IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

OGLETHORPE POWER CORPORATION,

Plaintiff,

v.

GEORGIA POWER COMPANY,

Defendant.

Civil Action No.
2022CV366418

COMPLAINT

Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe") states the following in this Complaint, seeking equitable relief, declaratory relief, and damages against Georgia Power Company ("Georgia Power"): 

I. PRELIMINARY STATEMENT

1. This case arises from Georgia Power’s refusal to honor the deal it struck with Oglethorpe and accept responsibility for Georgia Power’s share of massive cost overruns in the construction of nuclear power-generating Units 3 and 4 at the Alvin W. Vogtle Electric Generating Plant ("Vogtle Units 3 and 4"). For years Oglethorpe has paid for its share of billions of dollars in cost overruns for Vogtle Units 3 and 4, with Georgia Power’s assurance and agreement that if cost overruns reached a certain point, Georgia Power, who is responsible for construction of the project, would step in and take responsibility. Now that the cost overruns have reached that point and beyond, Oglethorpe has called on Georgia Power to stand by its commitment. Instead of honoring that commitment, however, Georgia Power denies it and seeks to shift still more cost overruns onto Oglethorpe. This complaint is brought to hold Georgia Power accountable for its promises.
2. Vogtle Units 3 and 4, which are being constructed near Waynesboro, Georgia, are co-owned jointly by Georgia Power (45.7%), Oglethorpe (30%), the Municipal Electric Authority of Georgia (22.7%), and the City of Dalton, Georgia (1.6%). Since the project’s inception in 2006, Georgia Power has had sole authority as agent for all the co-owners for the design and construction of the units under the co-owners’ Plant Alvin W. Vogtle Additional Units Ownership Participation Agreement (as amended, the “Participation Agreement”).

3. Each of the co-owners is responsible for its pro rata share of construction costs (“shareable costs”). The co-owners also incur individual costs that are not shared with the other co-owners (“non-shareable costs”), such as their respective financing costs and property taxes.

4. Georgia Power is a for-profit corporation that has repeatedly exercised its ability to push its Vogtle project cost overruns to the shareholders of its parent, Southern Company.

5. Oglethorpe, by contrast, has no shareholders. Instead, Oglethorpe is a not-for-profit Georgia electric membership cooperative that provides power to 38 members that are also not-for-profit electric membership cooperatives. These cooperatives, in turn, provide electricity to more than four million rural homes and businesses in 151 of 159 of Georgia’s counties. The people bearing the burden of Oglethorpe’s share of Georgia Power’s cost overruns for Vogtle Units 3 and 4 are the rural Georgians served by Oglethorpe and its member cooperatives.

6. During the last wave of nuclear construction projects in the United States (during the 1970s and 1980s), those projects experienced significant delays and cost overruns. To avoid this problem, the original engineering, procurement, and construction contract (“EPC Contract”) for Vogtle Units 3 and 4 was essentially a fixed-price contract with Westinghouse Electric Company, LLC (“Westinghouse”) and another entity that Westinghouse eventually bought out. Under the EPC Contract, Westinghouse was responsible for completing construction of Vogtle
Units 3 and 4 for the fixed-price specified in the contract (subject to certain exceptions and escalation provisions). Oglethorpe would not have made its initial commitment to Vogtle Units 3 and 4 without the protection provided by this fixed-price EPC Contract structure.

7. Over the course of the project, construction costs have continually gone up. Certain escalation and change orders to the EPC Contract did cause the fixed price of the contract to adjust, as did a 2015 amendment to the agreement with Westinghouse. Still, the pricing structure of the EPC Contract shielded Oglethorpe and the other co-owners from the vast majority of these construction cost increases. Oglethorpe’s non-shareable costs were never fixed by the EPC Contract.

8. Continuous project delays have caused the co-owners’ agent Georgia Power to push out the projected in-service dates for the units again and again, as illustrated in the chart below.

