. (Proposed Agreement, Provision 35).

## V. CONCLUSIONS OF LAW

1.

The Georgia Public Service Commission has general ratemaking jurisdiction over Georgia Power Company under O.C.G.A. Ch. 2, T. 46. The Georgia Public Service Commission has general supervision over electric light and power companies. O.C.G.A. §§ 46-2-20(a) and 46-2-21. The Commission has "exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction." O.C.G.A. § 26-2-23; see also O.C.G.A. §§ 46-1-1(5), 46-2-24, 46-2-25, 46-2-26.1, and 46-2-26.2.

2.

The Settlement Agreement as Modified complies with the test year statute for electric utilities which provides in relevant part:

> *In any proceeding to determine the rates to be charged by an electric utility, the electric utility shall file jurisdictionally allocated cost of service data on the basis of a test period, and the commission shall utilize a test period, consisting of actual data for the most recent12- month period for which data are available, fully adjusted separately to reflect estimated operations during the 12 months following the utility's proposed effective date of the rates. After the initial filing and until new rates go into effect, the utility shall file actual cost of service data as they become available for each month following the actual data which were filed. The utility shall have the burden of explaining and supporting the reasonableness of all estimates and adjustments contained in its cost of service data.*

(O.C.G.A. § 46-2-26.1(b))

Georgia Power filed the requisite data on the basis of a test period, and the Settlement Agreement as Modified uses the test period as a starting point and then makes necessary and appropriate adjustments to reflect operations during the 12 months following the utility's proposed effective date of the rate. The test period data serves as the benchmark from which adjustments are made for each year of the Alternative Rate Plan. This methodology is consistent both with the statute and with Commission precedent in rate case proceedings dating back to 1998.

3.

The rates resulting from the Settlement Agreement as Modified are fair, just and reasonable. By adopting the Settlement Agreement as Modified, the Commission retains its jurisdiction to ensure that the Company's rates are fair, just and reasonable.

4.

The remaining terms and conditions of the Settlement Agreement as Modified are reasonable and appropriate. By adopting the Settlement Agreement as Modified, the Commission adopts a reasonable resolution of the remaining issues in this docket.

5.

The Georgia Cogeneration and Distributed Generation Act of 2001 O.C.G.A. § 46-3-50 et seq. ("Cogen Act") allows for monthly netting; however, it does not require it.

6.

The Commission retains its jurisdiction to ensure that the Company abides by and implements the rates, terms and conditions set forth in the Settlement Agreement as Modified adopted herein, and to issue such further order or orders as this Commission may deem proper.

## VI. ORDERING PARAGRAPHS

**WHEREFORE, IT IS ORDERED,** that the Settlement Agreement as Modified shall be and the same hereby is adopted, that its terms and conditions are fully incorporated herein, and that Georgia Power Company shall comply with said terms and conditions.

**ORDERED FURTHER,** that the terms and conditions set forth in the Settlement Agreement as modified are just and reasonable and shall take effect for service rendered from and after January 1, 2023.

**ORDERED FURTHER,** that the tariffs implemented by Georgia Power to implement the aforesaid annual rate increase in the years 2023, the adjustments contemplated in 2024 and 2025, as well as the terms and conditions of the Settlement Agreement as Modified shall be subject to review by the Commission to ensure that such tariffs, as implemented, are proper and just.

**ORDERED FURTHER,** that for purposes of the rate increase in the year 2023, Georgia Power shall file compliance tariffs within 30 days of the issuance of this Order, reflecting rates to implement the rate increases ordered herein. These tariffs shall reflect the rate allocations adopted in this Order and shall be subject to the Commission's review for final approval. Contemporaneous with the filing of the compliance tariffs, the Company shall file any updates to the traditional base rate tariff adjustments or MFF adjustments as a result of the change in the EV Make Ready approval amount as provided in Paragraphs 5 and 8 of this order.

**ORDERED FURTHER,** that for purposes of the rate adjustments specified in the Settlement Agreement as Modified, the Company shall make compliance filings of the updated tariffs at least 90 days prior to the effective date of the tariffs. Compliance filings shall be served upon all parties of record to this proceeding. Upon receipt of such compliance filing, parties may offer input relative to the filing to the Commission.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER,** that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem proper.

**ORDERED FURTHER,** any motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by the Commission.

The above by action of the Commission in Administrative Session on the 20th of December 2022.

Sallie Tanner
Sallie Tanner
Executive Secretary

12-30-22
Date

Tricia Pridemore
Chairman

12-30-22
Date

## Attachment 1

**SETTLEMENT AGREEMENT**

**Georgia Power Company's 2022 Rate Case**

**Docket No. 44280**

Georgia Power Company ("Georgia Power" or the "Company") and the Public Interest Advocacy Staff ("Staff"), along with the undersigned Stipulating Parties, agree to the following Alternate Rate Plan ("ARP"), which shall commence January 1, 2023, and shall continue through December 31, 2025. This Stipulation is intended to resolve all issues in this case except (1) the earnings band to be applied for Annual Surveillance Report ("ASR") purposes, (2) pricing for the Community Solar program, as described in Paragraph 28, and (3) the additional amount to be paid for export energy pursuant to the RNR tariff, as described in Paragraph 33. The Stipulating Parties leave these three issues for the Commission to decide. Other than these issues, the Company's filing is accepted as filed with the following modifications:

1. Increases to base rate tariffs shall not be levelized but adjusted each year of the ARP.

2. The Company's retail revenue requirement shall be calculated using a total return on investment of 7.43% in 2023, 7.46% in 2024, and 7.49% in 2025, which incorporates an equity ratio of 56% and a return on equity ("ROE") of 10.50%.

3. For the purposes of settlement and compromise, the Company's filing is approved with the following modifications to the revenue requirement. No ratemaking policy or precedent is being set as it pertains to the issues on which the Stipulating Parties disagreed, and the resolution of this case does not suggest that a specific position, policy, or precedent is being adopted by the Stipulating Parties or the Commission on such issues. The agreed upon adjustments to the Company's request are set forth in the values in the table below and detailed on Exhibit A. The agreed upon adjustments by category and amount include the following:

    a. The Company agrees to reduce the requested Grid Investment Plan ("GIP") spend by 40% over the term of this ARP, as shown in the table below and on Exhibit A.

    b. The Company agrees to reduce EV Make Ready spend by 75% over the term of this ARP, as shown in the table below and on Exhibit A.

    c. The Company will not move forward with a full Distributed Energy Resource Management System ("DERMS") at this time. To prepare the electric system for higher levels of distributed energy resources ("DER"), the Company will be allowed to begin the following preliminary steps, which will include system modifications to allow for modeling and visibility of DER, integration of these modifications with the Company's real-time operations platforms such as EMS, DMS, and SCADA, and the establishment of DER remote configuration capabilities. The Company will report back to the Commission in the 2025 Integrated Resource Plan on the development of these systems and the need for any further system modifications to plan for DER integration. The investments made pursuant to this Paragraph will be amortized over 10 years.

d. In addition to the categories listed in the table below, Staff recommended several other adjustments to operations and maintenance ("O&M") expenses in this case. The Stipulating Parties agree that the only specific adjustments being made are those identified in the table below. For purposes of settlement and compromise, the Company agrees to further reduce the revenue requirement associated with miscellaneous O&M expenses by $30 million each year, which is not allocated to any particular expense.

