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8 May 2023

VIA EFILE & HAND DELIVERY

Sallie Tanner, Executive Secretary  
Georgia Public Service Commission  
244 Washington Street, SW  
Atlanta, Georgia 30334-5701

**RE: SIERRA CLUB & SOUTHERN ALLIANCE FOR CLEAN ENERGY  
POST-HEARING BRIEF & PROPOSED ORDER  
2023 Georgia Power Company Fuel Cost Recovery (FCR) Application  
GA PSC Docket 44902**

Ms. Tanner –

Please find enclosed the original and fifteen printed copies of the Post-Hearing Brief and Proposed Order in the above-referenced docket. The filing includes a certificate of service, and was e-filed initially. A compact disc containing an MS Word and pdf version of the filing is enclosed with this letter. The certificate of service for this filing is attached.

Sincerely,



Robert Jackson

BEFORE THE STATE OF GEORGIA  
PUBLIC SERVICE COMMISSION

In Re: )  
Georgia Power Company's )  
2023 Fuel Cost Recovery Application )

Docket No. 44902

**CERTIFICATE OF SERVICE**

I hereby certify by signature below that I have served a true and correct copy of SIERRA CLUB & SOUTHERN ALLIANCE FOR CLEAN ENERGY POST-HEARING BRIEF & PROPOSED ORDER by email, hand delivery, and or first class U.S. mail with proper postage affixed addressed as follows:

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SO CERTIFIED this 8<sup>th</sup> day of May 2023.



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BEFORE THE STATE OF GEORGIA

PUBLIC SERVICE COMMISSION

In Re:

Georgia Power Company's

2023 Fuel Cost Recovery Application

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Docket No. 44902

**POST-HEARING BRIEF OF THE SIERRA CLUB AND  
SOUTHERN ALLIANCE FOR CLEAN ENERGY (SACE)**

**INTRODUCTION**

Staff's premise in this case is that Georgia Power Company is entitled to 100% recovery of fuel costs. That premise is invalid. The Stipulation entered into between Staff and the Company includes a \$7 million reduction of the fuel balance, and neither Staff's witnesses nor the Company's testified that this reduction is based on Georgia Power's imprudence or illegal actions. If this \$7 million disallowance is not based on "illegal or clearly imprudent conduct on the part of the utility" under O.C.G.A. § 46-2-26, then the statute must allow for cost sharing between the Company and its ratepayers.

The testimony and evidence presented to the Georgia Public Service Commission over the course of these proceedings demonstrates that the Commission should not adopt the stipulation submitted by Georgia Power Company and the Public Interest Advocacy (PIA) Staff on April 13, 2023 (the "Stipulation"). Instead, the Commission should direct Georgia Power to share a percentage between 3% and 5% of the costs of both the FCR-25 under-recovered balance and the forward-looking FCR-26 tariff instead of adopting the current 0.28% sharing proposed in

the Stipulation.<sup>1</sup> As shown in our attached proposed order, this fuel cost sharing mechanism will benefit ratepayers by incentivizing and rewarding the Company for keeping fuel costs low.

## **ARGUMENT**

### **1. Georgia Law Allows for the Company and Ratepayers to Share Fuel Costs**

One-hundred percent fuel cost recovery is not mandatory and is not set in stone under Georgia law. Georgia’s fuel cost recovery statute *allows* utilities like Georgia Power to pass along all of fuel costs to ratepayers, but does not *require* it. Unlike other states that mandate recovery of all fuel costs, O.C.G.A. § 46-2-26(c) merely directs the utility to propose “base rate tariffs to recover [fuel] costs,” but does not mention that costs must be 100% passed through to customers. While O.C.G.A. § 46-2-26(h) establishes that the Commission shall disallow fuel costs that are “the result of illegal or clearly imprudent conduct on the part of the utility,” it does not preclude the Commission from disallowing fuel costs on other bases, i.e., as part of a fuel cost sharing mechanism.

