

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>EQUAL EMPLOYMENT</b>	:	
<b>OPPORTUNITY COMMISSION,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION NO.</b>
	:	<b>1:13-CV-3225-AT</b>
<b>v.</b>	:	
	:	
<b>GEORGIA POWER COMPANY,</b>	:	
<b>Defendant.</b>	:	
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	:	
<b>MARK BUTLER, DALE ALLEN and</b>	:	
<b>MICKEY SIMMONS,</b>	:	
<b>Plaintiff-Intervenors,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>GEORGIA POWER COMPANY,</b>	:	
<b>Defendant.</b>	:	
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**CONSENT DECREE**

This action was instituted by the Equal Employment Opportunity Commission (the “EEOC” or the “Commission”) against Defendant Georgia Power Company (“Defendant” or “Georgia Power”) pursuant to the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.* (hereinafter “ADA”), and the Civil Rights Act of 1991, 42 U.S.C. § 1981(a), to remedy the alleged wrongful practices identified in the Complaint and Amended Complaint filed in this action.

The Commission alleges in the foregoing civil action that Georgia Power acted unlawfully by subjecting Dale Allen, Mark Butler, Jennifer Harper, Mickey Simmons, and a group of twenty individuals, to discrimination in violation of the ADA. In its Amended Complaint, the Commission seeks make-whole relief including, but not limited to, back pay with interest, compensatory and punitive damages, and injunctive and other affirmative relief. The EEOC sought relief on behalf of Dale Allen, Mark Butler, Jennifer Harper, Mickey Simmons, each of whom filed charges of discrimination with the Commission, and twenty other individuals whom it contends have been subjected to discrimination in violation of the ADA (hereafter the “Class” or “Claimants”). Georgia Power denies that it violated the ADA as alleged by the Commission in its Complaint, its Amended Complaint, or as alleged by the Intervenors in their respective complaints. The parties to this action desire to avoid the additional expense, delay, and uncertainty that would result from the continuance of this litigation, and desire to formulate a plan to be embodied in this Consent Decree that will promote and effectuate the purposes of the ADA. The parties want to conclude fully and finally all claims arising out of the Charges of Discrimination filed with the Commission by Dale Allen, Mark Butler, Jennifer Harper, and Mickey Simmons, the Commission’s Complaint and Amended Complaint, and the Intervenors’ Complaints. The parties

enter into this Consent Decree to further the objectives of the ADA and equal employment opportunity.

This Court has jurisdiction over the subject matter of this action and over the parties to this action, as the employment practices alleged to be unlawful in the Complaint and the Amended Complaint filed herein occurred within the jurisdiction of the Northern District of Georgia, Atlanta Division.

This Court has reviewed the terms of the proposed Consent Decree in light of the pleadings and the applicable law and regulations, and has approved this Consent Decree as one that will promote and effectuate the purposes of the ADA.

Now, therefore, this Court being fully advised in the premises, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. GENERAL PROVISIONS

1. Jurisdiction of this Court is pursuant to 28 U.S.C. §§ 1331, 1337, 1343, and 1345. This action is authorized pursuant to Section 107(a) and Section 503(c) of the ADA, 42 U.S.C. § 12117(a) and § 12203(c), which incorporate by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

2. The negotiation, execution, and entry of this Consent Decree by the parties shall not constitute an adjudication or finding on the merits of this case, and shall not be construed as an admission or a disavowal by either party with respect

to the claims asserted in this case. Nothing in this Consent Decree shall be admissible in any other judicial or administrative proceeding for any purpose except to enforce the terms of this Consent Decree.

3. Defendant shall comply with the Americans with Disabilities Act by ensuring that all persons with disabilities are provided an individualized assessment of his or her ability to perform the relevant job prior to an employment decision being made affecting those persons.

4. Defendant shall not retaliate against any person because that person is a beneficiary of this Consent Decree, or has provided information or assistance to the EEOC in connection with this action, or has participated in any other manner in any investigation or proceeding relating to this action. Defendant further shall not retaliate against individuals for engaging in protected conduct under the ADA.

## II. COMPANY POLICIES AND PROCEDURES

5. During the term of the Consent Decree Georgia Power shall:

(a) not discharge an employee, place an employee on a Disability Leave of Absence, prevent an employee from returning from a Disability Leave of Absence, or withdraw a conditional job offer to an applicant based on that employee or applicant posing a direct threat to himself/herself or others because of seizure(s) unless and until Georgia Power has conducted an individualized assessment of the employee's or applicant's present ability to safely perform the

essential functions of his or her job (or job applied for) and shall consider whether any requested reasonable accommodation would reduce or eliminate such threat to the health or safety of the employee/applicant or other individuals without causing an undue hardship.