<table>
<thead>
<tr>
<th>Time Period That Projection of In-Service Date Was Made</th>
<th>Georgia Power’s Projected In-Service Date for Vogtle Unit No. 3</th>
<th>Georgia Power’s Projected In-Service Date for Vogtle Unit No. 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008 – EPC Contract executed with Westinghouse</td>
<td>April 2016</td>
<td>April 2017</td>
</tr>
<tr>
<td>2013 – During Westinghouse EPC Contract</td>
<td>December 2017</td>
<td>December 2018</td>
</tr>
<tr>
<td>2015 – During Westinghouse EPC Contract</td>
<td>June 2019</td>
<td>June 2020</td>
</tr>
<tr>
<td>Early 2017 – Pre-Westinghouse bankruptcy filing</td>
<td>June 2020</td>
<td>December 2020</td>
</tr>
<tr>
<td>VCM-17 – Late 2017, after Georgia Power completes its assessment of costs to complete the project</td>
<td>November 2021</td>
<td>November 2022</td>
</tr>
<tr>
<td>July 2021 – Georgia Power announces project delay</td>
<td>2nd Quarter 2022</td>
<td>1st Quarter 2023</td>
</tr>
<tr>
<td>October 2021 – Georgia Power announces project delay</td>
<td>3rd Quarter 2022</td>
<td>2nd Quarter 2023</td>
</tr>
<tr>
<td>February 2022 – Georgia Power announces project delay</td>
<td>4th Quarter 2022 or 1st Quarter 2023</td>
<td>3rd or 4th Quarter 2023</td>
</tr>
</tbody>
</table>
9. These significant construction challenges, which Oglethorpe does not supervise or control, have increased Oglethorpe’s share of Vogtle Units 3 and 4 costs, and Oglethorpe’s corresponding budget. Georgia Power’s cost overruns have caused Oglethorpe’s budget to increase from $4.2 billion in 2008 to over $8 billion today.

10. In March 2017, Westinghouse declared bankruptcy, which allowed Westinghouse to abandon its fixed-price EPC Contract. This left the co-owners without the protection of the fixed-price contract to complete the project – and created a very uncertain future.

11. In the wake of the Westinghouse bankruptcy, Georgia Power undertook what it described as an “intense effort” to determine how the project could be completed and at what cost. Georgia Power engaged its affiliate, another subsidiary of Southern Company, Southern Nuclear Operating Company (“Southern Nuclear”), to manage the engineering, procurement, and construction of the project. Georgia Power and Southern Nuclear also undertook what was said to be a comprehensive analysis of the cost to complete the project, after which they informed the co-owners that the estimate-to-complete (“ETC”) would amount to approximately $9.45 billion of additional shareable costs (the “Southern Nuclear ETC”). Adding in costs already incurred, this corresponded to a total estimate-at-completion (“EAC”) of approximately $14.9 billion in shareable costs.1 (These amounts were net of $3.68 billion received from Westinghouse’s parent company, Toshiba, in payout of a parental guaranty.) The Southern Nuclear ETC was based on new projected in-service dates of November 2021 for Unit 3 and November 2022 for Unit 4.

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1 An estimate to complete (ETC) refers to the “to go” costs to complete the project. An estimate at completion (EAC) refers to the total project costs, both those incurred and those to be incurred.
Southern Nuclear and Georgia Power informed Oglethorpe and its member cooperatives that the Southern Nuclear ETC had been carefully constructed and was reliable.

12. Georgia Power also presented the Southern Nuclear ETC to the Georgia Public Service Commission (“PSC”). The PSC regulates Georgia Power and has been monitoring the Vogtle project since its inception under what is known as the Vogtle Construction Monitoring (“VCM”) proceeding. For Georgia Power to be able to charge its customers for either shareable or non-shareable Vogtle costs, it must obtain approval from the PSC. The Southern Nuclear ETC was presented in Georgia Power’s August 2017 VCM filing, numbered “VCM 17.”

13. Even after the $1.1 billion Oglethorpe received under the Toshiba parental guaranty, the 2017 cost increase meant Oglethorpe had to decide whether it could take on a budget of $7.0 billion for its share of the project – a full $2.8 billion higher than its initial budget.

14. Accordingly, after the Westinghouse bankruptcy, Oglethorpe and the other co-owners decided to amend the Participation Agreement to require co-owner consent to proceed with construction if certain fundamental facts which the co-owners used to make their decision whether to proceed with construction of the project changed in the future. They referred to these changes as Project Adverse Events, or PAEs. The list of PAEs that would trigger this consent right included any increase in the overall project budget of $1 billion or more. Relying on this amendment and the Southern Nuclear ETC, Oglethorpe ultimately agreed to continue with the project, as did the other co-owners. In December 2017, the PSC also gave its approval for continuation of the project.