The plain reading of O.C.G.A. § 46-2-26 does not conclude that fuel costs are 100% pass through. The Georgia Supreme Court has repeatedly held that when interpreting a statute, courts “examine the plain language of the statute.” *White v. State*, 823 S.E.2d 794, 798 (Ga. Sup. Ct. 2019). Applying the “plain language” of the statute means that the court:

‘must presume that the General Assembly meant what it said and said what it meant.’ To that end, we must afford the statutory text its ‘plain and ordinary meaning,’ we must view the statutory text in the context in which it appears, and

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<sup>1</sup> The Stipulation would only reduce the Company’s approximate \$2,520,000,000 under-recovered fuel balance by \$7,000,000, retaining 99.72% of Georgia Power’s original request.

we must read the statutory text in its most natural and reasonable way. *Deal v. Coleman*, 751 S.E.2d 337, 341 (Ga. Sup. Ct. 2013) (citing *Arby's Rest. Grp., Inc. v. McRae*, 734 S.E.2d 55, 57 (Ga. Sup. Ct. 2012); *City of Atlanta v. City of College Park*, 741 S.E.2d 147, 149 (Ga. Sup. Ct. 2013); *Hendry v. Hendry*, 734 S.E.2d 46, 48 (Ga. Sup. Ct. 2012); *Luangkhot v. State*, 736 S.E.2d 397, 399 (2013); *Opensided MRI of Atlanta v. Chandler*, 696 S.E.2d 640, 641 (Ga. Sup. Ct. 2010)). See also *White v. State*, 823 S.E.2d at 798 (quoting *Deal*, 751 S.E.2d at 341); *Mayor v. Harris*, 809 S.E.2d 806, 808 (Ga. Sup. Ct. 2018) (quoting *Deal*, 751 S.E.2d at 341).

There is no existing case law interpreting the meaning of O.C.G.A. § 46-2-26. In absence of precedent, the court must follow these tenets of statutory construction and apply the plain meaning of the statute. There is no language in O.C.G.A. § 46-2-26 directing the Commission or Georgia Power to pass through all fuel costs to customers. Instead, there is plenty of room under the statute to implement a fuel cost sharing mechanism and, for the reasons discussed over the course of this proceeding, the Commission should do so in this case.

## **2. Allowing Georgia Power Company to Pass-Through 100% of Fuel Costs Directly to Ratepayers is a Moral Hazard**

As Sierra Club and SACE's witnesses Brent Alderfer and Jeremy Kalin testified in this proceeding, a "moral hazard" occurs when one party is incentivized to take more risk than they normally would "because that party is insulated against that risk." Direct Testimony of Jeremy Kalin at 9. When the consequences of a decision "are so disconnected from the decisionmaker that that party takes a bigger risk as a result," a moral hazard exists. *Id.*

In this case, Georgia Power’s direct testimony is filled with indications that the current fuel cost recovery application is a moral hazard: the Company is requesting to recover \$2.1 billion from customers (that is, 99.72% of its fuel costs), and is expecting to rely more, not less, on gas over the next three years (“Natural gas fired generation is projected to be the largest energy source for Georgia Power during the FCR-26 test period, with approximately 44% of the total projected fuel costs coming from natural gas”, Direct Testimony of Ms. Adams and Mr. Houston at 19). As explained in Exhibit 2 to Jeremy Kalin’s direct testimony, “[a]llowing utilities to ignore the consequences of relying on fuels distorts decision-making about what types of resources to invest in, (...) can disadvantage fuel-free resources in utility planning and investment decisions.” Direct Testimony of Jeremy Kalin, Exhibit 2, “Learning to Share: A Primer on Fuel-Cost Pass-Through Reform,” at 5.