**Exhibit A**

| | | |
|---|---|---|
| | Stock-Based Compensation | Ln 21 |
| | Energy Direct Premium Packages | Ln 4 |
| | Executive Financial Planning | Ln 7 |
| | O&M Scrap Sales Proceeds | Ln 5 |
| | Wireless Co-Location Revenues (80/20 sharing) | Ln 6 |
| | Depreciation Expense and Accumulated Depreciation - New Depreciation Rates | Lns 10 - 14 |
| | Depreciation Expense Reduction for Plant Scherer Units 1-3 and common, and Plant Bowen Units 1-2 (12 years) | Ln 9 |
| | Reduce projected Storm Damage Accrual to $31M per year | Ln 20 |
| | CCR ARO recovery methodology to remain consistent with the 2019 base rate case Order except for a four, rather than three, year amortization period. | Ln 18 |
| 75% | Electric Vehicle Make Ready Program | Ln 19 |
| 75% | O&M Expense - Electric Vehicle Make Ready Program | Ln 19 |
| 40% | Grid Investment Plan (Transmission and Distribution Plant Investment), and related Depreciation Expense and Accumulated Depreciation and ADIT | Ln 16 |

| | | |
|---|---|---|
| 60% | Preliminary system modifications for Distributed Energy Resource Management System (DERMS) and related Amortization (10-years) and Accumulated Amortization and ADIT | Ln 17 |
| | Depreciation Expense - Depreciation Rates Correction for Ft Benning and Ft Gordon | Ln 15 |
| | Property Tax Expense | Ln 22 |
| | Income Tax Credits Related to the Inflation Reduction Act, including Commission approval to opt out of normalization requirements for specified battery energy storage facilities | Ln 8 |

4. Effective January 1, 2023, traditional base tariffs shall be adjusted to collect $192 million, with additional adjustments in 2024 and 2025 of $273 million and $314 million, respectively.

5. Effective January 1, 2023, it is estimated that the Environmental Compliance Cost Recovery ("ECCR") tariff will be adjusted for traditional ECCR costs to reduce collections by $7 million, and adjusted to reduce collections by an additional estimated $35 million effective January 1, 2024, and an additional estimated $9 million effective January 1, 2025. Additionally, effective January 1, 2023, it is estimated that the Coal Combustion Residual Asset Retirement Obligations ("CCR ARO") costs recovered in the ECCR tariff shall be adjusted to reduce collections by $13 million, and adjusted to collect an additional $101 million effective January 1, 2024, and an additional estimated $90 million effective January 1, 2025. The process for revising these estimates is described in Paragraph 8 (a) and (b). As approved in the 2019 base rate case order in Docket No. 42516, ECCR shall continue to include the cost for compliance with CCR ARO. The projection of CCR ARO cost will be updated in 2023 and 2024 through compliance filings to set the actual ECCR tariff rates for 2024 and 2025. The Commission reserves the ability to make prudency determinations on the Company's coal ash related costs.

6. Effective January 1, 2023, Georgia Power shall collect an additional $37 million through the Demand Side Management ("DSM") tariffs, and as adjusted during the term of this ARP based on the DSM true up process agreed to by the Company and Staff with a projected increase of $27 million effective January 1, 2024, and a projected decrease of $2 million effective January 1, 2025.

7. Effective January 1, 2023, the Municipal Franchise Fee ("MFF") tariff will be increased to collect an additional $5 million effective January 1, 2023, an additional estimated $9 million effective January 1, 2024, and an additional estimated $9 million effective January 1, 2025, which dollar amount will change as total revenue adjustments change as allowed by this ARP, as well as with any future Fuel Cost Recovery ("FCR") changes and future Nuclear Construction Cost Recovery ("NCCR") changes.

8. Consistent with the 2019 base rate case order in Docket No. 42516, for purposes of the 2024 and 2025 rate adjustments, the Company shall make compliance filings of the updated tariffs at least

ninety (90) days prior to the effective date of the tariffs. The Company's compliance filings will include the following updates:

a) Effective January 1, 2024, (i) the traditional base tariffs shall be adjusted to collect an additional $273 million; (ii) the ECCR tariff shall be adjusted based upon the Compliance filing with updated CCR ARO costs as filed in the most recent semi-annual report for calendar year 2023; (iii) the DSM tariffs shall be adjusted to reflect the DSM costs for calendar year 2024 as approved in Docket No. 44161 and as adjusted based on the DSM true up process agreed to by the Company and Staff; and (iv) the MFF tariff shall be adjusted to collect the MFF cost incurred by the Company. The 2024 increase to traditional base rate tariffs, ECCR tariff, and DSM tariffs will use the most current kWh sales forecast for the applicable year to set the rates.

b) Effective January 1, 2025, (i) the traditional base tariffs shall be adjusted to collect an additional $314 million; (ii) the ECCR tariff shall be adjusted based upon the Compliance filing with updated CCR ARO costs as filed in the most recent semi-annual report for calendar year 2024; (iii) the DSM tariffs shall be adjusted to reflect the DSM costs for calendar year 2025 as approved in Docket No. 44161 and as adjusted based on the DSM true up process agreed to by the Company and Staff; and (iv) the MFF tariff shall be adjusted to collect the MFF cost incurred by the Company. The 2025 increase to traditional base rate tariffs, ECCR tariff, and DSM tariffs will use the most current kWh sales forecast for the applicable year to set the rates.

9. For Annual Surveillance Reporting ("ASR") purposes, beginning January 1, 2023, the earnings band shall be set at __% to __% ROE and the Company shall report earnings based on the actual historic cost of debt and capital structure described in Paragraph 2. The Company will not file a general rate case unless its calendar year retail earnings are projected to be less than the bottom end of the band.

10. Subsequent to finalization of Staff's review of the respective ASR, any excess retail revenues above the top end of the earnings band will be shared, with seventy percent (70%) being applied to regulatory assets in the following priority: Accumulated CCR ARO; Retired Generating Plant; and Obsolete Inventory, ten percent (10%) being directly refunded to customers, allocated on a percentage basis to all customer groups including the base revenue contribution of RTP incremental usage, and the remaining twenty percent (20%) retained by the Company.

11. The Company will make its ASR filings for this ARP by March 15th of the following year. The Commission will consider the ASR filing and determine any direct refunds and reduction of regulatory assets by December 31st of that year.

12. The Company anticipates sharing revenues above the approved ROE band for 2022 with customers under the current ARP. For purposes of settlement, the Company will expedite sharing to provide the return of the estimated amount of customer sharing in the first quarter of 2023. Any revision, if needed, to the estimated amount of sharing will be adjusted once the Commission

finalizes its review of the 2022 ASR. The customers' portion of sharing shall be applied in the manner ordered in the 2019 rate case in Docket No. 42516.

13. For book accounting and ASR purposes, the schedule for the Nuclear Decommissioning Trust - Tax Funding (reference the attached "Proposed Supplemental Order - Nuclear Decommissioning Costs") shall be approved.

14. Any additional tax benefits related to the Inflation Reduction Act, the Infrastructure and Investment Jobs Act, or any additional state or federal regulations shall accrue as a regulatory liability.

15. In the event that the Company determines that an asset is impaired or the Commission approves the retirement of a retail generation asset as a result of any environmental regulation or legislation, the Company may request that costs associated with such impairment or retirement be deferred as a regulatory asset.