15. Just six months later, in June 2018, Georgia Power and Southern Nuclear stunned Oglethorpe and the other co-owners by announcing major mistakes in their prior cost projections: the estimated cost to complete the project would exceed the Southern Nuclear ETC –
upon which the co-owners had just relied to make the decision to go forward – by a staggering $1.5 billion. Ultimately, this $1.5 billion increase ballooned to over $2 billion. The Southern Nuclear ETC was erroneous in nearly every material category. After taking the guaranty funds already received from Toshiba into account, this astonishing increase brought the shareable total project cost for all co-owners to $17.1 billion.

16. In a slide show presented to the co-owners during the August 29, 2018 meeting of the Vogtle Project Management Board, Georgia Power provided the new cost forecast of $17.1 billion, along with a new ETC.

17. Two days later, on August 31, 2018, Georgia Power filed its “VCM 19” report with the PSC. In written testimony submitted to the PSC in October 2018, as part of the VCM 19 proceeding, Georgia Power witnesses informed the PSC that “the new ETC and cost forecast . . . was filed with VCM 19 and has been approved by the [co-owners].” (Direct Testimony of David L. McKinney and Jeremiah C. Haswell on Behalf of Georgia Power Company, at 11.) The cost forecast provided to the PSC at that time was the $17.1 billion forecast contained in the August 29, 2018 Project Management Board presentation. This presentation was expressly referred to by the PSC Staff in a data request sent to Georgia Power and also in the testimony of a PSC Staff witness. Also, this was the only forecast being reviewed, discussed, and presented for approval by the co-owners at that time.

18. Georgia Power’s new forecast included such a sizable increase from the previous forecast that it triggered the PAE provision of the Participation Agreement, thus requiring a vote

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2 Sept. 18, 2018 Staff Data Request STF-149-39 (referring to the “August 29, 2018 PMB slides”); Nov. 30, 2018 Direct Testimony of Don Grace on Behalf of PSC Advocacy Staff, at 13 (referring to “$17.1 billion Total Construction Cost” contained in the “August 29, 2018 Project Management Board slides”).
of the co-owners on whether to continue with the project. The co-owners were faced with the question whether they could recommit to a project whose budget, prepared by Georgia Power and its affiliate, had skyrocketed in less than nine months from approximately $15 billion in the 4th quarter of 2017 to $17.1 billion in the 2nd quarter of 2018. For itself, Oglethorpe was forced to decide whether it could recommit to Vogtle Units 3 and 4 when doing so would require Oglethorpe to increase its budget from the $7.0 billion it committed to at the end of 2017 to $7.5 billion in a matter of months to account for Oglethorpe’s share of Georgia Power’s erroneous forecast.

19. With no control over the project budget produced by Georgia Power and its affiliate, or the construction work itself, and having seen the most recent budget shattered, Oglethorpe decided that it could no longer proceed on the same path. Oglethorpe determined that it could not vote to continue construction on Vogtle Units 3 and 4 without a cap on Oglethorpe’s exposure to future budget increases. Oglethorpe therefore asked Georgia Power to accept responsibility for its erroneous forecast, its budget estimate, and its team on the ground by capping Oglethorpe’s costs for its 30% ownership share at 30% of the VCM 19 forecast ($17.1 billion). Oglethorpe urged Georgia Power to accept this limitation on construction costs going forward in order to “manage the burden on 4.1 million Georgians, many of whom live in rural areas with very limited means and [who] will be forced to bear this entire cost.” Oglethorpe was willing to continue with the project if Georgia Power accepted this cap, but Georgia Power refused.

20. Despite Georgia Power’s intransigence, Oglethorpe was aware of the importance of the Vogtle Units 3 and 4 project, and so Oglethorpe continued to seek a resolution. After intense negotiations, the parties agreed to continue with the project, but only after Georgia Power
accepted more responsibility for any future cost overruns. The parties documented their agreement in a Co-Owner Term Sheet dated September 26, 2018 (the term sheet was later embodied in a set of “Global Amendments”).