The Company also acknowledged that gas prices are still subject to extreme volatility (“Natural gas prices remain subject to extreme volatility”, Direct Testimony of Ms. Adams and Mr. Houston at 20; “Q: Do you still believe that's the case, even after filing your rebuttal? Volatility, I mean. A: Yeah, I mean, natural gas is always subject to volatility.” GA PSC Committee Hearing on Docket No. 44902, May 2, 2023 at 6:15:36, <https://youtu.be/YRWzZQHU-5A?t=22536>) and recognized that factors outside of its control can significantly affect ratepayers (“Even small movements in gas prices can impact the Company’s fuel balance and, ultimately, costs to customers”, Direct Testimony of Ms. Adams and Mr. Houston at 20). As Mr. Alderfer’s testimony points out, “[r]ecent price swings are not the result of short-term supply and demand issues.” Direct Testimony of Brent Alderfer at 6. Instead—and in line with Georgia Power’s own characterization of the gas price forecast—, “the price increases and volatility are the result of structural changes in global markets for natural gas, the

exposure to which is expanding here in the U.S.” *Id.* This means “more, not less, customer exposure to fuel price increases.” *Id.* at 8.

The direct and rebuttal testimony of Georgia Power explain that the markets for natural gas have changed dramatically with extreme volatility and risk of higher prices continuing into the foreseeable future. The structural change in natural gas markets driven by global factors outside of the control of Georgia Power poses significant risk of additional significant costs to ratepayers. Additionally, efforts in other states suggest that fuel cost sharing has significant benefits for reliability, resource diversity, ratepayer protection and utility performance. Direct Testimony of Jeremy Kalin at 32. These factors alone should be enough for the Commission to protect ratepayers from potential fuel price swings by implementing a fuel cost sharing mechanism.

### **3. The Commission Should Implement a Fuel Cost Sharing Mechanism**

The Commission should direct Georgia Power to share a percentage between 3% and 5% of the fuel costs that the Company seeks to recover in this proceeding, as explained in the proposed order attached to this post hearing brief.<sup>2</sup> Fuel cost sharing is already included in the Stipulation that Staff and the Company have asked this Commission to approve. Paragraph 5 of the Stipulation states that “[t]he Company agrees to a reduction of the fuel balance by \$7.0 million as of May 31, 2023”. Stipulation, Docket No. 44902, Apr. 12, 2023, at 2. In both Staff and the Company’s view, the \$7 million reduction in fuel costs is not based on Georgia Power’s imprudence or illegality.

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<sup>2</sup> As described in Jeremy Kalin’s Exhibit 2, “a utility could be responsible for just 5 percent of fuel costs (i.e., passing through 95 percent to customers) or for 20 percent (i.e., passing through 80 percent to customers). The ideal sharing percentage is a level that is high enough to motivate the utility to keep its fuel costs in check, but low enough that the utility is not exposed to unreasonable levels of risk.” Kalin, Exhibit 2, at 16.



During cross examination, Georgia Power's witnesses stated that the \$7 million reduction did not correspond to any admission of imprudence or illegality ("Q: Did you come up with those \$7 million, with that specific number, because you weren't prudent or because your costs were illegal in any way? A: Absolutely not." GA PSC Committee Hearing on Docket No. 44902, May 2, 2023 at 6:21:47, <https://youtu.be/YRWzZQHU-5A?t=22907>). Similarly, Staff's witnesses agreed that the Stipulation could have easily read "the Company agrees to a reduction of X%" of the fuel balance:

Q. I'm asking you whether you think that it would be an incentive for the Company if what they should reduce is based on a percentage every time and not a number that's up for negotiation with Staff.

A: You can calculate this as a percentage if you'd like. I think you'd find it's fairly small, I admit. But we could've calculated this as a percentage and it could read 'The Company agrees to a reduction of X percent as of May 31st 2023'." GA PSC Committee Hearing on Docket No. 44902, May 2, 2023 at 2:00:57, <https://youtu.be/YRWzZQHU-5A?t=7257>.

