BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

Review of Proposed Revisions and Verification Of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Sixth Semi-Annual Construction Monitoring Report	)	Docket No. 29849

POST-HEARING BRIEF OF GEORGIA WATCH

I. INTRODUCTION

This matter is presently before the Georgia Public Service Commission ("Commission") as a result of Georgia Power Company ("Georgia Power" or "Company") filing its Sixth Semi-Annual Construction Monitoring Report for Plant Vogtle Units 3 and 4 ("Vogtle 6th CMR") on February 28, 2012. Georgia Watch hereby submits this Post-Hearing Brief to show the following:

A. The Project is only one-third complete and is already on the brink of proving to have been an uneconomic decision for consumers;

B. Georgia Power must allow for meaningful analyses to be performed to assess the true economics of the Project on a cost-to-complete basis; and

C. The Commission's decision not to impose a risk-sharing mechanism is proving itself to be harmful to consumers and must be revisited in the next construction monitoring case.

II. PROCEDURAL BACKGROUND

Following the filing of the Vogtle 6th CMR, the Commission issued a procedural and scheduling order on March 29, 2012, for the purpose of scheduling hearings and events related thereto. Petitions to intervene were filed timely by Resource Supply Management, Georgia

Watch, and the Southern Alliance for Clean Energy for this phase of the case.

Pursuant to the procedural and scheduling order, Georgia Power pre-filed the direct testimony of Kyle C. Leach and David L. McKinney on April 6, 2012, to which very minor corrections were made in an amended version of the testimony that was pre-filed on April 17, 2012. Thereafter, Georgia Power presented the testimony of these witnesses at a hearing that was scheduled for and held before the Commission on May 9, 2012.

On May 30, 2012, Public Interest Advocacy Staff ("Staff") pre-filed the direct testimony of Philip Hayet, E. Cary Cook, and William R. Jacobs, Jr., Ph.D., which testimony was the subject of a hearing scheduled for and held before the Commission on June 13, 2012. No other Intervenor presented witness testimony in this matter.

On June 29, 2012, Georgia Power filed a letter with the Commission indicating that it would not be pre-filing rebuttal testimony in this matter, thereby obviating the need for the remaining hearing scheduled in this docket.

Following the filing of briefs and proposed orders by parties on August 3, 2012, the Commission is scheduled to render a decision in this matter at its regularly scheduled Administrative Session on August 21, 2012.

III. ARGUMENT AND CITATION OF AUTHORITY

A. THE PROJECT IS ONLY ONE-THIRD COMPLETE AND IS ALREADY ON THE BRINK OF PROVING TO HAVE BEEN AN UNECONOMIC DECISION FOR CONSUMERS.

To date, the Company has spent $1.8 billion on the Project. Tr. 181, l. 17. Staff's "cost-to-complete" analysis shows that if the $1.8 billion already spent were to be ignored, the cost of finishing the Project would be $2.2 billion more economic than building the equivalent natural gas combined cycle from scratch. Tr. 242, ll. 19-20. While the Staff's "cost-to-complete"

analysis ignores the $1.8 billion already spent, consumers cannot. This is because they are the ones that will have to pay it.

Said differently, building a nuclear plant from scratch for the $6.113 billion certified cost would only have been $400 million more economic than building natural gas generation from scratch, not $2.2 billion more.[1] Since it now appears that the Project is not going to be built at the current certified cost, even this $400 million benefit is a great uncertainty.[2] Ironically, $400 million is the exact amount known to be disputed costs attributable to design changes and schedule delays for which both the Company and Consortium disavow responsibility. Tr. 63, ll. 1-18. If consumers get saddled with this cost, the benefit of the Project having been selected as the most economic resource will disappear completely. Further, Georgia Power witnesses testified at the hearing that one-third of the Project has been completed. Tr. 35, ll. 20-21. In terms of costs, it is unknown at this time how many more change orders, cost increase disputes, and schedule delays may materialize. In light of these eventualities, the Project could very easily prove to have been an uneconomic decision for consumers.

B. GEORGIA POWER MUST ALLOW FOR MEANINGFUL ANALYSES MUST BE PERFORMED TO ASSESS THE TRUE ECONOMICS OF THE PROJECT ON A COST-TO-COMPLETE BASIS.