21. The parties agreed to two key provisions designed to protect Oglethorpe and the other co-owners from future cost overruns. Without these two provisions Oglethorpe would not have voted to continue construction of Vogtle Units 3 and 4.

22. First, the parties agreed to cost-sharing bands. Georgia Power agreed to pay an additional 10% of costs in the first band and an additional 20% of costs in the second band. The cost-sharing bands would be triggered if the estimate at completion (EAC) for Units 3 and 4 was later revised to exceed the VCM 19 forecast of $17.1 billion by more than $800 million, for an EAC of $17.9 billion. All owners would maintain their original ownership percentage in the project through the cost-sharing bands.

23. Second, the parties agreed to a “freeze” tender option. Under this option, if the EAC was later revised to exceed the VCM 19 forecast of $17.1 billion by $2.1 billion, for an EAC of $19.2 billion, then each co-owner other than Georgia Power could tender a portion of its interest in the project to Georgia Power in exchange for Georgia Power’s agreement to pay 100% of that co-owner’s portion of the remaining shared construction costs – thus freezing a tendering party’s shareable costs for the duration of the project.

24. Only after the Co-Owner Term Sheet was signed did Oglethorpe vote to continue construction of Vogtle Units 3 and 4. This vote by Oglethorpe is what allowed construction of Vogtle Units 3 and 4 to proceed.

25. While Oglethorpe certainly hoped that the cost overruns would not continue, its insistence on obtaining more protection for itself, its cooperative members, and rural Georgians
was well-founded. In February 2022, the EAC was revised to $20.5 billion. This was well in excess of $17.1 billion plus $2.1 billion, thus triggering the freeze tender option, which Oglethorpe has exercised. The cost-sharing provisions have also been triggered.

26. Georgia Power, however, refuses to abide by its agreement. Georgia Power continues to bill Oglethorpe its full 30% share in defiance of the cost-sharing bands and has told Oglethorpe that the tender-option threshold has not been met. The cost to Oglethorpe and its members of Georgia Power’s refusal to abide by its agreement is up to $99 million under the cost-sharing bands and approximately $400 million under the freeze tender option at the current EAC, which could go even higher if construction costs exceed the current EAC.

27. Despite its solemn, written promise to accept increased responsibility for cost overruns over the threshold, Georgia Power has quite simply reneged. The time has come for Georgia Power to honor its agreement. Oglethorpe brings this lawsuit to protect itself, its non-profit cooperative members, and millions of rural Georgians from Georgia Power’s effort to evade its own promises.

II. PARTIES AND JURISDICTION

28. Plaintiff Oglethorpe is an electric membership corporation organized and existing under the laws of the state of Georgia.

29. Defendant Georgia Power is a corporation duly formed under the laws of the state of Georgia.

30. Georgia Power’s principal office address and registered agent are located at 241 Ralph McGill Boulevard, NE, Atlanta, Fulton County, Georgia 30308.

31. Georgia Power is subject to the jurisdiction of this Court.

32. Venue is proper in this Court.
33. The Court has subject matter jurisdiction over the claims in this action.

III. ADDITIONAL FACTUAL BACKGROUND

34. Under the Participation Agreement, Georgia Power serves as agent for all the co-owners with sole authority for the planning, licensing, design, construction, acquisition, completion, startup, commissioning, management, control, operation, maintenance, renewal, addition, replacement, modification, and decommissioning of Vogtle Units 3 and 4.

35. Georgia Power has had to report to the PSC regarding the Vogtle Units 3 and 4 project since its inception. The PSC had to approve Georgia Power’s entry into the project and Georgia Power’s costs (both shareable with the other co-owners and non-shareable) both at the outset of the project and ever since then. Georgia Power is required to file Unit 3 and 4 construction monitoring reports (VCM reports) with the PSC every six months. When the PSC reviews and approves Georgia Power’s VCM filings, its focus is on Georgia Power’s costs, not the costs of the other co-owners, who are not before the PSC.