(b) not discharge an employee, place an employee on a Disability Leave of Absence, prevent an employee from returning from a Disability Leave of Absence, or withdraw a conditional job offer to an applicant based on that employee or applicant posing a direct threat to himself/herself or others because of the use of a legal drug or medication prescribed to that individual unless and until Georgia Power has conducted an individualized assessment of that individual's present ability to safely perform the essential functions of his or her job (or job applied for). That individualized assessment may include but is not limited to, as appropriate: (i) determining when the employee or applicant takes or is directed to take the drug or medication; (ii) ascertaining how the drug or medication affects the employee and what side effects, if any, the employee or applicant actually experiences or is reasonably expected to experience by using the drug or medication; (iii) identifying any specific threat to the health or safety of the employee/applicant or other individuals which is caused by use of the drug or medication; and (iv) assessing whether any requested reasonable accommodation

can reduce or eliminate such threat to the health or safety of the employee/applicant or other individuals without causing an undue hardship.

(c) not discharge an employee, place an employee on a Disability Leave of Absence, prevent an employee from returning from a Disability Leave of Absence, or withdraw a conditional job offer to an applicant based on the fact that the employee poses a direct threat to himself/herself or others unless and until Georgia Power has conducted an individualized assessment of the individual's present ability to safely perform the essential functions of his or her job (or job applied for) and considered whether any requested reasonable accommodation would reduce or eliminate such threat to the health or safety of the employee/applicant or other individuals without causing an undue hardship.

(d) revise its Drug and Alcohol policy to specifically state that the Company will not discharge an employee, place an employee on a Disability Leave of Absence, prevent an employee from returning from a Disability Leave of Absence, or withdraw a conditional job offer to an applicant based on the fact that the employee poses a direct threat to himself/herself or others because of the use of a legal drug or medication prescribed to that individual unless and until Georgia Power has conducted an individualized assessment of the individual's present ability to safely perform the essential functions of his or her job (or job applied for) and considered whether any requested reasonable accommodation would reduce or

eliminate such threat to the health or safety of the employee/applicant or other individuals without causing an undue hardship. Said revisions shall be completed within 90 days of entry of this Consent Decree. Defendant shall provide EEOC with a copy of the revised policy within 100 days of the entry of the Consent Decree.

(e) revise its Seizure policy to specifically state that the Company will not discharge an employee, place an employee on a Disability Leave of Absence, prevent an employee from returning from a Disability Leave of Absence, or withdraw a conditional job offer to an applicant based on the fact that the employee poses a direct threat to himself/herself or others unless and until Georgia Power has conducted an individualized assessment of the individual's present ability to safely perform the essential functions of his or her job (or job applied for) and considered whether any requested reasonable accommodation would reduce or eliminate such threat to the health or safety of the employee/applicant or other individuals without causing an undue hardship. Said revisions shall be completed within 90 days of entry of this Consent Decree. Defendant shall provide EEOC with a copy of the revised policy within 100 days of the entry of the Consent Decree.

6. Prior to taking any adverse action against any employee or applicant (including discharging, declining to hire, placing the employee on a Disability

Leave of Absence, or preventing an employee from returning from a Disability Leave of Absence – hereafter sometimes “adverse action”) based on a medical impairment, seizure or the taking of any legally prescribed drug, Georgia Power shall follow these procedures:

- (a) Georgia Power shall exercise due diligence to evaluate the ability of the employee or applicant to safely perform the essential functions of the position held or sought by conducting an individualized assessment when the individual is deemed to be unable to perform one or more essential job functions and/or pose a direct threat to himself/herself/others;
- (b) Georgia Power shall provide written notice to the employee or applicant that contains the following:
  - (i) a statement that the employee or applicant has been evaluated under its Drug and Alcohol policy and/or under its Seizure policy and/or otherwise by its Medical Director, Medical Review Officer, or any employee in its Disability Management department;
  - (ii) an invitation to the employee or applicant to communicate with Georgia Power about the disqualification and his/her appropriateness for employment in the relevant position, including explicitly inviting the employee or applicant to provide information that the employee or applicant believes bears on his/her suitability for employment; and,
  - (iii) identification of the name, title and contact information (including telephone number, e-mail and business address) of the employee with whom the individual should communicate regarding the above information.
  - (iv) Timing/delivery of notice - The notice shall be delivered to the employee or applicant by reasonable means, and

shall afford the employee or applicant a period of not less than ten (10) business days, within which he/she may respond to Georgia Power before the contemplated adverse employment decision is made final.