In conjunction with the filing the Seventh Construction Monitoring Phase Report and corresponding testimony, Georgia Power should be directed by the Commission to provide

[1] This $400 million is derived from taking from the $2.2 billion the $1.8 billion in "sunk costs" that ratepayers will have to pay unless they can show that approved costs in this amount represent expenditures that were the result of illicit conduct or imprudence as required by the Commission's Order. As noted elsewhere in this Brief, this will be virtually impossible.

[2] Dr. Jacobs testified at the hearing that the Company will be unable to complete the Project for the certified costs. Tr. 293, ll. 24-25; 294, l., 1.

supplemental Project cost forecasts that include estimates for all potential change orders and potential scheduling delays identified by Dr. Jacobs in his testimony.

Throughout the present phase of the construction monitoring docket, Georgia Power and the Consortium have been left to determine when such costs will impact the economic analysis of the Project. Tr. 317, ll. 3-5. As a result, a number of potential change orders that could "significantly impact" the Project identified previously in the 3rd, 4th and 5th semi-annual construction monitoring proceedings still remain open in this case. Tr. 285, ll. 7-23; 286, ll. 1-3. No cost assessment has been made of them because they reportedly are not final. Tr. 315, 9-14. In addition, issues remain outstanding regarding the design and fabrication of modules and sub-modules at the Shaw Modular Solutions facility, and Vogtle-specific certified for construction design packages required to meet the Project schedule remain. Tr. 294, l. 25; Tr. 295, lines 1-8. The Company's potential costs resulting from this situation have not been included in Project estimates, either.

This uncertainty with Project costs was identified by Dr. Jacobs as inhibiting Staff from conducting meaningful analyses to determine whether the Project is economic. Tr. 294, ll. 18-24. He noted that many of the potential change orders have been open for two years but costs and responsibility for them have not been determined. Tr. 301, ll. 15-24. Dr. Jacobs stated that some of the potential change orders **will** turn into change orders for the Project that will have a cost. Tr. 315, ll. 24-25. In light of these disclosures, it is not practical for analytical purpose for Georgia Power to be permitted to only to file projections that presume that none of these costs will ever have a financial impact on the Project.

To address this situation, Georgia Power should be directed to obtain cost information from the Consortium for all such pending change orders and known schedule delays, although

not final and determined to be the responsibility of Georgia Power. In running its next set of economic analyses, the Company and Staff should use this data to perform its analyses to assess whether the Project is economic by producing additional scenarios that assume 1) the Company is *responsible for* ***all*** *such costs* from the scheduling delays and potential change orders, and 2) the Company is *responsible for* ***none*** *of these same costs.* These "best case" and "worst case" scenarios will provide a range of potential outcomes and will assist the Commission in conducting a more meaningful cost-to-complete analysis for the Project that the one currently being utilized. To be clear, the "worst case" scenario is not intended to suggest that either Georgia Power or consumers are responsible for additional costs. Rather, its purpose is to give the Commission some idea of the potential impact to the Project if the Consortium were determined not to be responsible for these costs.

C. THE COMMISSION'S DECISION NOT TO IMPOSE A RISK-SHARING MECHANISM IS PROVING ITSELF TO BE HARMFUL TO CONSUMERS AND MUST BE REVISITED IN THE NEXT CONSTRUCTION MONITORING CASE.

Over the course of a three-year period, Staff presented the Commission with multiple opportunities[3] to protect consumers with a risk-sharing mechanism that would fairly allocate between the Company's shareholders and ratepayers the risk of cost overruns as well as provide Georgia Power with a strong financial incentive to effectively manage the costs of the Project. The Company very aggressively opposed each and every attempt to implement such a measure, alleging that such action was either unlawful or unwarranted.

---

[3] *See, Georgia Power Company's Application for the Certification of Vogtle Generating Units 3 and 4 and Upgraded Integrated Resource Plan, Docket No. 27800,* August 1, 2008*; Review of Proposed Revisions and Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Third Semi-Annual Construction Monitoring Report,* Docket No. 29849, August 31, 2010; and *Review of Proposed Revisions and Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Third Semi-Annual Construction Monitoring Report (Risk-Sharing Mechanism)*, Docket No. 29849, April 20, 2011.

