

June 14, 2012

Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

IN RE: Docket No. 35277: Georgia Power Company's Fuel Cost (FCR) Application (FCR-23)

Dear Mr. McAlister:

In accordance with the Procedural and Scheduling Order issued by the Georgia Public Service Commission ("Commission") on March 9, 2012, in this docket, Georgia Watch hereby submits this Letter Brief in lieu of a traditional brief and/or a proposed order.

Generally speaking, Georgia Watch supports the Stipulation agreed to by Public Interest Advocacy Staff ("Staff") and Georgia Power Company ("Georgia Power" or "Company"). The issues that Georgia Watch does have with the Stipulation are set for more fully below.

Process in Arriving at Stipulation

Georgia Watch's major concern with the proposed Stipulation (Staff-Company Joint Exhibit 1) lies primarily with the manner in which it was reached.

Georgia Watch and certain other parties of record received from a representative of Staff a copy of the Stipulation at 6:13 p.m. on the evening before the hearing on June 7, 2012.¹ This was a surprise, as no notification had been given to Georgia Watch that settlement discussions were taking place, nor had any invitation been extended to Georgia Watch to participate in a proposed resolution of the case.

Receiving an invitation to participate in settlement negotiations is vitally important to Georgia Watch in any instance in which Staff and Georgia Power are participants. A significant number of Commission cases are concluded by Staff entering stipulations with the Company. These proposed resolutions to cases almost always are adopted by the

¹ Alan R. Jenkins, Esq., counsel for The Commercial Group, stated for the record that he did not get a copy of Stipulation. Transcript (Tr.) 63:25; 64:1.

Commission as presented, thereby making it essential for a party such as Georgia Watch to have an opportunity to have input in them as they are reached.

When concerns about this process were raised at the hearing, the Company attempted to defend the exclusion of Georgia Watch from settlement negotiations by noting that Georgia Watch had not pre-filed witness testimony.² Tr.14:4-5. This somehow was held out as justification before the Commission to disregard Georgia Watch as a legitimate party in these proceedings. Similarly, a member of Staff observed that because Georgia Watch had not signed on to settlement proposals in past cases (Tr.16:17-18), it somehow was acceptable to exclude this party from participating in discussions about a resolution in this proceeding.

As a very small non-profit consumer advocacy organization, Georgia Watch lacks the ability to pay the high costs involved in securing expert testimony in each case in which it intervenes. Unlike in the case of Staff, no authority exists through which the Commission can require other parties to pay the costs of the testimony to support positions to be advanced. The fact that Georgia Watch does not have a witness in this or any other case cannot be viewed as a basis to presume that Georgia Watch has no interest in its outcome. On the contrary, Georgia Watch's intervention in any docket provides sufficient evidence that the opposite is true.

Georgia Watch does not dispute that it has been unable on past occasions to participate in certain settlements reached between Staff and the Company. This has been because the proposed resolutions were not something that Georgia Watch could support in light of the mission that it was created to fulfill. That notwithstanding, its past inability to resolve past cases in a manner endorsed by Staff and the Company should not forever serve as grounds for Georgia Watch's exclusion from settlement negotiations in all subsequent cases.

Georgia Watch acknowledges that entering into a stipulation before any testimony or evidence is admitted to the record is not something Staff and the Company were prohibited from doing. However, such a practice suggests to the Commission as well as to the excluded parties that anything that they may do at the hearing could not possibly have any impact on the outcome of the case. This completely marginalizes the contributions other parties of record are perceived to be able to make at a hearing and sends them a message that their participation in the case is without any true meaning.

Based on the foregoing, it is respectfully requested that as a party of record seeking to further the interests of consumers, Georgia Watch should be invited to participate in all settlement negotiations held in any case that Staff and Georgia Power attempt to resolve.

² AFFIRM pre-filed the testimony of witness Russell L. Klepper in this case but was not invited to be part of settlement negotiations (Tr. 15:23-25), thereby casting a pall on the reasoning inferred by the Company for the exclusion of parties.

Rate of Interest to be Paid to Ratepayers on the Over-Recovered Fuel Balance

Paragraph 3 of Staff-Company Joint Exhibit 1 specifies the manner in which the interim fuel rider is to operate when fuel cost under- and over- recoveries meet a specified set of conditions. No provision is included in the language of the Stipulation that expressly provides for any interest to be paid to consumers when an over-recovery in any amount occurs. Georgia Watch requests that any order that may be entered by the Commission accepting the Stipulation include language to remove any ambiguity whether interest is to be paid.