- (c) Georgia Power shall evaluate all relevant information provided by the applicant for the purpose of adhering to the requirements of this Consent Decree.
- (d) Georgia Power shall maintain records of the information provided by the employee or applicant and any other records or documents relied upon by Georgia Power in making the relevant decision throughout the term of this Decree.

7. Any employee or applicant who is disqualified from employment after Georgia Power completes the individualized assessment required in this section shall be given written notice of his or her disqualification within ten (10) business days of the decision to disqualify. Throughout the term of this Decree Georgia Power shall maintain a copy of this notification along with all other documents made or obtained under the provisions of this section.

### III. TRAINING

8. During the term of this Consent Decree, Georgia Power shall hold one (1) training session annually for the next three years, the cost of which is to be borne by Georgia Power, to be attended by the following persons who are involved in making decisions or recommendations concerning whether an individual is disqualified from work based on a medical impairment and/or denied a reasonable accommodation for a medical impairment: (a) the Company's Disability

Management Group (including its Medical Director; Medical Review Officer; and all employees who work with the Medical Director or Medical Review Officer on making the decisions or recommendations referenced in this paragraph); (b) all Labor Relations Coordinators who are involved in making the decisions or recommendations referenced in this paragraph; and (c) all Human Resources personnel who are involved in making the decisions or recommendations referenced in this paragraph.

Georgia Power shall include at least one person identified in Paragraph 8(a) in all decisions or recommendations referenced in this paragraph and will also include a person or persons identified in Paragraph 8(b) or 8(c) where necessary and appropriate under the circumstances.

9. The training required under this section shall address the Defendant's equal employment opportunity obligations under the ADA, including, but not limited to the following topics: (a) the Company's obligation to not discriminate against employees because they have a disability and not to retaliate against employees who have engaged in protected activity; (b) any medical inquiry that is made to applicants prior to making a conditional offer of employment complies with the requirements of 42 U.S.C. § 12112(d); (c) the obligation for an employer to conduct an individualized assessment of an employee or prospective employee's disability before taking any adverse employment action based on the employee

posing a direct threat due to his or her disability; and (d) the employer's obligation to provide a reasonable accommodation to disabled employees so they may perform the essential functions of their job, unless doing so would pose an undue hardship.

10. Georgia Power shall also re-distribute its EEO policy to training participants as part of the training. The training shall also cover the matters addressed in Section II of this Consent Decree.

11. The first of the above-referenced training sessions shall be completed within six (6) months after entry of this Consent Decree. Georgia Power shall provide written certification to the Commission of training completed pursuant to this Section within fifteen (15) business days following completion of training. The certification shall include the name(s) and qualifications of the person(s) providing instruction, names and job titles of attendees, length of training, and a detailed outline of the training topics.

12. All written notice and certification required by this Section of the Consent Decree shall be addressed and forwarded to the EEOC at EEOC-ATDO-decree-monitoring@eoc.gov.

#### IV. REPORTING

13. During the term of this Consent Decree, Defendant shall submit reports to the EEOC at six-month intervals, the first being due six (6) months after

the entry of this Consent Decree. Each report shall contain the following information:

- (1) A list of all employees in the Generation Group, the Transmission Group, and the Distribution Group, who were placed on a Disability Leave of Absence, not allowed to return from a Disability Leave of Absence, or discharged related to an impairment or disability or under Georgia Power's Seizure policy or its Drug and Alcohol Policy (for use of a Legal Drug (as defined in that Policy)) during the reporting period. Along with the employee's name, the report shall also include:
  - (a) Current contact information for the employee, including address and telephone number.
  - (b) A reasonably detailed summary of the basis for the decision.
  - (c) The medical impairment, disability or legal drug or medication at issue.
  - (d) Copies of any Physical Limitation Evaluations, Functional Capacity Examinations, and Fitness for Duty Evaluations used in making the decision at issue.
  
- (2) A list of all applicants for any positions in the Generation Group, the Transmission Group, and the Distribution Group who were not hired for any reason related to an impairment or disability or pursuant to Georgia Power's Seizure policy or its Drug and Alcohol Policy (for use of a Legal Drug (as defined in that Policy)) during the reporting period. Along with the applicant's name, the report shall also include:
  - (a) Current contact information for the applicant, including address and telephone number.
  - (b) A reasonably detailed summary of the basis for the decision.
  - (c) The medical impairment, disability or legal drug or medication at issue.
  - (d) Copies of any Physical Limitation Evaluations, Functional Capacity Examinations, and Fitness for Duty Evaluations used in making the decision at issue.