In ultimately deciding the matter, the Commission unanimously voted to issue an *Order Adopting Stipulation Regarding a Risk Sharing Mechanism* ("Order") dated August 4, 2011, that did not impose any type of risk-sharing mechanism to protect consumers and encourage the Company's vigilance in managing the costs of the Project. Instead, the Commission found and concluded that it was "in the public interest to decline the adoption of a risk-sharing mechanism due to the reasonable settlement [Stipulation] reached by Staff and Georgia Power."[4]

By looking at the terms of the Stipulation adopted in the Order, however, no explanation can be derived how exactly the public interest is served by a one-sided arrangement favoring the Company's shareholders at the utter and complete expense of consumers. As written, the Stipulation does four things: 1) paraphrases existing law that provides that Project expenditures approved by the Commission subsequently can be excluded from rate base pursuant to O.C.G.A. 46-3A-7(b) upon a finding that they had been incurred through illicit conduct[5] or imprudence; 2) places the burden of proof on a party moving to exclude verified costs from rate base by demonstrating that they resulted from illicit conduct or imprudence on the part of Georgia Power; 3) expresses agreement between Staff and the Company that the Commission should continue to monitor the Project at this agency already intended to do; and, 4) calls for the withdrawal of support by Georgia Power and Staff of positions on an incentive/risk-sharing mechanism.

Nothing in this Order and its Stipulation serve the public interest by providing consumers with any meaningful avenue of protection from cost overruns that will occur on the Project. On the contrary, what the Order does is to make it explicit that unless consumers can

[4] Id. at 3; Exhibit A, *Stipulation.*

[5] For purposes of this Brief, "illicit conduct" includes fraud, concealment, failure to disclose a material fact, or criminal misconduct, all of which are expressly referenced in O.C.G.A. 46-3A-7(b).

show imprudence or illicit conduct on the part of the Company for any approved Project expenditures, they will be paid by consumers. Practically speaking, it will be virtually impossible for consumers to prevail in such a challenge against Georgia Power. This is because state law does not afford any group advocating on their behalf discovery rights to obtain information directly from the Company to further any allegation that illicit conduct or imprudence by Georgia Power warrant any approved costs being excluded from rate base.[6] Also lacking is the availability of any source through which consumers could fund expert witness testimony that is essential to making a finding that any approved costs at issue should subsequently be disallowed by the Commission. [7]

In failing to protect consumers in its Order declining to adopt a risk-sharing mechanism, the Commission has conferred upon Georgia Power's the tremendous benefit of its shareholders not having to pay so much as one nickel of any cost overruns that are incurred on this Project. The patent unfairness of such a result became readily apparent through testimonial evidence provided in this case regarding the occurrence of an extremely careless and avoidable mistake made by the Company and Consortium in placing rebar in the nuclear island, the complete inability of these same parties to agree to a fully integrated project schedule to effectively manage the Project, and the existence of a $400 million dispute between the Consortium and Georgia Power.

With respect to the installation of rebar in the nuclear island, on February 10, 2012, the combined operating licenses for Vogtle Units 3 and 4 were issued by the Nuclear Regulatory

[6] The Consumers' Utility Counsel had this right, which it exercised often before being defunded by the Governor in 2008.

[7] Ironically, without any such funding themselves, consumers will be required to pay the cost of any defense mounted by Georgia Power to refute any allegations that illicit conduct and/or imprudence call for the subsequent disallowance of approved costs.

Commission ("NRC"). Tr. 13, ll. 1-3. This allowed for work on the Project's safety related structures to commence—including the installation of rebar in the nuclear island. Tr. 277, ll. 1-5. A mere eight to ten weeks later, an inspection of the rebar installation by the NRC revealed that it had not been placed in conformity with the Design Control Document, nor was it not installed in accordance with the controlling American Concrete Institute standard. Tr. 277, ll. 15-18. Dr. Jacobs testified at the hearing that the Design Control Document had been approved by the NRC, and if a modification was made to the approved rebar installation design, it would have had to be approved by the NRC. Tr. 328, ll. 21-25.