36. As stated above, the threshold for determining whether the cost-sharing bands and freeze tender option have been reached is based on the EAC. Specifically, Section 17.11(b) of the Participation Agreement, as amended, provides that “[i]n the event the estimate at completion is revised and exceeds the VCM 19 Forecast by more than $800 million, GPC will pay [an additional 10% or 20%] . . . .” (emphasis added). Likewise, Section 17.11(c) provides that “[i]n the event the estimate at completion is revised and exceeds the VCM 19 Forecast plus $2.1 billion, each of the Participating Parties shall have a one-time option to be exercised or not at the time the budget forecast first shows the budget exceeding the VCM 19 Forecast plus $2.1 billion to [make a freeze option tender].” (emphasis added)
37. Once the cost-sharing provision has been triggered based on a revised EAC that exceeds $17.9 billion, then, under Section 7.11(b), Georgia Power “will pay” the increased cost percentages (10% or 20%) set forth in the first and second cost-sharing bands. Within the bands, the construction costs to which Georgia Power’s increased payment obligation applies is qualified. Specifically, Georgia Power is required to pay either an additional 10% or 20% of “Qualifying Construction Costs.” “Qualifying Construction Costs” exclude certain costs, such as those resulting from a force majeure event. This is in contrast to “Costs of Construction,” which include all construction costs. The Qualifying Construction Cost provision does not come into play in determining when Georgia Power’s cost-sharing obligation is triggered; it comes into play only as to costs actually incurred within a cost-sharing band.

38. Once the freeze tender option is triggered based on an EAC that exceeds $19.2 billion, the concept of Qualifying Construction Costs (e.g., force majeure) does not come into play at all. Rather, a co-owner has the right to make a tender “in exchange for GPC’s agreement to pay 100% of such Participating Party’s remaining share of Cost of Construction in excess of the VCM 19 Forecast plus $2.1 billion.” Indeed, while negotiating the Co-Owner Term Sheet, the co-owners specifically deleted the term, and concept of, “Qualifying Construction Costs” from the freeze tender option provision as reflected in the parties’ final agreement. As noted above, “Cost of Construction” includes all construction costs; it does not exclude costs resulting from force majeure events.

39. Even though the cost-sharing provisions have been triggered, Georgia Power continues to bill Oglethorpe for its full 30% ownership share of shareable costs as though the cost-sharing bands have not been triggered. Georgia Power is billing Oglethorpe without accounting for Georgia Power’s increased cost-sharing obligations.
40. Oglethorpe has exercised the freeze tender option.

41. Georgia Power, however, has taken the position that the freeze tender option has not been triggered.

42. Georgia Power asserts that the VCM 19 forecast was really $18.38 billion, not $17.1 billion, and that’s the starting point for both the cost-sharing provisions and freeze tender option.

43. As noted above, Georgia Power witnesses informed the PSC in VCM 19 that the new EAC forecast “was filed with VCM 19 and has been approved by the [other co-owners].” As demonstrated above, this refers to the forecast of $17.1 billion. No forecast of $18.38 billion was ever presented to the co-owners, much less approved by them. No forecast of $18.38 billion was ever filed with the PSC. Since 2017, the forecasted shareable costs of the project over time have been as follows:

<table>
<thead>
<tr>
<th>Date of Budget</th>
<th>Project Budget for Vogtle 3 and 4 Shareable Costs</th>
<th>Increase from Prior Project Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fall 2017 (at time of VCM-17), after Georgia Power completes its assessment of costs to complete the project and co-owners decide to proceed without Westinghouse EPC Contract</td>
<td>$14.9 billion</td>
<td></td>
</tr>
<tr>
<td>Fall 2018 (at time of VCM-19) after Georgia Power’s erroneous forecast, which increased the estimate to complete from approx. $9.45 billion to approx. $11.5 billion</td>
<td>$17.1 billion</td>
<td>$2.2+ billion</td>
</tr>
<tr>
<td>Fall 2020 (at time of VCM-23)</td>
<td>$17.4 billion</td>
<td>$325 million</td>
</tr>
<tr>
<td>Spring 2021 (at time of VCM-24)</td>
<td>$17.8 billion</td>
<td>$385 million</td>
</tr>
<tr>
<td>Fall 2021 (at time of VCM-25)</td>
<td>$18.9 billion</td>
<td>$1.1 billion</td>
</tr>
<tr>
<td>February 2022 (at time of VCM-26)</td>
<td>$20.5 billion</td>
<td>$1.6 billion</td>
</tr>
</tbody>
</table>

3 All values have been rounded for ease of reference.
44. In VCM 19, Georgia Power reported to the PSC that the new EAC increased its “share” of total costs to $8.4 billion.