16. The Interim Cost Recovery ("ICR") mechanism as initially approved in the 2010 Rate Case in Docket No. 31958 is continued throughout the term of this ARP utilizing the earnings band set by the Commission in this case.

17. Beginning in 2023, with the adjustment to traditional base rate tariffs, except as otherwise provided in this Stipulation, the rate increase shall be applied to each traditional base rate on an equal percentage basis. The energy, demand, and basic service charge components of each base rate shall all be adjusted equally. Except as otherwise provided in this Stipulation, the Company will not apply any increase to the basic service charges for the tariffs that had this component adjusted to the full amount of the customer-related costs in the 2019 base rate case or apply an increase to the basic service charge for the domestic and small business rate groups.

18. Tariffs within the Medium and Large Business rate groups will receive an equal adjustment to the energy, demand, and basic service charge components.

19. The Electric Transportation ("ET") tariff will be allocated 50% of the base rate increase. The revenue deficiency for this adjustment will be accounted for within the Government/Institutional tariff group.

20. To move the Medium Business and Large Business rate groups closer to parity, beginning in 2023, rates in the Medium Business and Large Business rate groups will receive 85% of the overall base rate increase with the resulting revenue deficiency being spread to other rate groups excluding the Small Business, Lighting, Agricultural, and Marginal Rate groups, which will receive the overall base rate increase.

21. The Company agrees to work with the Department of Defense to investigate a Backup rider for customers on the Real Time Pricing rate who install customer-owned generation that normally

operates at least 6,000 hours per year. The Company will meet with the DOD within 90 days of the final Order in the case to begin that collaboration

22. The Residential Service tariff ("R rate") will be the default rate for all residential premises.

23. The Company will maintain the R rate as a rate option available to all residential customers. In addition, there will be an elimination of the declining-block rates during the non-summer months to a flat rate for all kWh usage. The relationship between the summer and non-summer base rate energy charge revenues will be maintained.

24. The Stipulating Parties agree that within ninety (90) days of the Final Order in this docket, the Company and Staff will collaborate on a process to consider potential options for the expansion of income qualified discount opportunities to assist customers. This process will allow for interested stakeholders to provide input on the options to be considered. Stipulating Parties further agree that within 270 days of the Final Order in this docket, the Company, after considering input from interested stakeholders, will report back to the Commission on their findings and may recommend additional action. Any potential program options must consider cost impacts to non-participating customers as well as the impacts of any revenue erosion.

25. The Company will agree to file quarterly reports regarding the location, peak demand, usage, and revenue of the Charge It Electric Vehicle rider.

26. The Company will withdraw proposed Section F.9 of the Company's Rules and Regulations for Electric Service and will work with the Georgia Association of Manufacturers and Staff to identify alternative language, which will be filed with the Company's compliance filing in this case.

27. The interconnection fee found in Section G of the Company's Rules and Regulations for Electric Service for customer generators smaller than 250 kW will be $100 for residential customers and $200 for commercial and industrial customers. The Company's proposed modification to the language in Section G.3 will limit the Company's communication with and control of the customer's generator to those capabilities provided in IEEE 1547-2018 (or as it is subsequently amended) and will only apply to new interconnecting customer generators at or above 250 kW and existing interconnected customer generators who expand or modify their generation facility.

28. Regarding the pricing for the Community Solar program, the Stipulating parties agree that this is a policy issue for Commission determination. Depending on the Commission's intent for the program, it can adopt either the Company's proposed $27.99 per block for residential customers and $29.99 for commercial customers or Staff's proposed $20 per block for residential customers and $22 for commercial customers.

29. The Time of Use – Food and Drink ("TOU-FD") rate shall remain available to all food services and drinking places identified as 722 of the North American Industry Classification System ("NAICS") through December 31, 2025. During the term of the ARP, qualifying food services and drinking

places will be accepted on TOU-FD on a first come, first allowed basis until the number of accounts on the rate equals 6,000. Any revenue erosion from the TOU-FD rate conversion during the term of the ARP will be captured in a regulatory asset account and recovered through rates in 2024 and 2025. All revenue loss resulting from the implementation of this provision shall be recovered by the Company from the TOU-FD rate.

30. The Company will continue to make the Time of Use Residential Energy Only ("TOU-REO") rate available to customers.

31. The Company agrees to rename the TOU-PEV tariff to clarify the broad availability of the tariff to Residential customers that do not own an electric vehicle.

32. The Company's collective Electric Transportation program proposed in this case for investments in community electric vehicle ("EV") charging facilities and electric transportation infrastructure upgrades to support customer EV charging (i.e., Make Ready, infrastructure maintenance, administrative costs, Community Charging, and rebates) is approved, provided however, that the EV Make Ready program shall be approved at 25% of the requested budget level, and the program shall be modified to prioritize electrification of public fleets and publicly available charging. The Make Ready program will now allow EV charging providers to participate under the following conditions: (i) they have the permission of the site host customer to operate on the site host customer's premises; (ii) they will coordinate with the site host and Georgia Power for purposes of the Make Ready program; (iii) Georgia Power is able to obtain all required easements and any other rights required to implement the Make Ready program; and (iv) Georgia Power retains final approval of Make Ready project design. In addition, Make Ready criteria and terms and conditions will be available on Georgia Power's website. A Term Sheet detailing the operation of the Company's Electric Transportation program is attached to this Stipulation. The Company agrees to develop reporting requirements for the Electric Transportation program to keep the Commission informed of the program's progress. The Company also agrees that charger locations under the Community Charging component of the program will be subject to a right of first refusal for private EV charging providers and further agrees to establish publicly available criteria for the Company's Community Charging locations as detailed in the Term Sheet. The Charge It Electric Vehicle rider is approved and will be available to all existing and new EV charging providers. Additionally, the Company will work with Staff and the EV parties signing the Stipulation to review and design an alternate commercial EV rate in addition to the Charge It Electric Vehicle rider, which will enable the Company to collect the costs to provide electric service to EV charging providers through a transparent pricing structure and support the growth of EV commercial charging investments. The alternative design should primarily collect costs through a volumetric structure, but may also allow for some collection of costs – such as distribution costs – through demand charges. In developing the rate, the parties will consider a variety of rate designs to ensure the best rate solution is developed. The Company will file an alternative EV charging rate within six months of the execution of the Final Order in this docket. The Company's Electric Transportation program and alternative charging rate(s) will be reviewed by the Commission in the next base rate case.

33. The monthly netting pilot will remain capped at 5,000 customers. The 5,000 customers currently on monthly netting will be grandfathered for 15 years effective January 1, 2023. For current and new customers on instantaneous net metering, the Company agrees that it shall pay avoided cost plus an additional amount of __ cents per kWh for excess generation beginning January 1, 2023. The additional amount shall be in place for three years and will be reviewed in the Company's 2025 base rate case. Prior to the next rate case, Staff and the Company shall collaborate to determine whether a monthly minimum bill for customers on the RNR tariff is appropriate.

    To address the potential for continued behind the meter consumer complaints the Company and Staff agree to collaborate with interested stakeholders to determine whether a more formal framework for the Commission's referral of consumer complaints to the Consumer Protection Division of the Georgia Attorney General's Office is needed. Staff and the Company may make recommendations to the Commission as deemed appropriate for improvements in the process. Staff and the Company shall also continue to review additional ways to improve consumer protection.