An investigation into the matter revealed that approximately one year before—in or about April 2011—a design change was issued that was intended to relieve rebar congestion where the first layer of horizontal rebar meets the vertical wall. Tr. 277, ll. 18-21. To comply with federal regulations, a design change like this could only be authorized through a request being made and approved by the NRC to the Design Control Document. Tr. 277, l. 21; Tr. 27. As the record reflects, this process was not followed by the Company. Tr. 278, ll. 3-4. Although Dr. Jacobs testified that it was his understanding that an engineer from Westinghouse changed the rebar installation requirements, Georgia Power or its designee, Southern Nuclear should have been aware of it. Tr. 332, ll. 6-25.

At the hearing, Dr. Jacobs expressed significant concern that Georgia Power and the Consortium looked at the rebar day after day and did not identify the problem—NRC inspectors did. Tr. 329, ll. 11-17. After lengthy discussions with the NRC, the Company and Consortium agreed to remove or modify some of the installed rebar so it would conform with the approved Design Control Document. Tr. 278, ll. 4-6. Dr. Jacobs estimated that this would impact the Project by delaying the placement of first nuclear concrete by approximately three months. Tr.

278, ll. 8-10. No information was available regarding the time and cost of this error, as the Company reportedly was doing a root cost analysis of the occurrence. Tr. 328, ll. 9-10.

In terms of responsibility for an error of this magnitude, Dr. Jacobs acknowledged that ratepayers had nothing to do with creating the issue with the improper rebar installation. Tr. 335, ll. 21-24. That notwithstanding, the lack of a risk-sharing mechanism makes it the complete responsibility of consumers to pay the bill for any and all costs that may be attributable to Georgia Power as a result of what appears to be an extremely avoidable and costly mistake. One can only wonder if such an error of this magnitude would have been permitted to occur if a risk-sharing mechanism was in place that would have exposed Company shareholders to some adverse financial impact of such an occurrence.

The non-existence of a fully Integrated Project Schedule in this matter creates the potential for a large amount of costs being placed on consumers. When asked what role such an item played in the Project, Dr. Jacobs testified that the integrated project schedule is a very computerized schedule that has approximately 120,000 individual items that are linked together to identify what should be done when on the Project—including engineering activities, procurement activities, and construction activities. Tr. 319, ll. 3-11. Dr. Jacobs stated that the Company and Consortium "have never had a totally and completely integrated project schedule that includes every activity."[8] He noted that the module schedule and the delivery schedule were not included in the integrated project schedule because it was not known when the modules would be delivered. Tr. 320, ll. 22-25; Tr. 321, ll. 1-2. When asked about the ramifications to the Project caused by this deficiency, Dr. Jacobs testified that they could include spending additional

[8] Dr. Jacobs did agree with counsel on cross examination that a document called an integrated project schedule did exist for the Project. Tr. 374, ll. 4-5. However, as he previously testified, project management knew the integrated project schedule being used was not real. Tr. 319, ll. 19-23. In the fall of 2011, it was observed that things known to be part of the Project were not on the schedule, which is when problems became obvious. Tr. 320, ll. 5-9.

money to ensure that a task is completed in a timely manner, unnecessarily expediting some procurement activity that is not driving the schedule, and not spending money that should be spent to maintain the schedule. Tr. 323, ll. 14-20.

The critical importance of having this item was further highlighted as being a means to ensuring that the Project came in on time and at schedule, and for project management to know what areas are behind and need to be pushed. Tr. 319, ll. 12-23. In detailing how the Project was being executed in the absence of a fully integrated project schedule, Dr. Jacobs testified that this multi-billion dollar construction project was being managed by use of short-term forecasts of 60 to 90 days—a practice that he indicated could not be efficiently or effectively executed in the long term. Tr. 287, ll. 1-3. This expert witness even went so far as to state that the absence of a fully integrated project schedule for the Project was "probably not prudent." Tr. 324, ll. 23-24.

Once again, Dr. Jacobs readily agreed when asked that ratepayers had nothing to do with the inability of Georgia Power and the Consortium to arrive at a fully integrated project schedule. Tr. 326, ll. 7-11. Similar to the situation with the rebar, however, the responsibility for any cost overruns directly attributable to the Company as a result of the non-existence of this vital scheduling item will fall on consumers as per the Commission's Order.