45. Ignoring all prior cost forecasts for Vogtle Units 3 and 4, including the cost forecast of $17.1 billion that nearly brought the project to an end and was the reason the co-owners entered into the Co-Owner Term Sheet and Global Amendments, Georgia Power apparently takes the position that the term “VCM 19 Forecast,” which is defined as “the total project cost of which GPC’s share is $8.4 billion,” contains a hidden math formula. According to Georgia Power, one is to divide $8.4 billion by Georgia Power’s Ownership Interest (45.7%) to produce a result of $18.38 billion, and that number – which has never been a cost forecast for the project and has never been discussed by the parties – rather than $17.1 billion, should be viewed as the total project cost at the time of VCM 19. Georgia Power’s theory, while creative, is entirely inconsistent with Georgia Power’s own presentation of the relevant numbers at the time the co-owners entered into the Co-Owner Term Sheet and Global Amendments. Georgia Power’s presentation to the co-owners at their Vogtle Project Management Board meeting on October 25, 2018 is just one of the many sources that demonstrates that the term “the total project cost of which GPC’s share is $8.4 billion” clearly means $17.1 billion. Georgia Power presented the following (the original is attached as Exhibit “A”):

<table>
<thead>
<tr>
<th>August 2018 Reprojection</th>
<th>Total Forecast (in Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Shareable Budget (net of PG and Test Fuel Estimate)</td>
<td>$17,104</td>
</tr>
<tr>
<td>100% Shareable Budget at GPC % ($17.103 x 45.7%)</td>
<td>$7,817</td>
</tr>
<tr>
<td>Non-Shareable Items in GPC Forecast</td>
<td></td>
</tr>
<tr>
<td>Ad Valorem</td>
<td>$273</td>
</tr>
</tbody>
</table>
Parent Guarantee Refund | $188
Non-Shareable Legal and Regulatory | $82
GPC Total in Term Sheet | $8,360

46. Georgia Power’s $8.4 billion “share” as set forth above and as reported to the PSC includes both the shareable costs common to all the owners (of which Georgia Power’s percentage is 45.7% ($7.8 billion)), and non-shareable costs that are unique to Georgia Power, such as ad valorem taxes. Said another way, Georgia Power did not calculate its “share” of $8.4 billion by multiplying 45.7% times $18.38 billion. Instead, it derived this number ($8.4 billion) by multiplying 45.7% times the total project cost or forecast of $17.1 billion, and then adding in unique, non-shareable Georgia Power costs. The reverse is also true: the total project cost for all the co-owners cannot be determined by dividing $8.4 billion by 45.7%.

47. The $8.4 billion number included both Georgia Power’s 45.7% of costs shareable with all the co-owners plus Georgia’s Power’s non-shareable costs. It cannot properly be used in some sort of reverse math formula to retroactively revise the co-owners’ total project cost at the time of VCM 19. That number is, and always has been, $17.1 billion.

IV. CLAIMS FOR RELIEF

COUNT ONE
Breach of Contract (Equitable Relief and Damages)

48. Oglethorpe re-alleges and incorporates by reference paragraphs 1 through 47 above as if fully set forth herein.

49. The Participation Agreement, as amended, constitutes an enforceable contract under Georgia law.
50. Oglethorpe has fully performed all its obligations under the Participation Agreement.

51. Georgia Power has breached the Participation Agreement by, among other things,
   a. posting monthly budgets that fail to allocate costs in compliance with the cost-sharing provisions;
   b. invoicing Oglethorpe for costs in excess of what Oglethorpe owes under the cost-sharing provisions;
   c. withdrawing funds paid into the co-owner construction account by Oglethorpe in a manner inconsistent with the cost-sharing provisions; and
   d. failing to pay its required percentage of costs owed under the cost-sharing provisions.

52. Oglethorpe has suffered damage as a result of these breaches in an amount to be proved at trial, plus pre- and post-judgment interest.