34. The Income Qualified Senior Citizen Discount will be increased by $6 per month.

35. By July 1, 2025, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The Company will collaborate with Staff to determine what additional supporting materials for revenue estimates will be provided at the time of filing. The test period utilized by the Company in its rate case filing shall be from August 1, 2025, to July 31, 2026. The Company may propose to continue, modify, or discontinue this ARP. The Company shall also file projected revenue requirements for calendar years 2026, 2027, and 2028.

36. The Company's Annual Surveillance Review ("ASR") filings Operating Income statement (Section 2 Page 2) will include a separate line item for fuel in Operating Revenues and Operating Expenses. The Company will modify future ASRs Average Rate Base (Section 2 Page 1) to include the following separate line items under Plant-in-Service: Steam – Coal, Steam – Gas, Combined Cycle, Combustion Turbine, Solar, and Other.

37. The Company will be required to file semi-annual reports on the GIP starting with the period January 1 – June 30, 2023. Staff and the Company will collaborate on the formatting and content of these reports. Staff and the Company will agree to collaborate on what, if any, additional reporting is necessary to address transmission and distribution capital investment.

38. In conjunction with the ongoing level of review and analysis required by this agreement, Georgia Power will agree to pay for any reasonably necessary specialized assistance to Staff in an amount not to exceed $400,000 annually. This amount paid by Georgia Power under this Paragraph shall be deemed as a necessary cost of providing service and the Company shall be entitled to recover the full amount of any costs charged to the utility.

## Attachment 2

**Electric Transportation Programs Term Sheet**

**12/20/2022**

### Make Ready

- For purposes of prioritizing Make Ready funding, the Company will place Make Ready projects into two groups – (1) Public Facing Projects and (2) Other EV Projects – and provide Make Ready funding to each group as described below:

1. **Public Facing Projects**
    - Public Facing Projects are projects that involve infrastructure to support (i) EV charging in public locations (e.g., grocery store parking lots, malls, gas stations and convenience stores) and (ii) the electrification of <u>public</u> fleets (e.g., MARTA, public school buses).
    - Consistent with how the Make Ready Program works today, Public Facing Projects would be funded at 100% of the Make Ready costs, which would include funding for the charging panel.
    - The customer would then be responsible for funding the chargers.

2. **Other EV Projects**
    - Funding shall be first made available to Public Facing Projects prior to funding Other EV Projects.
    - Other EV Projects represent projects that are *not* associated with <u>public</u> chargers or electrification of <u>public</u> fleets; rather, these are projects where an entity (for example, Amazon or UPS) installs chargers on their *private* property to assist with the electrification of their *private* EV fleet.
    - In contrast to how the Make Ready Program works today, going forward, Other EV Projects would receive less funding as compared to Public Facing Projects.
    - Specifically, for Other EV Projects, Georgia Power would *only* fund the infrastructure <u>up to</u>, but not including the electrical panel.

The Other EV Project customer would have to fund the rest of the infrastructure costs themselves; this would include the panel, the charger and beyond.

- The Company will continue to maintain any infrastructure funded through the Make Ready program for the shorter of the life of the asset or ten years, and all Make Ready customers will be required to agree to the Company's terms and conditions of participation. Maintenance schedules of the infrastructure will be reviewed in the Company's next base rate case.

**Community Charging**

- Each year, GPC would file a Community Charging Plan (the Plan) with the Georgia PSC
    - The Plan would identify the location of up to (but not more than) eleven (11) Community Chargers GPC plans to install in the forthcoming year based on the budget in the original rate case filing.
    - The Plan will focus on underserved areas -- both rural and income qualified, but which are not located within one (1) mile of a designated Alternative Fuel Corridor or any other location for which funding is provided through the Georgia Electric Vehicle Infrastructure Deployment Plan.
    - Rural areas and Income Qualified areas will be defined as "counties identified as Tier 1 and 2 by the Georgia Department of Community Affairs (DCA)." *See*: https://www.dca.ga.gov/sites/default/files/jtc2022.pdf [dca.ga.gov]

- Once the annual Plan is filed, private EV charging service providers (Private Providers) would have a one-time, 60-day right of first refusal (ROFR) to claim a location within 15 miles of a Company-proposed location in the Plan.

    - Specifically, the Private Providers would have the ability to make a filing with the Georgia PSC asserting their intent to serve one or more of the eleven (11) locations identified in the Company's annual Community Charging Plan. Should the Private Providers fail to break ground at the community charging location within 1.5 years (18 months), they would waive their ROFR and the right to install chargers at that particular location would revert to GPC.

- Interested parties will have the opportunity to provide comments on the Plan within 30 days of the filing of the Plan.

- The Company's actual costs incurred to own, operate and maintain approved community charging equipment may be recovered in its rates for retail electric service.

- The need for a Community Charging program will be reviewed in the Company's next base rate case.

# Exhibit D

FILED

JUL 3 1 2025

EXECUTIVE SECRETARY
GPSC

DOCKET# 44280
DOCUMENT# 223495



# Georgia Public Service Commission

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**Docket No. 44280**

**In Re:** **Georgia Power Company's 2022 Rate Case**

## ORDER GRANTING JOINT PETITION OF GEORGIA POWER COMPANY AND THE PUBLIC INTEREST ADVOCACY STAFF AND APPROVAL OF THE STIPULATION TO EXTEND THE ALTERNATIVE RATE PLAN

Record Submitted: May 19, 2025 Decided: July 1, 2025

## APPEARANCES

On behalf of Georgia Public Service Commission Public Interest Advocacy Staff:

JUSTIN PAWLUK, Esq.
CHRIS COLLADO, Esq.

On behalf of Georgia Power Company:

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On behalf of Americans for Affordable Clean Energy:

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On behalf of Georgia Association of Manufacturers:

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On behalf of Georgia Conservation Voters:
Education Fund:

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AMITAV KAMANI, Esq.

On behalf of Georgia Solar Energy Association "GA SOLAR":

DONALD MORELAND

On behalf of Georgia WAND Education Fund:

JUAN ESTRADA, JR., ESQ.

On behalf of Metropolitan Atlanta Rapid Transit Authority (MARTA):

KIMBERLY (KASEY) A. STURM, ESQ.

On behalf of jointly intervened Sierra Club, NRDC, and SACE:

ISABELLA ARIZA, Esq.

CURT THOMPSON, Esq.

On behalf of Walmart:

STEPHANIE EATON, Esq.

CARRIE H. GRUNDMANN,Esq.

STEVEN W. LEE, Esq.

**BY THE COMMISSION:**

## I. STATEMENT OF PROCEEDINGS

On December 30, 2022, the Georgia Public Service Commission ("Commission") issued its Order Adopting Settlement Agreement as Modified in Docket No. 44280, Georgia Power Company's 2022 Rate Case. In that Order, the Commission established a three-year Alternate Rate Plan ("ARP"), ending December 31, 2025. The Commission further ordered Georgia Power Company ("Georgia Power" or the "Company") to file a general rate case as follows:

> *By July 1, 2025, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The test period utilized by the Company in its rate case filing shall be from August 1, 2025, to July 31, 2026. The Company may propose to continue, modify or discontinue this Alternate Rate Plan [CARP ")]. The Company shall also file projected revenue requirements for calendar years 2026, 2027, and 2028.*

In light of growing economic and regulatory uncertainty, Georgia Power proposed to forgo its July 1, 2025, rate case filing. Georgia Power's decision resulted in the Company entering into a Stipulation ("Settlement Agreement") with the Public Interest Advocacy Staff ("PIA Staff"), collectively ("Joint Petitioners"), on May 19, 2025. The Settlement Agreement extends the current ARP for an additional three-year term through 2026, 2027, and 2028. Customer rates would remain consistent and predictable as base rates remain unchanged. The Joint Petitioners also filed a Petition to Extend the ARP on May 19, 2025, outlining the terms of the Settlement Agreement and explaining how forgoing the 2025 rate case filing and extending the ARP is in the best interest of Georgia Power's customers.