If this \$7 million disallowance is not based on the Company's imprudence or illegal actions under O.C.G.A. § 46-2-26, then the statute must allow for the implementation of a cost sharing mechanism between Georgia Power and its ratepayers.

Ordering the utility to cover some of the fuel costs is also consistent with Commission precedent. In docket 19142-U, decided May 17, 2005, the Commission reduced the FCR tariff proposed by Georgia Power. Commission Order, Docket No. 19142-U, May 17, 2005 at 11. In docket 11884-U, decided March 30, 2000, the Commission made multiple changes to the FCR tariff proposed by Savannah Electric and Power Company. Final Order, Docket No. 11884-U,

Mar. 30, 2000 at 7. On several occasions, the Commission has reduced the proposed FCR tariff by requiring extended amortization periods, including dockets 19142-U and 21229-U. *See* Commission Order, Docket No. 19142-U, Mar. 30, 2000; Order Adopting Stipulation, Docket No. 21229-U, Nov. 2, 2005.

Except for Staff's attorney, no party in this case disagrees with the fact that having Georgia Power cover a percentage of fuel costs is allowed in Georgia—and such fuel sharing is in fact already embedded in the current Stipulation. However, though the \$7 million reduction in fuel costs is a step in the right direction, it is not enough to incentivize the Company to keep fuel costs low. Instead, to prevent the continued detrimental effects of the existing moral hazard, the Commission should direct Georgia Power to share a percentage between 3% and 5% of the fuel costs as laid out in our attached proposed order.

#### **4. Increasing the Cap of the Interim Fuel Recovery Mechanism to 40% Is Not in the Best Interest of Ratepayers**

Implementing an Interim Fuel Recovery (“IFR”) Mechanism that would authorize Georgia Power to increase rates up to 40% is not a cost mitigation method, but a “risk mitigation method for the utility, at the literal expense of ratepayers.” Direct Testimony of Jeremy Kalin at 17. As Staff's witnesses admitted, ratepayers do not save money from having the IFR Mechanism increased from 15% to 40%:

“Q: Is it your testimony that increasing the IFR Mechanism to 40% will significantly reduce costs for ratepayers?

A: No. . . . It prevents the buildup of a two billion dollar balance. . . .

Q: Did you quantify how much will customers save from having the IFR Mechanism increased to 40%?

A: There's no savings.” GA PSC Committee Hearing on Docket No. 44902, May 2, 2023 at 2:05:53, <https://youtu.be/YRWzZQHU-5A?t=7553>.

Rather than reducing fuel costs, increasing the IFR merely passes along the Company’s increased fuel costs to ratepayers sooner. Georgia Power would be allowed to collect more revenue via the higher FCR tariff, “effectively providing a further disincentive to the utility to aggressively reduce the fuel costs themselves.” Direct Testimony of Jeremy Kalin at 17. Because the IFR Mechanism worsens the moral hazard described above, the Commission should not approve it and should, instead, keep the current IFR 15% cap.

#### **5. Alternative Ask: the Commission Should Open a Fuel Cost Recovery Modernization Docket**

If the Commission decides to approve the Stipulation as filed, it should also open a Fuel Cost Recovery modernization docket to include some amount of fuel-cost-sharing and fuel-risk-sharing by the utility rather than continue the current moral hazard policy of passing through 100% of fuel costs to ratepayers. This Fuel Cost Recovery modernization docket should address, among other factors, the proper amount of fuel cost and fuel risk sharing to be assigned to Georgia Power, transparency of key contract terms, and reliance on forecasts versus actual historic pricing.<sup>3</sup> The Fuel Cost Recovery modernization docket would fairly share the risk of fuel cost changes between Georgia Power and ratepayers, and provide the Company with sufficient incentive to reasonably manage or lower its fuel costs.

As explained in our attached proposed order, if Georgia Power can actively reduce fuel costs, “[it] should be rewarded for such efforts. . . . [D]esigned well, a modernized Fuel Cost

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<sup>3</sup> See Direct Testimony of Jeremy Kalin at 29-31.