53. Oglethorpe is entitled to recover damages because of Georgia Power’s breaches, plus attorneys’ fees and litigation costs.

54. Oglethorpe, its members, and the customers they serve are and will be irreparably harmed by having to pay construction and resulting financing costs that are not properly payable.

55. Oglethorpe is entitled to a decree of specific performance and injunctive relief requiring Georgia Power to:
   a. post monthly budgets that allocate costs in accordance with the cost-sharing provisions;
   b. invoice Oglethorpe in accordance with what Oglethorpe properly owes under the cost-sharing provisions;
c. withdraw funds paid into the co-owner construction account by Oglethorpe only in a manner consistent with the cost-sharing provisions;

d. as to invoices received after the cost-sharing bands were triggered (i.e., after February 2022), identify which costs, if any, Georgia Power contends are Qualifying Construction Costs (which contention Oglethorpe reserves the right to challenge); and

e. while this litigation is pending, track costs and allocations consistent with Oglethorpe’s interpretation of the Participation Agreement as asserted herein (i.e., the VCM 19 Forecast is $17.1 billion and Qualifying Construction Costs are not taken into account when determining the thresholds under the cost-sharing bands), so the parties and Court will be able to determine the proper allocation of costs.

**COUNT TWO**

Anticipatory Breach of Contract (Equitable Relief and Damages)

56. Oglethorpe re-alleges and incorporates by reference paragraphs 1 through 50 above as if fully set forth herein.

57. Oglethorpe has made a tender pursuant to Section 7.11(c) of the amended Participation Agreement.

58. Georgia Power has stated clearly and unequivocally to the co-owners and publicly that Oglethorpe’s right to make a tender under Section 7.11(c) has not been triggered.

59. As a result, Georgia Power has anticipatorily repudiated and breached its obligation to accept Oglethorpe’s tender and pay 100% of Oglethorpe’s remaining share of Cost of Construction in excess of the VCM 19 Forecast of $17.1 billion plus $2.1 billion.
60. Oglethorpe will be harmed by this breach in an amount to be proved at trial, plus pre- and post-judgment interest.

61. Oglethorpe is entitled to recover damages resulting from Georgia Power’s anticipatory breach of contract, plus attorneys’ fees and litigation costs.

62. Oglethorpe, its members, and the customers they serve will be irreparably harmed by having to pay construction and resulting financing costs in excess of what Oglethorpe owes under the freeze tender provision.

63. Oglethorpe is entitled to a decree of specific performance and injunctive relief requiring Georgia Power to:

   a. accept Oglethorpe’s tender;
   b. pay 100% of Oglethorpe’s remaining share of the Cost of Construction in excess of $19.2 billion;
   c. invoice Oglethorpe in accordance with what Oglethorpe properly owes under the freeze tender provision;
   d. withdraw funds paid into the co-owner construction account by Oglethorpe only in a manner consistent with the freeze tender provision; and
   e. while this litigation is pending, track costs and allocations consistent with Oglethorpe’s interpretation of the Participation Agreement as asserted herein (i.e., the VCM 19 Forecast is $17.1 billion and Qualifying Construction Costs are not taken into account when determining the freeze tender threshold), so the parties and Court will be able to determine the proper allocation of costs.
COUNT THREE
Breach of Implied Covenant of Good Faith and Fair Dealing
(EQUITABLE RELIEF AND DAMAGES)

64. Oglethorpe re-alleges and incorporates by reference paragraphs 1 through 63 above as if fully set forth herein.

65. The Participation Agreement imposed a duty of good faith and fair dealing on Georgia Power in the performance of its contractual obligations.

66. Georgia Power has breached and continues to breach this duty to deal fairly and in good faith with Oglethorpe.

67. Georgia Power’s breaches of its duty of good faith and fair dealing have damaged and will continue to damage Oglethorpe.

68. Oglethorpe is entitled to damages and equitable relief requiring Georgia Power to abide by the Participation Agreement.

COUNT FOUR
Declaratory Judgment (and Equitable Relief)

69. Oglethorpe re-alleges and incorporates by reference paragraphs 1 through 63 above as if fully set forth herein.

70. Georgia Power’s actions and positions taken with respect to the cost-sharing bands and freeze tender option have placed Oglethorpe in a state of uncertainty and insecurity with respect to its rights, status, and other legal relations under the Participation Agreement.