The Commission has approved ARPs or the extension of them since 1995, finding them to be fair, just and reasonable. In the 2022 rate case, the Commission made similar findings in approving the current ARP upon which the Joint Petitioners now seek an extension. Thus, the Commission held the Company's requirement to file a base rate case on or before July 1, 2025, in abeyance for 60 days to allow the Commission to consider the Settlement Agreement. A hearing on the matter was held on June 26, 2025 ("Hearing") and was considered a contested case pursuant to O.C.G.A. 50-13-13.

On May 20, 2025, the Commission issued a Procedural and Scheduling Order setting the procedure, testimony filing dates, and hearing date for this matter. In this proceeding, PIA Staff was responsible for performing an independent evaluation of the filed case, advocating from the standpoint of promoting public interest and just and reasonable rates. PIA Staff were considered a party to the case and could negotiate settlements with other parties, in the public interest. The

Commission's Advisory Staff served as a technical advisor to the Commissioners, providing on-request advice based exclusively on their own independent evaluation.

Further, PIA Staff filed its Direct Testimony of Tom Bond and Steven Roetger on May 30, 2025. Georgia Power also filed its Direct Testimony of Aaron Abramovitz and Matthew Berrigan in Support of the Stipulation to Extend the Alternate Rate Plan. Georgia Wand Education Fund and Georgia Conservation Education Fund filed a Formal Complaint and Demand of Recusal ("Demand") against Commissioners McDonald, Echols, and Shaw ("named Commissioners") on June 6, 2025.[1] On June 12, 2025, Georgia Interfaith Power & Light filed the Direct Testimony of Justin Barnes, Sierra Club, SACE, and NRDC file the Direct Testimony of John D. Wilson, and Walmart filed the Direct Testimony of Steven W. Chriss. The Rebuttal Testimony of Abramovitz and Berrigan in Support of the Stipulation to Extend the ARP was filed on June 20, 2025.

The hearing was held on June 26, 2025. On June 30, 2025, Georgia Wand Education Fund filed a Motion to Extend the Commission's Procedural Schedule.

## II. LEGAL AUTHORITY AND JURISDICTION

The Commission has general supervisory authority over electric utilities. O.C.G.A. § 46-2-20 and 21. The Commission has the exclusive power to determine just and reasonable rates and charges made by Georgia Power Company. O.C.G.A. § 46-2-23(a). Unless the Commission has otherwise authorized the change, Georgia Power Company must provide thirty (30) days' notice to the Commission and to the public of any proposed change to any rate, charge, classification, or service subject to the jurisdiction of the Commission. O.C.G.A. § 46-2-25(a). The Commission is authorized to suspend the operation of any new schedule and defer the use of such rate, charge, classification, or service for a period not to exceed five months. The Commission is authorized to resolve matters by stipulation pursuant to O.C.G.A. § 50-13-13(a)(4).

## III. COMMISSION ACTION

### *a. Demand for Recusal.*

On June 6, 2025, Georgian Wand Education Fund and Georgia Conservation Education Fund filed a Formal Complaint and Demand for Recusal of Commissioners Speaking Publicly in Support of Georgia Power's 3-Year Rate Freeze ("Demand").

The Demand alleged that the named Commissioners violated Rule 515-2-1-.01, which provides that a Commissioner shall "reserve his opinion and in no way commit himself in advance touching the merits of any matter or question to be passed upon by the Commission or that should be dealt with by it, until the facts and evidence are all submitted and the Commission considers the same in administrative session." The Commission will, according to the Rule, hold no "presumption in favor of the position of any party."

The Demand asserted that on May 21, 2025, Commissioners McDonald and Shaw attended a press conference by Governor Brian Kemp, which was held in support of Georgia Power's and

[1] Two other entities signed the Demand; however, they failed to intervene in this matter.

PIA Staff's proposed three-year base rate freeze. There, Chairman Shaw stated that "to freeze rates for three years is a very big deal for our state, and good for Georgians." There is no allegation, however, that Chairman Shaw stated that he would vote to adopt the proposed Stipulation. The Demand does not assert that Commissioner McDonald made any comments at all related to freezing rates or to adopting the Stipulation. Finally, the Demand asserted that Commissioner Echols, last named in the Demand, made public comments at a separate event. Like Chairman Shaw, however, there is no allegation that Commissioner Echols stated that he would vote to adopt the proposed Stipulation.

The Demand also asserted that the proposed rate freeze was not good for Georgians and discussed Georgia Power's customer shut-off rate, Return-on-Equity profits, and proposed cost transparency related to fossil fuel expansion. In addition to requesting recusal, the Demand requested that the Commission either: (1) deny the rate-freeze proposal, or (2) appoint an impartial hearing officer not affiliated to the GPSC for this case.

As a preliminary matter, it should be noted that the assertions in the Demand are not verified or supported by affidavit and the Demand did not include any transcripts of the events.[2] In Georgia courts, this alone would be grounds to deny a recusal request. See e.g. USCR Rule 25 and Supreme Ct Rule 26(2). If the Commission or its Chairman possessed the authority to order the recusal of its members, the Demand would not pass such a threshold review.

The Demand, however, has not pointed to any law authorizing the Commission or its Chairman to order the recusal of a Commissioner. The Commission only has such powers as are expressly or by necessary implication conferred upon it. Neither the Commission's own law nor the Administrative Procedures Act authorizes such power. Individual Commissioners may determine whether to voluntarily recuse themselves. See 1989 Ga. Op. Att'y Gen. 22. At the Hearing on June 26, 2025, each of the named Commissioners declined to recuse themselves.

***b. The Stipulation.***

During the direct testimony phase of the Hearing, the Bond Roetger Panel and the Abramovitz Berrigan Panel testified jointly in support of the proposed Settlement Agreement. The Bond Roetger Panel stated that Staff has been concerned that if a a fully contested rate case hearing were held, rates would increase for all ratepayers, including small business and residential customers. (Bond Roetger Direct, p. 5, ln. 2-17). The Smith Forsythe Panel, which recently testified in Dockets 56002 and 56003, was cited by the Bond Roetger Panel as evidence of the concern, "[W]hile not a complete revenue requirement, the '2025 IRP Financial Summary' appears to show varying levels of upward pressure on the Company's base rates under each scenario." (Bond Roetger Direct, p. 5, ln. 11-14). The Bond Roetger Panel, further, cited two reasons related to growing economic uncertainty as basis for Staff's support of the Settlement Agreement. First, Georgia Power customers would be secure in their electric services as costs would remain unchanged absent an increase in usage. (Bond Roetger Direct, p. 6, ln. 19-21). Second, the Stipulation provides for the July 2028 Rate Case to be significantly more grounded in substantive

[2] Additionally, neither Georgian Wand Education Fund nor Georgia Conservation Education Fund pre-filed testimony in this proceeding.

data as opposed to forecasts, particularly as it concerns prospective new large load customers. (Bond Roetger Direct, p. 7, ln. 2-3).

