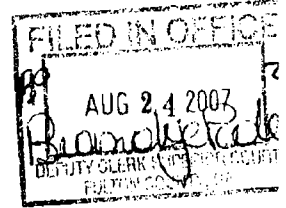


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IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



GEORGIA POWER COMPANY; THE  
SOUTHERN COMPANY; and SOUTHERN  
POWER COMPANY,

Plaintiffs,

v.

BART L. GRAHAM, STATE  
REVENUE COMMISSIONER,

Defendant.

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CIVIL ACTION FILE

NO. 2007-CV-137383

**ANSWER OF BART L. GRAHAM,  
STATE REVENUE COMMISSIONER**

COMES NOW Bart L. Graham, State Revenue Commissioner (hereinafter the  
"Commissioner"), by and through counsel, and answers the Complaint in the above-styled action  
as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks subject matter jurisdiction.

THIRD DEFENSE

The action is barred in whole or in part by the doctrine of sovereign immunity.

FOURTH DEFENSE

The action and relief requested are barred in whole or in part by the statute of limitations.

FIFTH DEFENSE

The Commissioner responds to the individual paragraphs of the Complaint as follows:

### Unnumbered Introductory Paragraph

In response to the allegations contained in the unnumbered introductory paragraph of the Complaint, the Commissioner admits the allegation that Plaintiffs are seeking to file the action against Bart L. Graham, State Revenue Commissioner in his official capacity and that Plaintiffs' refund claim rests on their construction of O.C.G.A. § 48-7-40.15 (the "Ports Tax Credit"). The Commissioner denies all other allegations in the unnumbered introductory paragraph.

1.

In response to the allegations contained in paragraph 1 of the Complaint, the Commissioner admits that Plaintiffs filed the Complaint pursuant to the stated statutory provision. The Commissioner denies that Plaintiffs are entitled to the Ports Tax Credit set out in O.C.G.A. § 48-7-40.15 for the tax years 2002, 2003, and 2004. To the extent paragraph 1 purports to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contention as to the content and meaning of the statute. The Commissioner is without knowledge or information sufficient to form a belief as to truth of Plaintiffs' allegations with regard to Georgia Power's port traffic. Such allegations are therefore denied. The Commissioner admits that Plaintiffs did not claim the Ports Tax Credit on their original 2002, 2003, and 2004 consolidated income tax returns and that Plaintiffs filed claims for refund with Defendant which refund claims are still pending before the Commissioner. The Commissioner denies that Plaintiffs are entitled to a refund on the basis alleged in this Complaint and all other allegations in paragraph 1 not specifically admitted or denied herein.

2.

In response to the allegations contained in paragraph 2 of the Complaint, on information and belief the Commissioner admits that Georgia Power Company is a Georgia corporation with its principal place of business in Fulton County, Georgia, that it is a public utility regulated by the Georgia Public Service Commission and is a subsidiary of the Southern Company. The Commissioner is without knowledge or information sufficient to determine the truth of the remaining allegations in paragraph 2 of the Complaint.

3.

In response to the allegations contained in paragraph 3 of the Complaint, on information and belief the Commissioner admits the allegations in paragraph 3 of the Complaint.

4.

In response to the allegations contained in paragraph 4 of the Complaint, on information and belief the Commissioner admits that the Southern Power Company is a Delaware corporation with its principal place of business in Fulton County, Georgia. The Commissioner is without knowledge or information sufficient to form information sufficient to form a belief as to the remaining allegations contained paragraph 4 of the Complaint.

5.

The Commissioner admits the allegations contained in paragraph 5 of the Complaint.

6.

In response to the allegations contained in paragraph 6 of the Complaint, the Commissioner admits that personal jurisdiction is proper in this Court, but denies for the reasons stated in the defenses set out above that this Court has subject matter jurisdiction of the issues

raised herein. To the extent paragraph 6 purports to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required.

7.

In response to the allegations contained in paragraph 7 of the Complaint, the Commissioner admits that should the Court have subject matter jurisdiction over this Complaint, venue would be proper.

Paragraphs 8 through 23.

In response to the allegations contained in paragraphs 8 through 23 of the Complaint, the Commissioner responds that such allegations are not factual, not relevant to Plaintiffs' Complaint, nor within the personal knowledge of Plaintiffs. Such allegations are therefore denied. To the extent paragraphs 8 through 20 purport to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contention as to the content and meaning of the statutes.

24.

The Commissioner admits the allegations contained in paragraph 24 of the Complaint.

25 through 28.