Georgia Power is not required to include in this report any employee or applicant for whom Georgia Power performed an individualized assessment for a medical condition or under its Seizure policy or its Drug and Alcohol Policy if that employee or applicant was not subjected to an adverse employment action as defined in paragraph 6 above.

In the event there is no activity to report pursuant to this paragraph, Georgia Power shall send the Commission a “negative” report indicating no activity.

#### V. DISTRIBUTION OF REVISED POLICIES

14. Within 100 days of entry of this Decree, Georgia Power shall distribute a copy of its revised Drug and Alcohol Policy and its revised Seizure policy as referenced in paragraph 5(d) and 5(e) *supra* to all employees. Distribution shall be made by sending an email to all employees concerning the changes to these Policies including a hyperlink to the revised policies appearing on the Company’s intranet site.

15. During the term of this Consent Decree, Georgia Power shall continuously post its EEO policy on its Intranet site.

#### VI. INDIVIDUAL RELIEF

16. Georgia Power, in settlement of all claims alleged by the Commission in its Complaint and Amended Complaint, and all claims asserted in the Charges of

Discrimination filed by Dale Allen, Mark Butler, Jennifer Harper, and Mickey Simmons on which this action is premised, shall pay the total sum of \$1,586,500.00 (One Million, Five Hundred and Eighty-Six Thousand, Five Hundred Dollars and No/100) in settlement of such claims. Payments in amounts designated by the EEOC within seven (7) calendar days of the entry of the Consent Decree (not to exceed \$\$1,586.500.00) shall be or already have been made to the following Claimants directly:

Dale Allen

Kimberly Ashley

James Bennett

Mark Butler

R.C. Clonts

Brook Duncan

Mike Faughnan

Jennifer Harper

Terryl Jones

Donald Jordan

Richard Lanier

Ross Marshall

Timothy Millican

Wallace Moore

Kimberly Patterson

Evan Pope

Michelle Potter

Mickey Simmons

John Tatum

Chad Thompson

J.W. Tidwell

John Turner

Martha Uhland

Steven Vollrath

Within twelve (12) calendar days after the entry of the Consent Decree, Defendant will send a release of claims to each Claimant's private attorney or in the case of unrepresented claimants, to an attorney designated by the EEOC ("Designated Attorney"). Defendant will also send the Designated Attorney's fee at the time the releases are sent. Claimants will have forty(40) calendar days from the date the private attorney or Designated Attorney receives the releases and fee (if applicable) to return the executed release and necessary tax forms to Defendant. Within twenty-one (21) calendar days after Defendant's receipt of the executed releases and tax forms, Defendant will make payment to all Claimants who

executed and did not revoke the release and provided the required tax form.

Within five (5) business days of issuing a payment to any Claimants, Defendant shall send EEOC a copy of the letter and checks issued to the Claimants.

If any Claimants fail or refuse to sign the release described in the preceding paragraph or revoke their execution of that release, then within one hundred thirty (130) calendar days of entry of this Consent Decree, Defendant will distribute that Claimant's funds to a Georgia-based charitable organization or organization that has been designated by EEOC within one hundred (100) calendar days of the entry of this Consent Decree. Within five (5) business days of making payment to the charitable organization, Defendant will send the EEOC a copy of the letter and checks issued to the charitable organization, along with a list of Claimants whose monies remained in the unclaimed fund that was donated to the charitable organization. If all monies payable under this Consent Decree are paid out to Claimants such that no unclaimed funds remain, then no later than one hundred (100) calendar days after entry of this Consent Decree, Defendant will notify EEOC that no unclaimed funds remain.

17. Neither the EEOC nor Georgia Power make any representation or assume any responsibility for any tax liability, assessments, interest, penalties and/or costs that any individual named above may or may not incur under local, state and/or federal law on the payments identified in this Section.

VI. DECREE TERM AND PERIOD OF JURISDICTION

18. This Consent Decree shall continue to be effective and binding upon the parties to this action for a period of thirty six (36) calendar months immediately following the entry of the Consent Decree, provided that all remedial benefits required hereby have been received or offered prior to its expiration and provided further, that all required reports and certifications are submitted at least thirty (30) days before the expiration date of the Consent Decree. If required reports are not submitted within thirty (30) days of the expiration date or if the remedial provisions are not complete, the Consent Decree will be automatically extended until these provisions are completed.