The Bond Roetger Panel testified that the Company's pro forma retail revenue deficiency model showed an aggregate deficiency amount of $2.588 billion over the 3-year extension period. (Bond Roetger Direct, p. 10, ln. 3-5). If the Company's litigation position in the planned rate case was consistent with that amount, the Company could recommend that ratepayers pay the additional $2.588 billion over the 3-year period. The Panel stated that "[t]here is a very real risk that such a case could result in higher rates for customers." (Bond Roetger Direct, p. 15, ln. 19-20). The Panel further testified that the accounting and expense adjustments in the Settlement Agreement "offset only a portion of the Company's forecasted revenue deficiency. Not including the potential deferrals under Paragraph 7 of the Stipulation, which can only be used to the extent the earned ROE is below the set point ROE, the adjustments offset only $853M of the $2.589B, leaving a much larger forecasted aggregate revenue deficiency of $1.736B over the 3-year period." (Bond Roetger Direct, p. 10, ln. 7-9).

The Bond Roetger Panel further testified that the Settlement Agreement will continue to protect existing customers from the risk of bearing any of the costs of adding new large load customers. First, it provides rate stability for the next three years. Second, it ensures that in the 2028 rate case the Commission will have detailed cost of service data relating to the new capacity for the large load customers at issue in the 2023 Amended Integrated Resource Planning ("IRP") case and the 2025 IRP case. (Bond Roetger Direct, p. 14, ln. 15 to p. 15, ln. 9).

The Abramovitz Berrigan Panel also advocated for approval of the Settlement Agreement, testifying that the Settlement Agreement's terms are just, reasonable, and in the best interests of customers. (Abramovitz Berrigan Panel, p. 3, ln. 20-24). The panel further testified that the Company is dutifully committed to providing its customers with safe, reliable, clean, and affordable energy. (Abramovitz Berrigan Panel, p. 5, ln. 10-11). When asked how would the Settlement Agreement would affect the terms of the 2022 ARP, the panel explained that the company would continue (1) operating within the earnings band of 9.5 % - 11.9% that was approved in the 2022 Rate Case Order, (2) annual surveillance reporting under the ARP, (3) share 80% of any earnings above the band with customers, all per the 2022 ARP, and (3) agree to not file a base rate case or implement the interim cost recovery mechanism, unless projected earnings drop below the bottom of the earnings band. (Abramovitz Berrigan Panel, p. 6, ln. 8-14). The Hearing concluded immediately after the Abramovitz Berrigan Panel ended.

On June 30, 2025, Georgia Interfaith Power & Light ("GIPL") submitted its Post-Hearing Brief and Proposed Motion ("GILP Proposed Motion"). The GIPL Proposed Motion urged the Commission to ensure that loopholes in the large load rules are closed, verify that Georgia Power customers do not bear the cost of the Company's preliminary revenue deficiency, and order the Company to provide load, generation, and real-time energy pricing data ahead of the 2028 rate case. (GIPL Motion, p. 5). The Commission did not rule to accept the GIPL Proposed Motion.

During its July 1, 2025, regular Administrative Session, the Commission voted to approve the Settlement Agreement.

### *c. Motion to Extend Procedural Schedule.*

On June 30, 2025, four days after the hearing concluded, Georgia Wand Education Fund filed a Motion to Extend the Commission's Procedural Schedule by setting a new deadline for pre-filed testimony. The Procedural and Scheduling Order in this case was issued May 20, 2025. It set the procedure, the testimony filing dates, and the hearing date for this matter. Pursuant to Commission Rule 515-2-1.08, a motion for reconsideration for a Commission order must be filed within ten days from the effective date of the order. Georgia Wand's motion is well beyond the 10-day reconsideration period. Of note, O.C.G.A. 46-2-59(j) states: "Nothing in this Code section shall be construed to prohibit the Commission from taking any action prior to the expiration of the 30-day period during which persons are permitted to file applications for leave to intervene."

Furthermore, Georgia Wand was present for the June 26, 2025, hearing. This hearing was held after the intervention period had ended. At the hearing, Georgia Wand made no request to file late testimony, and it made no request to extend the schedule. Georgia Wand waited until after the hearing concluded and the record was closed to file its motion. Therefore, Georgia WAND's motion was untimely.

## **IV. FINDINGS OF FACT**

1.

PIA Staff and Georgia Power agree to certain modifications to the 2022 Rate Case order, which are as follows:

2.

The Company agrees to no adjustment to base rates, with any under-recovered storm costs considered in a separate proceeding to be filed in 2026.

The Settlement Agreement states that base rates will not be adjusted in 2026, 2027, and 2028. The rate freeze ensures that customer rates are predictable and stable. The Company agrees to continue the amortization of liabilities and regulatory assets approved by the Commission in its 2022 Rate Case Settlement Agreement. Joint Petitioners agree to allow the Company to recover its reasonable and prudent under-recovered storm damage costs that result from major storms, such as from Hurricane Helen. The Settlement Agreement allows for consideration of the recovery to be considered through fully litigated and narrow proceedings, which are to take place in 2026.

3.

The Company agrees to the use and normalization of various tax credits for the benefit of customers, both now and in the future.

Investment Tax Credits ("ITCs") and Production Tax Credits ("PTCs") are named in the Settlement Agreement to maintain stable base rates over the next three years. The Company will also amortize the ITC tax benefits generated during the duration of the Settlement Agreement over a five-year period. While the credit's value will depend on multiple factors, the credits will be available during the Company's 2028 Rate Case filing. ITCs and PTCs above the established and agreed-upon threshold, as well as 40% of PTCs below the threshold, will be deferred as regulatory liabilities to offset any regulatory assets resulting from the extension. In turn, the tax credits will be used to minimize regulatory assets associated with CCR-ARO and storm damage costs. Equally, state and federal tax reductions will be deferred as regulatory liabilities for future customer benefit.

4.

The Company agrees to the use of various expense adjustments to keep existing base rates stable.

The Stipulation includes adjustments to the depreciation expenses associated with Bowen Units 1-4 and Plant Scherer Units 1-3, as well as adjustments for the amortization of the remaining netbook value of retired plants Wansley Units 1-2 and Plant Hammond Unit 4, which will be extended to 13 years. It provides for the continuation and recovery of Municipal Franchise Fees, Demand Side Management costs, and limited deferrals for potential uncollectables above the amounts already in rates. The Company is, further, allowed to defer any incremental cost for distributed energy resource management systems ("DERMs") that were approved in the 2025 IRP. The Company may also use certain limited deferrals related to depreciation expense for resources that were previously approved by the Commission, but not currently in depreciation rates, if the Company's earnings drop below the return on equity setpoint from the 2022 Rate Case.

5.

The Company agrees to the continuation of activities and programs approved in the current ARP.

The EV Make Ready Program, Grid Improvement Plan ("GIP"), and other Commission-approved programs and activities will continue during the Extension Period. GIP spending will not exceed 50% of the level approved in the 2022 Rate Case Order for the three-year period. Spending reporting is to continue during the GIP's semi-annual reporting process.

6.

The Settlement allows the Company to request deferrals of some pre-construction costs as part of either the All-Source Certification proceeding, or another proceeding identified by the Company. Staff reserved the right to oppose or recommend modifications to any such request.

7.