Witnesses for the Company testified at the hearing that ratepayers would receive interest on the over-recovered balance at the same rate at which Georgia Power borrows money—its short-term debt rate. Tr. 68:9-13. Since consumers do not borrow money at the same rate of interest that the Company does, Georgia Watch recommends that the rate of interest on any over-recovered fuel balance be tied to an index that more aptly reflects ratepayers' cost of borrowing money. Allowing consumers to collect interest on fuel cost overpayments at a rate that more accurately reflects what they would be charged to borrow money is the more equitable option in this instance.³

Redacted Testimony by Dr. Jacobs Regarding Proposed Nuclear Disallowances

Dr. Jacobs recommended in his pre-filed testimony that replacement costs resulting from imprudently incurred nuclear unit outages and deratings be disallowed in this case. Tr. 99:25. Staff witness Philip Hayet testified that the amount of this proposed disallowance was \$3.206 million. Tr. 207:20-22.

Dr. Jacobs' testimony supporting the reasons for this disallowance was completely redacted in the public disclosure version of the testimony that he pre-filed, presumably because it contained trade secrets. Tr. 214-225. Consumers and other members of the public were not allowed to know what his opinions were regarding these outages and deratings⁴, nor was it readily disclosed to them what the bases of his recommendations were.⁵

When the Company filed its rebuttal testimony, however, witnesses Dennis R. Madison and Tom E. Tynan provided extensive public disclosure testimony attempting to refute Dr. Jacobs' recommended proposed disallowances. Tr. 293-323. Nothing provided in or with that testimony gave any justification why Dr. Jacobs' testimony was required by the

³ If a ratepayer is unwilling or unable to pay the amount of his or her electric bill due to a higher fuel cost recovery rate in effect, he or she runs the risk of having his or her electric service disconnected for non-payment.

⁴ Aspects of other witnesses' testimony were marked as trade secret by the parties in this case in instances in which no justification was offered for their being so. The focus of this letter on certain segments of Dr. Jacobs' "trade secret" testimony is used as an example by Georgia Watch of the type of mischaracterizations of public information that have occurred.

⁵ As an unbiased witness in this proceeding, Dr. Jacobs' testimony supporting the disallowances is viewed by Georgia Watch as being more credible than that offered by Southern Nuclear. While Georgia Watch agrees that sufficient evidence exists to support Dr. Jacobs' \$3.206 million disallowance in this case, it understands that a Stipulation is offered in whole and cannot fairly be deconstructed without destroying the purpose for which it was proposed.

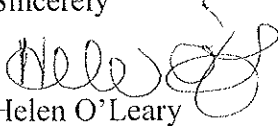
Company to be withheld from the public under the guise of being trade secret but could be used without limitation to discredit him by the Company's two witnesses in their pre-filed rebuttal. *Id.* It was only on cross-examination by Resource Management Services that Dr. Jacobs was allowed to provide any sort of public testimony regarding the bases for his disallowances. Tr. 236-253.

Georgia Watch is aware that the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, and Department Rule 515-3-1-.11 provide an exception from public disclosure for information on file with the Commission for which a trade secret designation is claimed. However, presumed in both law and rule is that when representations are made alleging that information is trade secret⁶, they are made exclusively for legitimate purposes and not merely to obtain a litigation advantage by preventing parties of record and interested consumers from accessing and making use of what otherwise should be made available to them.

In furtherance of its goal to ensure that as much transparency as possible is provided to consumers in proceedings like this, Georgia Watch requests that Staff and the Company be mindful of their obligation in Commission cases only to withhold from public viewing those aspects of information that genuinely can be classified as trade secret.

On behalf of Georgia Watch, I appreciate being given this opportunity to comment on the recommended outcome of this proceeding.

Sincerely


Helen O'Leary
Senior Attorney, Georgia Watch

cc: All Parties of Record

⁶ It should be noted that neither Staff nor the Company provided any statement with Dr. Jacobs' pre-filed testimony detailing the basis why any redacted portions were regarded as trade secret.

CERTIFICATE OF SERVICE

I certify that I have this day served via electronic mail a copy of the foregoing "Letter Brief" in Docket Number 35277 to the parties of record addressed as follows:

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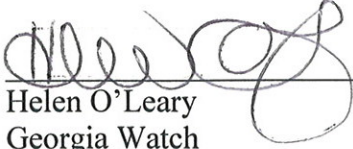
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This 14th day of June 2012.



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