71. Among other things, Georgia Power’s position with respect to the cost-sharing bands has placed Oglethorpe in a state of uncertainty and insecurity as to whether it should continue making payments in excess of the amounts Oglethorpe believes are due under the cost-sharing bands of the Participation Agreement.
72. Georgia Power’s position with respect to the freeze tender option has placed Oglethorpe in a state of uncertainty and insecurity as to whether it should continue making payments in excess of the amounts Oglethorpe believes are due under the freeze tender provision of the Participation Agreement.

73. Additionally, Georgia Power’s position with respect to the freeze tender option has placed Oglethorpe in a state of uncertainty and insecurity as to the point at which the threshold for exercising the option has arisen or will arise.

74. This case presents an actual controversy in which the Court has power to declare Oglethorpe’s rights and other legal relations, under O.C.G.A. § 9-4-2(a).

75. The ends of justice require a declaration of Oglethorpe’s rights and other legal relations, under O.C.G.A. § 9-4-2(b).

76. Specifically, Oglethorpe is entitled to a declaration that:
   a. the first and second cost-sharing bands have been triggered;
   b. the freeze tender option has been triggered; and
   c. Oglethorpe has timely exercised the freeze tender option.

77. Oglethorpe is entitled, in addition to a declaration of its rights and other legal relations, to further plenary relief, legal or equitable, including damages and injunctive relief, under O.C.G.A. § 9-4-3(a).

78. Oglethorpe is entitled to a decree of specific performance and injunctive relief requiring Georgia Power to:
   a. post monthly budgets that allocate costs in accordance with the cost-sharing and freeze tender provisions;
b. invoice Oglethorpe in accordance with what Oglethorpe properly owes under the cost-sharing and freeze tender provisions;

c. withdraw funds paid into the co-owner construction account by Oglethorpe only in a manner consistent with the cost-sharing and freeze tender provisions;

d. as to invoices received after the cost-sharing bands were triggered (i.e., after February 2022), identify which costs, if any, Georgia Power contends are Qualifying Construction Costs (which contention Oglethorpe reserves the right to challenge);

e. accept Oglethorpe’s tender;

f. pay 100% of Oglethorpe’s remaining share of the Cost of Construction in excess of $19.2 billion; and

g. while this litigation is pending, track costs and allocations consistent with Oglethorpe’s interpretation of the Participation Agreement as asserted herein (i.e., the VCM 19 Forecast is $17.1 billion and Qualifying Construction Costs are not taken into account when determining the thresholds under the cost-sharing and freeze tender provisions), so the parties and Court will be able to determine the proper allocation of costs.

COUNT FIVE
Bad Faith and Stubborn Litigiousness

79. Oglethorpe re-alleges and incorporates by reference paragraphs 1 through 78 above as if fully set forth herein.

80. Georgia Power has acted in bad faith, been stubbornly litigious, and caused Oglethorpe unnecessary trouble and expense.
81. Georgia Power is therefore liable to Oglethorpe under O.C.G.A. § 13-6-11 for its expenses of litigation in this matter, including attorneys’ fees.

**V. PRAYER FOR RELIEF**

Oglethorpe therefore prays for the following relief:

a. Equitable relief;

b. A decree of specific performance;

c. Preliminary and permanent injunctive relief;

d. Declaratory relief;

e. Compensatory damages;

f. An award of interest;

g. An award of costs, attorneys’ fees, and other expenses of litigation; and

h. All further relief that this Court may deem appropriate

This 18th day of June, 2022.

/s/ James A. Orr  
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*Counsel for Plaintiff Oglethorpe Power Corporation*
EXHIBIT A
<table>
<thead>
<tr>
<th>August 2018 Reproduction</th>
<th>Total Forecast (in Millions)</th>
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<tr>
<td>100% Shareable Budget (net of PG and Test Fuel Estimate)</td>
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<tr>
<td>100% Shareable Budget at GPC % ($17.103 x 45.7%)</td>
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<td>Non-Shareable Legal and Regulatory</td>
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<td><strong>GPC Total in Term Sheet</strong></td>
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