In response to the allegations contained in paragraphs 25 through 28 of the Complaint, the Commissioner responds that to the extent such paragraphs attempt to set forth the content and meaning of statutes and regulations, such statutes and regulations speak for themselves and no response is required.

29 through 31.

The Commissioner admits the allegations contained in paragraphs 29 through 31.

32 through 34.

To the extent paragraphs 32 through 34 purport to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contentions as to the content and meaning of the statute.

35.

The Commissioner admits the allegations set forth in paragraph 35 of the Complaint.

36.

In response to the allegations contained in paragraph 36 of the Complaint, the Commissioner is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

37.

The Commissioner admits the allegations set forth in paragraph 36 of the Complaint.

38.

In response to the allegations contained in paragraph 38 of the Complaint, the Commissioner is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein

39.

The Commissioner denies the allegations contained in paragraph 39 of the Complaint.

40.

To the extent paragraph 40 purports to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required,

the Commissioner denies as stated Plaintiffs' contention as to the content and meaning of the statute.

41.

The Commissioner admits the allegations contained in paragraph 41 of the Complaint.

42.

In response to the allegations contained in paragraph 42 of the Complaint, the Commissioner denies that Plaintiffs are entitled to the Ports Tax Credit for the years at issue and that Plaintiffs overpaid Georgia income tax in that year. The Commissioner is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 42.

43.

In response to the allegations contained in paragraph 43 of the Complaint the Commissioner admits that Plaintiffs filed claims for refund on or about the date stated. The Commissioner denies that Plaintiffs made any overpayments of Georgia Income Tax and further denies that Plaintiffs are entitled to a refund on the basis claimed.

44.

The Commissioner admits the allegations contained in paragraph 44.

45.

To the extent paragraph 45 purports to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contention as to the content and meaning of the statute. Further, the Commissioner incorporates as if fully restated herein the defenses raised above.

46.

The foregoing responses are incorporated by reference into the following responses.

47.

The Commissioner denies the allegations contained in paragraph 47 of the Complaint.

48.

The Commissioner admits that Plaintiffs attempted to file a refund claim pursuant to the statute cited. The Commissioner denies all other allegations contained in paragraph 48 of the Complaint.

49 through 50.

To the extent paragraph 49 through 50 purport to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contention as to the content and meaning of the statute.

51.

The Commissioner admits the allegations contained in paragraph 51 of the Complaint.

52.

In response to the allegations contained in paragraph 52 of the Complaint the Commissioner denies that Plaintiffs are entitled to a refund of any portion of their 2002 tax year Georgia income tax. The Commissioner admits that he issued no decision on Plaintiffs' refund claim.

53.

The foregoing responses are incorporated by reference into the following responses.

54.

The Commissioner denies the allegations contained in paragraph 54 of the Complaint.

55.

The Commissioner admits that Plaintiffs attempted to file a refund claim pursuant to the statute cited. The Commissioner denies all other allegations contained in paragraph 55 of the Complaint.

56 through 57.

To the extent paragraphs 56 through 57 purport to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contentions as to the content and meaning of the statute.

58.

The Commissioner admits the allegations contained in paragraph 58.

59.

In response to the allegations contained in paragraph 59 of the Complaint the Commissioner denies that Plaintiffs are entitled to a refund of any portion of their 2003 tax year Georgia income tax. The Commissioner admits that he issued no decision on Plaintiffs' refund claim.

60.

The foregoing responses are incorporated by reference into the following responses.

61.

The Commissioner denies the allegations contained in paragraph 61 of the Complaint.



62.

The Commissioner admits that Plaintiffs attempted to file a refund claim pursuant to the statute cited. The Commissioner denies all other allegations contained in paragraph 62 of the Complaint.

63 through 64.

To the extent paragraphs 63 through 64 purport to set forth the content and meaning of statutes, such statutes speak for themselves and no response is required. To the extent a response is required, the Commissioner denies as stated Plaintiffs' contentions as to the content and meaning of the statute.

65.

The Commissioner admits the allegations contained in paragraph 65 of the Complaint.

66.

The Commissioner denies that Plaintiffs are entitled to a refund of any portion of their 2004 tax year Georgia income tax. The Commissioner admits that he issued no decision on Plaintiffs' refund claim.

67.

The Commissioner denies every allegation not specifically admitted, denied or qualified herein.

WHEREFORE, the Commissioner respectfully request that the Claim for Refund be denied and that he be granted such other relief as the Court deems just and proper.

This 24th day of August, 2007.

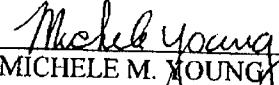
Respectfully submitted,

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