Finally, while not volunteered by Georgia Power in its direct case, Staff managed to extract from its witnesses on cross-examination that Southern Company, its parent, made a filing with the Securities Exchange Commission ("SEC") disclosing that a dispute existed as to responsibility for $400 million for design changes orders and scheduling delays. The Consortium had taken the position the costs were not its responsibility, as did the Company. Tr. 62, l. 25; Tr. 63, ll. 1-18. In its SEC filing, the Company disclosed that if these costs were imposed on it, Georgia Power would seek an amendment to the certified cost of the Project. Tr. 64, ll. 7-12.

Said differently, the Company simply would request that the Commission approve ratepayers being compelled to pay its share of this costs. Once again, under the present arrangement in which a risk-sharing mechanism was not adopted, consumers will be the ones that pay each and every dollar determined to be the responsibility of the Company.

Based on the foregoing, Georgia Watch respectfully requests that the Commission include the need for a risk-sharing mechanism as an issue in the next construction monitoring phase of this Project. This will allow the Commission to consider taking action to reverse its prior decision that the public interest is served under such an arrangement.

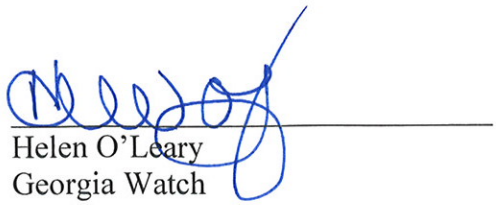
IV. CONCLUSION

As set forth herein, Vogtle 3 and 4 are not poised to benefit ratepayers in terms of being an economic resource decision. Similarly, while at the present time the Project appears to have value on a cost-to-complete basis, this may be the result of costs with significant impact attributable to the Project not being included in the economic analyses being done. To more fairly assess this, the Company should be directed in the next phase of the construction monitoring case for the Project to provide supplemental cost estimates that will allow for additional assessments to be done on "worse case" scenario as opposed to just the one presenting its "best case."

As the evidence has shown in this case, consumers are being harmed by the Commission's decision last year to decline the adoption of a risk-sharing mechanism, thereby making all cost overruns in the Project theirs exclusively. Such inaction sends a very clear and loud message that the interests of the Company's shareholders are paramount to those of consumers taking electric service from Georgia Power. Such an arrangement is wholly

inequitable and must be revisited and reversed in the next construction monitoring phase of this docket.

Respectfully submitted this 3rd day of August 2012.



Helen O'Leary
Georgia Watch

Georgia Watch
55 Marietta Street, N.W.
Atlanta, GA 30303
(404) 525-1085, Extension 14

CERTIFICATE OF SERVICE

I certify that I have this day served via electronic mail a copy of the foregoing "Post-Hearing Brief of Georgia Watch" in Docket Number 29849 to the parties of record addressed as follows:

Reece McAlister*
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
reecem@psc.state.ga.us

Jeff Stair*
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
jeffreys@psc.state.ga.us

Sheree Kernizan*
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
sherrek@psc.state.ga.us

Kevin Greene
Brandon Marzo
Troutman Sanders, LLP
Bank of America Plaza, Suite 5200
600 Peachtree Street, NE
Atlanta, Georgia 30308-2216
kevin.greene@troutmansanders.com
Brandon.marzo@troutmansanders.com

Randall D. Quintrell
Randall D. Quintrell, P.C.
999 Peachtree Street, N. E.
Atlanta, Georgia 30309-3996
randy.quintrell@sutherland.com

Robert B. Baker, Jr. Esq.
Freeman, Mathis, & Gary, LLP
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339-5948
bbaker@fmglaw.com

Charles B. Jones, III
G. L. Bowen, III
Georgia Traditional Manufacturers Association
The Hurt Building
50 Hurt Plaza, Suite 985
Atlanta, Georgia 30303
cjones@gtma.org
rbowen@gtma.org

Robert G. Smiles, Jr., Esq.
1205 Johnson Ferry Road
Suite 136-138
Marietta, Georgia 30068
smileslawfirm@gmail.com

Rita Kilpatrick
Southern Alliance for Clean Energy
250 Arizona Avenue
Atlanta, Georgia 30307
kilpatrick@cleanenergy.org

This 3rd day of August 2012.

Helen O'Leary
Georgia Watch

Georgia Watch
55 Marietta Street, NW
Suite 903
Atlanta, Georgia 30303
holeary@georgiawatch.org
(404) 525-1085, Ext. 14