Recovery mechanism in Georgia will provide consistent benefits to the utility and to ratepayers.”

Direct Testimony of Jeremy Kalin at 32.

### **CONCLUSION**

To prevent further entrenchment of current moral hazard practices related to fuel cost recovery, this Commission should deny Staff’s and Georgia Power’s Stipulation and should, instead, implement a fuel cost sharing mechanism, as laid out in Sierra Club and SACE’s attached proposed order.

Respectfully submitted this 8<sup>th</sup> day of May 2023.



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ALL BILLS NOT SUBJECT TO TIME OF USE RATES (per Attachment A)				
June through September:	June 2023 - May 2024	June 2024 - May 2025	June 2025 - May 2026	
	3% sharing	4% sharing	5% sharing	
Secondary Distribution customers:	\$ 0.052622	\$ 0.052079	\$ 0.051537	
Primary Distribution customers:	\$ 0.051680	\$ 0.051147	\$ 0.050614	
Transmission customers:	\$ 0.051319	\$ 0.050790	\$ 0.050261	
October through May:				
Secondary Distribution customers:	\$ 0.047463	\$ 0.046974	\$ 0.046484	
Primary Distribution customers:	\$ 0.046613	\$ 0.046133	\$ 0.045652	
Transmission customers:	\$ 0.045803	\$ 0.045331	\$ 0.044859	
ALL BILLS SUBJECT TO TIME OF USE FUEL COST RECOVERY SCHEDULE (per Attachment B)				
June through September:	June 2023 - May 2024	June 2024 - May 2025	June 2025 - May 2026	
	3% sharing	4% sharing	5% sharing	
Secondary Distribution customers:	\$ 0.075102	\$ 0.074328	\$ 0.073554	
Primary Distribution customers:	\$ 0.073758	\$ 0.072997	\$ 0.072237	
Transmission customers:	\$ 0.073244	\$ 0.072489	\$ 0.071734	
October through May:				
Secondary Distribution customers:	\$ 0.047616	\$ 0.047125	\$ 0.046635	
Primary Distribution customers:	\$ 0.046765	\$ 0.046283	\$ 0.045800	
Transmission customers:	\$ 0.046438	\$ 0.045959	\$ 0.045480	

**ALL BILL SUBJECT TO TIME OF USE FUEL COST RECOVERY THREE-PARTY SCHEDULE (per Attachment C)**

	June 2023 - May 2024	June 2024 - May 2025	June 2025 - May 2026
On-Peak kWh			
	3% sharing	4% sharing	5% sharing
Secondary Distribution customers:	\$ 0.075102	\$ 0.074328	\$ 0.073554
Primary Distribution customers:	\$ 0.073758	\$ 0.072997	\$ 0.072237
Transmission customers:	\$ 0.073244	\$ 0.072489	\$ 0.071734
Off-Peak kWh			
Secondary Distribution customers:	\$ 0.049741	\$ 0.049228	\$ 0.048715
Primary Distribution customers:	\$ 0.048845	\$ 0.048342	\$ 0.047838
Transmission customers:	\$ 0.048504	\$ 0.048004	\$ 0.047504
Super Off-Peak kWh			
Secondary Distribution customers:	\$ 0.042960	\$ 0.042517	\$ 0.042075
Primary Distribution customers:	\$ 0.042191	\$ 0.041756	\$ 0.041321
Transmission customers:	\$ 0.041897	\$ 0.041465	\$ 0.041033

BEFORE THE STATE OF GEORGIA

PUBLIC SERVICE COMMISSION

In Re:	)	
Georgia Power Company's	)	
2023 Fuel Cost Recovery Application	)	Docket No. 44902

**PROPOSED ORDER**

**FCR-26 Fuel Sharing Incentive**

**I. FCR-26 Rates, starting with the billing month of June 2023, adjusted for Company assumption of fuel risk sharing:**

The FCR-26 rates shall be as detailed on the table in Exhibit 1, representing the FCR-26 rates described in Attachments A, B, and C to the proposed Stipulation, or alternatively, to the FCR-26 rates as approved by the Commission, and adjusted as follows:

For June 2023 through May 2024 billing months:  
97% of the Company's proposed FCR-26 tariff, representing a 3% fuel risk sharing requirement for the Company;

For June 2024 through May 2025 billing months:  
96% of the Company's proposed FCR-26 tariff, representing a 4% fuel risk sharing requirement for the Company, and

For June 2025 billing months and thereafter:  
95% of the Company's proposed FCR-26 tariff, representing a 5% fuel risk sharing requirement for the Company

**II. Fuel Cost Sharing Incentive Mechanism:**

For each year in which the FCR-26 rates are in effect:

- 1) The Company shall within ten (10) business days of the month end provide historic (incurred) fuel revenues, fuel expenses, monthly over- or under-collection and cumulative over- or under-collection balances in a separate Excel worksheet (the "Monthly Fuel Costs Report").
- 2) Within fifteen (15) business days of the end of the 365-day period following the Commission's order, the Company shall issue a Yearly Fuel Costs Report under paragraph (1) above submit a plan to reduce all fuel costs over the remainder of the FCR-26 period (the "Fuel Cost Reduction Plan"). Such Fuel Cost Reduction Plan will contain monthly projected fuel revenues, fuel expenses, monthly over- or under-collection and cumulative current period



(FCR-26) over- or under-collection balances, together with the historical information for any additional months.

The Company's Yearly Fuel Costs Report must include key drivers such as gas and coal prices and any significant re-dispatch, but not a total new reforecast; and the Company's Report must benchmark:

- (a) for natural gas (i) fuel prices as forecasted in the FCR-26 Fuel Cost Recovery docket against (ii) fuel prices as actually reported on the Spot Price of natural gas for delivery at the Henry Hub in Louisiana for the official daily closing price at 2:30 p.m. from the trading floor of the New York Mercantile Exchange for a specific delivery month, as reported by Refinitiv, an LSEG business and posted on the United States Energy Information Agency website;
- (b) for coal (i) the forecasted coal prices in the FCR-26 Fuel Cost Recovery docket against (ii) coal prices as actually reported by the U.S. Energy Information Agency website of the Central Appalachia average weekly coal spot price in dollars per short ton; and
- (c) for other fuels, (i) the forecasted fuel prices in the FCR-26 Fuel Cost Recovery docket against (ii) that fuel's prices as actually reported by the U.S. Energy Information Agency using the accepted industry standard price benchmark for that fuel.

3) If the Company has reduced fuel costs, when normalized for any changes in fuel costs, the Company's report shall show what the yearly fuel costs would have been but for Company actions taken under the Fuel Cost Reduction Plan.

4) The Commission shall review the Company's fuel cost reduction actions as stated in the Report, and shall identify those savings attributed to only these actions:

- (a) Negotiation of Fuel Supply Agreements which replace existing spot purchasing or expiring fuel supply agreements, with terms at or below benchmark prices;
- (b) Demand-Side Management;
- (c) Replacing MWh production of higher-fuel-cost generation sources with lower-fuel cost generation sources or no-fuel-cost generation sources;
- (d) Additional no-fuel-cost capacity additions via all-source-procurement competitive bidding, and
- (e) Hedging.

The burden of proof shall be on the Company to demonstrate the identify the aggregate cost savings attributed to the Company's actions. The Commission shall review such alleged aggregate fuel cost savings, and shall increase the FCR-26 rate by ten percent (10%) of such aggregate cost savings, provided that the Commission finds that such additional collection by the Company results in just and reasonable.

5) If the Company has not reduced fuel costs, when normalized for any changes in fuel costs, the Commission shall not permit the Company to receive any fuel cost savings incentive, and the FCR-26 rate for the forthcoming year shall be unchanged.