19. Upon the Court's execution and entry of this Consent Decree, this case shall be dismissed with prejudice. This Court shall retain jurisdiction over this action for the purposes of clarifying and enforcing this Consent Decree and for any other appropriate or equitable purposes for thirty-six (36) calendar months from the date of entry of this Consent Decree, unless the Court acts or the Commission has, prior to the expiration of said 36 calendar month period, moved to enforce compliance with the Consent Decree. If the Court acts or the Commission has moved to enforce compliance with this Consent Decree within this period, this Court shall retain jurisdiction of this action until all issues relating to all such motions that are made during the 36 calendar month period have been

resolved. At the expiration of 36 calendar month period of jurisdiction, if all obligations have been performed by the parties under this Consent Decree, and no disputes regarding compliance remain unresolved, the Consent Decree shall operate as an automatic dismissal with prejudice.

VI. COMPLIANCE OFFICIAL

20. Georgia Power has designated Mike Clay to be its Compliance Official who shall be responsible for Georgia Power's compliance with this Consent Decree. The Compliance Official is to be responsible for coordinating and overseeing Georgia Power's compliance with the specific terms of this Consent Decree. If Georgia Power changes its designated Compliance Official it shall provide the EEOC with notice of the new Compliance Official's name and contact information within fifteen (15) business days of making the change.

VII. PROCEDURE FOR ENFORCING COMPLIANCE

21. The parties will attempt to resolve any disputes regarding the enforcement of this Consent Decree by informal consultation and/or mediation before seeking enforcement through the judicial process. The Commission will notify, in writing by first-class mail and email, Georgia Power's Compliance Official if it has any reason to believe that any act or omission by Georgia Power is in violation of the Consent Decree. Georgia Power shall have thirty (30) days after the receipt of such notification to cure any such alleged deficiency, and to notify

the Commission, by written report addressed to the Regional Attorney at the EEOC's Atlanta District Office, of the measures taken to cure the alleged deficiencies.

22. If upon receipt of Georgia Power's report, the Commission concludes that the deficiency has not been satisfactorily cured by Georgia Power, the Commission shall seek to resolve the alleged deficiency through good faith conciliation or mediation. If the alleged deficiency is not resolved within thirty (30) days after the initiation of such good faith conciliation or mediation process, then the Commission may seek enforcement of this Consent Decree through the judicial process.

23. Nothing in this agreement shall be deemed to prohibit any matter which occurred during the term of this Consent Decree, and which constitutes a dispute as contemplated by this Section, from being fully and completely resolved in the manner described in this Section, even if the term of the Consent Decree expires prior to thirty (30) days after the initiation of good faith conciliation or mediation as set forth in this Section.

#### VIII. OTHER ACTIONS

24. The Commission shall not commence any action or prosecute Georgia Power for any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities that arise out of Dale Allen's, Mark

Butler's, Jennifer Harper's, and Mickey Simmons's claims that they were subjected to discrimination in violation of the ADA, as embodied in EEOC Charge Numbers 410-2011-00077 (Allen); 410-2011-00947 (Butler); 410-2012-00684 (Harper); and 410-2012-02376 (Simmons), which were filed with, and investigated by the EEOC's Atlanta District Office. The Commission also shall not commence any action or prosecute Georgia Power (including a Commissioner's Charge or Lawsuit) for any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities that arise out of any allegations made in the Amended Complaint that relate to any persons who were identified as Class members in this litigation or who could have been identified as Class members in this litigation at or prior to the time of the filing of the Amended Complaint.

25. This Consent Decree in no way affects the Commission's right to process any pending or future charges that may be filed against Georgia Power by other individuals in accordance with standard Commission procedures, and to commence and prosecute civil actions pursuant to the ADA (or any other statutes enforced by the Commission) on any such charges. Nothing in this Consent Decree shall be construed to limit or reduce Georgia Power's obligation to fully comply with the ADA. Nothing herein shall preclude the Commission from bringing an action to enforce the provisions of this Consent Decree.

IX. COSTS AND ATTORNEY'S FEES

26. The EEOC, the Intervenors, and Georgia Power shall bear their own respective costs and attorneys' fees for this action.

27. All reports or other documents sent to the Commission by Defendant pursuant to this Consent Decree shall be sent: (a) by electronic mail to [EEOC-ATDO-decree-monitoring@eoc.gov](mailto:EEOC-ATDO-decree-monitoring@eoc.gov) or (b) if by mail to Regional Attorney, EEOC, Atlanta District Office, 100 Alabama Street SW, Suite 4R30, Atlanta, GA 30303.

28. The parties hereto and undersigned attorneys of record for the parties in the above-styled action hereby consent to the entry of the foregoing Consent Decree.

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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United States District Court Judge  
Northern District of Georgia, Atlanta Division

**BY CONSENT:**

/s/Steven A. Wagner  
Steven A. Wagner  
Georgia Bar No. 000529  
Ottrell F. Edwards  
Supervisory Trial Attorney  
Georgia Bar No. 141979

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