PIA Staff and Georgia Power also modified certain provisions to revise dates to reflect the ARP extension period, limited to paragraph 14 of the Settlement Agreement.

8.

The Commission finds that a three-year term for the Stipulation Agreement ending December 31, 2028, is reasonable. By July 1, 2028, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The test period utilized by the Company in its rate case filing shall be from August 1, 2028, to July 31, 2029. The Company may propose to continue, modify, or discontinue this ARP. The Company shall also file projected revenue requirements for calendar years 2029, 2030, and 2031. In addition to filing a Cost-of-Service Study as a part of its next base rate case, the Company shall include additional Cost-of-Service data with sufficient detail to show how the Company proposes to allocate the forecasted costs relating to the new capacity for large load customers at issue in the 2023 Amended Integrated Resource Planning ("IRP") case and the 2025 IRP case, as well as the forecasted revenues from the prospective new large load customers at issue in those cases, to the various customer rate groups. ("Stipulation to Extend the ARP, p. 5, par. 15").

9.

The terms of the Settlement Agreement are just and reasonable and the Settlement Agreement will continue to protect existing customers from the risk of bearing any of the costs of adding new large load customers.

## V. CONCLUSIONS OF LAW

1.

The Georgia Public Service Commission has general supervision over electric light and power companies. O.C.G.A. §§ 46-2-20(a) and 46-2-21. The Commission has "exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction." O.C.G.A. § 26-2-23. Unless the Commission has otherwise authorized the change, Georgia Power Company must provide thirty (30) days' notice to the Commission and to the public of any proposed change to any rate, charge, classification, or service subject to the jurisdiction of the Commission. O.C.G.A. § 46-2-25(a). The Commission is authorized to suspend the operation of any new schedule and defer the use of such rate, charge, classification, or service for a period not to exceed five months.

2.

The Commission is authorized to resolve matters by stipulation pursuant to O.C.G.A. § 50-13-13(a)(4).

3.

The terms and conditions of the Settlement Agreement are fair, just and reasonable. By adopting the Settlement Agreement, the Commission retains its jurisdiction to ensure that the Company's rates, terms and conditions are fair, just and reasonable. The Commission concludes that the Settlement Agreement is a reasonable resolution of the issues in this docket.

4.

The Commission retains its jurisdiction to ensure that the Company abides by and implements the terms and conditions set forth in the Settlement Agreement adopted herein, and to issue such further order or orders as this Commission may deem proper.

## VI. ORDERING PARAGRAPHS

**WHEREFORE, IT IS ORDERED,** that the Settlement Agreement shall be and the same hereby is adopted, that its terms and conditions are fully incorporated herein, and that Georgia Power Company shall comply with said terms and conditions.

**ORDERED FURTHER,** that the terms and conditions set forth in the Settlement Agreement are just and reasonable and shall take effect for service rendered from and after January 1, 2026.

**ORDERED FURTHER,** that any tariffs implemented by Georgia Power to implement the terms and conditions of the Settlement Agreement shall be subject to review by the Commission to ensure that such tariffs, as implemented, are proper and just.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER,** that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem proper.

**ORDERED FURTHER,** any motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by the Commission.

The above by action of the Commission in Administrative Session on the 1st of July 2025.

| | |
|---|---|
| Sallie Tanner | Jason Shaw |
| Executive Secretary | Chairman |
| 7-31-25 | 7-31-25 |
| Date | Date |

## ATTACHMENT 1

## Stipulation To Extend the Alternate Rate Plan

### Georgia Power Company's 2022 Rate Case
### Docket No. 44280

On December 30, 2022, the Georgia Public Service Commission ("Commission") issued its order ("Order Adopting Settlement Agreement As Modified") in the above-styled docket approving a Settlement Agreement between Georgia Power Company ("Georgia Power" or the "Company"), the Public Interest Advocacy Staff ("Staff"), and several Interveners providing for an Alternate Rate Plan ("ARP") (collectively "2022 Rate Case Settlement Agreement"). The ARP commenced January 1, 2023, and continues through December 31, 2025. The ARP required the Company to file its next base rate case by July 1, 2025. This Stipulation allows the ARP to continue for an additional three-year term through December 31, 2028 ("Stipulation to Extend the ARP"). To facilitate extending the current ARP, the Stipulating Parties agree to the following modifications:

1. The terms and conditions of the ARP, as defined in the 2022 Rate Case Settlement Agreement as approved by the Commission in its Order Adopting Settlement Agreement as Modified, shall remain in effect unless expressly amended by this Stipulation to Extend the ARP.

2. Under the Stipulation to Extend the ARP, base rates will not be adjusted for the next three years (2026, 2027, and 2028) ("ARP extension period"), except for storm damage cost, which will be recovered in accordance with Paragraph 3 of this Stipulation.

3. The Company will be allowed to recover actual reasonable and prudent storm damage cost incurred through December 31, 2025, that exceeds the amount of the annual storm damage accrual approved in the Order Adopting Settlement Agreement as Modified. The Company will file for the recovery of under-recovered storm damage cost no sooner than February 1, 2026, and no later than July 1, 2026, with new rates effective the 1st of the month following 90 days after the request for recovery. The Company's filing will include at a minimum pre-filed direct testimony and the documentation supporting the request for changes in the storm damage accrual as well as the proposed period over which to allow recovery of the under-recovered storm damage balance. The Commission shall determine the rates, the period over which under-recovered storm costs will be recovered, and any other issues the Commission deem necessary to address the limited issue of storm damage cost recovery. The rate increase shall be applied to each traditional base rate on an equal percentage basis. The energy, demand, and basic service charge components shall all be adjusted equally, provided that the Company shall not apply any increase to the basic service charge for the domestic and small business rate groups. The Commission shall issue a final decision within 90 days of the Company's filing.

4. During the ARP extension period, the Company shall continue the amortization of regulatory assets and liabilities in the 2022 Rate Case Settlement Agreement as approved in the

Order Adopting Settlement Agreement As Modified and subsequently included in current rates through the annual compliance filings. This includes those regulatory asset and liability balances that were projected to be fully amortized through 2025 or during the ARP extension period, and any amortization debit or credit will be recorded to a regulatory liability or asset during the ARP extension period.

5. Stipulation Paragraph 14 of the 2022 Rate Case Settlement Agreement shall be modified by adding the following to the end of the paragraph:

> Provided, however, that the Company shall not accrue tax benefits on Investment Tax Credits ("ITCs") or Production Tax Credits ("PTCs") as a regulatory liability during the ARP extension period, except as described in this paragraph. The Company will recognize state and federal tax benefits in accordance with the Internal Revenue Service rules, the Georgia Department of Revenue rules, and the Company's accounting policy. The Company shall be allowed to transfer certain tax credits and to elect out of Internal Revenue Code ("IRC") normalization rules on a project-by-project basis, where applicable, which would allow the Company to reduce rate base by any unamortized ITC benefits. Any ITCs and PTCs deferred to an ITC liability or regulatory liability from 2023 to 2025 will be amortized to amortization or income tax expense over three years beginning January 1, 2026, to the extent they are not subject to the Internal Revenue Service ("IRS") normalization rules. Any ITCs not subject to the IRS normalization rules that are generated during the ARP extension period will be amortized to amortization expense over five years. The value of ITCs and PTCs that will be available to support the extension of the ARP will depend upon several factors including IRS determinations and in service dates for resources eligible for ITCs. The Company has provided a schedule of ITCs and PTCs in Exhibit A to this Stipulation. Any ITCs and PTCs generated above the annual levels projected by the Company in Exhibit A shall be deferred to a regulatory liability. To the extent the Company does not generate ITCs equal to the annual projections shown on Exhibit A in a given year, the shortfall shall be added to the annual projection available for amortization in the following year so that the annual amount shown in Exhibit A is increased by the amount of the shortfall. However, any ITC amount deferred to a regulatory liability can be carried forward to a subsequent year, to be available for amortization, subject to the maximum level for that year. Sixty percent (60%) of PTCs generated during the ARP extension period will be credited to income tax expense as generated. The remaining forty percent (40%) shall be deferred to a regulatory liability. The PTCs generated under the IRC 45J associated with Plant Vogtle Units 3 and 4 will not be subject to the provisions in this stipulated agreement.

6. The Company will not defer the benefits of the state tax rate reduction from 5.39% to 5.19% effective January 1, 2025.

7. For each year of the ARP extension period, provided that the Company does not file a rate case or invoke the Interim Cost Recovery Mechanism in such year, the Company shall be allowed to defer certain costs under subsection (b) of this provision as specified below if the Company's ROE would otherwise drop below 10.5% (the set point ROE used by the Commission to set rates in the 2022 Order Adopting Settlement Agreement As Modified). For avoidance of doubt, this provision does not change or modify the Company's current earnings band of 9.5% to 11.9% approved in the Order Adopting Settlement Agreement As Modified.

a. The maximum amount of such costs that the Company shall be allowed to defer exclusively for purposes of Paragraph 7, shall be $50 million for 2026, $100 million for 2027, and $150 million for 2028. In the event that the Company's actual retail ROE, as determined by the Commission through review and audit of, and after any resulting accounting or regulatory adjustments to, the Company's Annual Surveillance Report for such year, would be greater than 10.50% if the Company were to defer the entire amount, then the deferral shall be limited to only that amount, if any, as would allow the Company to earn no more than 10.50% for such year.

b. In the following order of priority, costs that may be deferred consist of:

   i. the depreciation expense for assets approved in the 2023 Amended IRP that went into rate base on or after 01/01/2026;

   ii. the depreciation expense for assets approved in the 2025 IRP that went into rate base on or after 01/01/2026; and,

   iii. the depreciation expense for assets approved in the 2022 IRP that went into rate base on or after 01/01/2026, provided that such cost was not included in rates set in the 2022 rate case.

8. There shall be annual true up of Municipal Franchise Fee tariff ("MFF") in 2026, 2027, and 2028. The treatment (refund or cost recovery) of any resulting regulatory asset or liability from the MFF.

9. The DSM tariff will be accounted for under the existing DSM true-up methodology, without annual rate adjustments during the ARP extension period. The treatment (refund or cost recovery) of any resulting regulatory asset or regulatory liability from the DSM true-up process shall be considered in the Company's next base rate case.

10. To the extent any uncollectible expense during the ARP extension period exceeds the annual amount for uncollectible expense included in the base rates approved by the Commission in the 2022 Base Rate Case, the Company will defer such balance as a regulatory asset to be recovered in the Company's next base rate case provided that the deferral shall not

exceed $20 million in any given year of the ARP extension period or $60 million total for the cumulative 3-year period.

11. Paragraph 3 of the 2022 Rate Case Settlement Agreement shall be modified as follows to allow for the continuation of Commission-approved activities and programs during the ARP extension period:

a. The Company shall continue with the Grid Investment Plan ("GIP") spending over the term of the ARP extension period and will not exceed 50% of the budget levels previously approved by the Commission in the Order Adopting Settlement Agreement As Modified. Spending will continue to be reported through the Grid Improvement Plan's semi-annual reporting process.

b. The Company shall continue with EV Make Ready spending over the term of the ARP extension period using the same budget levels previously approved by the Commission in the Order Adopting Settlement Agreement As Modified.

c. To the extent the cost for DERMs in the ARP extension period exceeds the amount approved in rates in the 2022 Rate Case Settlement Agreement, any incremental cost for DERMs approved in the 2025 Integrated Resource Plan ("2025 IRP") shall be deferred as a regulatory asset for recovery in the Company's next base rate case.

d. The annual depreciation expense for Plant Bowen Units 1-4 and Plant Scherer Units 1-3 shall be reduced by extending the period for depreciation to 13 years effective January 1, 2026. The deferral of depreciation expense associated with Bowen Units 1-2 and Scherer Units 1-3 approved in the 2022 Base Rate Case will cease during the ARP extension period and the associated regulatory asset shall begin amortization on January 1. 2026 over 13 years to match the depreciation period.

e. The amortization expense on the remaining net book value of Plant Wansley Units 1-2 and Plant Hammond Unit 4 shall be reduced by extending the period for amortization to 13 years effective January 1, 2026.

12. To the extent that the Company accrues a regulatory asset under the provisions of Paragraphs 4, 7, 8, 9, or 11 c of this Stipulation, the Company shall reduce such asset to the extent possible using the regulatory liability deferrals under Paragraph 5 of the Stipulation to Extend the ARP. Any remaining regulatory liabilities from Paragraph 5, after being fully applied in accordance with the first sentence of this paragraph, shall be applied in the following priority: 1) the storm damage regulatory asset, and 2) CCR ARO regulatory asset.

13. The Company has maintained that there is a unique opportunity to actively provide benefits to customers during the extension of the ARP by actively growing economic development loads in Georgia, the Company has undertaken pre-construction activities that it believes are appropriate to meet the capacity and energy needs of retail customers. This includes reservation fees for long lead time equipment and scoping and engineering study costs associated with the

projects intended to serve retail customers' needs. To the extent not recovered through other means, the Company intends to seek approval to defer project costs, including associated financing costs, irrespective of whether the projects are later certified. The Company may make such request as part of the All-Source Certification proceeding or as part of another proceeding identified by the Company. Staff reserves the right to oppose the request or to recommend modifications to it.

14. Paragraphs 29 and 33 from the 2022 Rate Case Settlement Agreement shall be amended as follows to revise dates in these provisions to reflect the ARP extension period:

a. The first sentence of Paragraph 29 of the 2022 Rate Case Settlement Agreement shall be amended to state that the "The Time of Use — Food and Drink ("TOU-FD") rate shall remain available to all food services and drink places identified as 722 of the North American Industry Classification System ("NAICS") through this ARP extension period."

b. The fourth sentence of Paragraph 33 of the 2022 Rate Case Settlement Agreement shall be amended to state "The additional amount shall be in place during the ARP extension period and will be reviewed in the Company's next base rate case."

15. By July 1, 2028, the Company shall file testimony and exhibits required in a general rate case along with supporting schedules required by the Commission to support a "traditional" rate case. The test period utilized by the Company in its rate case filing shall be from August 1, 2028, to July 31, 2029. The Company may propose to continue, modify, or discontinue this ARP. The Company shall also file projected revenue requirements for calendar years 2029, 2030, and 2031. In addition to filing a Cost-of-Service Study as a part of its next base rate case, the Company shall include additional Cost-of-Service data with sufficient detail to show how the Company proposes to allocate the forecasted costs relating to the new capacity for large load customers at issue in the 2023 Amended Integrated Resource Planning ("IRP") case and the 2025 IRP case, as well as the forecasted revenues from the prospective new large load customers at issue in those cases, to the various customer rate groups.