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July 1, 2024

VIA ELECTRONIC DELIVERY

Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

RE: Georgia Power Company's Response to Southern Environmental Law Center's Motion for Reconsideration of Limitations on Battery Sourcing from Specific Countries; Docket Nos. 45084, 55268

Dear Ms. Tanner:

Please find enclosed an electronic version of **Georgia Power Company's Response to Southern Environmental Law Center's Motion for Reconsideration of Limitations on Battery Sourcing from Specific Countries** to be filed in Docket Nos. 45084 and 55268 on behalf of the Georgia Power Company.

If you have any questions regarding this filing, please call me at (404) 885-3779.

Sincerely,

/s/ Allison W. Pryor
Allison W. Pryor
Attorney for Georgia Power Company

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In Re: Georgia Power Company's CARES 2023 Utility Scale Renewable Request for Proposals	)	**Docket No. 45084**
Georgia Power Company's 2029-2031 All-Source Capacity Request for Proposals	)	**Docket No. 55268**

GEORGIA POWER COMPANY'S RESPONSE TO SOUTHERN ENVIRONMENTAL LAW CENTER'S MOTION FOR RECONSIDERATION OF LIMITATIONS ON BATTERY SOURCING FROM SPECIFIC COUNTRIES CHOSEN BY GEORGIA POWER COMPANY

I. INTRODUCTION

On June 13, 2024, the Georgia Public Service Commission (the "Commission") issued its Order Approving Request for a Bid Refresh and Rule Waiver, Revised Battery Requirements, and Accompanying Modifications ("Order") to the Clean and Renewable Energy Subscription ("CARES") 2023 Utility Scale ("US") Request for Proposals ("RFP") entered in Docket No. 45084, which approved revised Battery Energy Storage System ("BESS") requirements to address heightened reliability risk associated with including certain foreign-made battery components within projects connected to the Georgia Power Company ("Georgia Power" or the "Company") electric system. In addition, at the Commission's June 18, 2024 Administrative Session, the Commission approved Georgia Power's 2029-2031 All-Source Capacity RFP in Docket No. 55268, which included the same revised BESS requirements. Subsequently, on June 21, 2024, the Southern Environmental Law Center ("SELC") filed its Motion for Reconsideration of Limitations on Battery Sourcing from Specific Countries Chosen by Georgia Power ("Motion for Reconsideration"). SELC has failed to provide any compelling

reason or shown good cause for the Commission to reconsider its decision. The arguments offered by SELC were considered by the Commission and properly rejected. Moreover, SELC is not a party of record in either docket and, therefore, lacks standing to request reconsideration of the Commission's decisions in Docket Nos. 45084 and 55268. For this and the other reasons described below, SELC's motion should be denied.

II. PROCEDURAL HISTORY

On December 21, 2023, the Commission issued an Order in Docket No. 45084 approving the Final CARES 2023 US RFP and Pro Forma Contracts.[1] The CARES 2023 US RFP seeks to procure 2,875 megawatts ("MW") of renewable resources, with anticipated in-service dates of 2026, 2027, and 2028. Bids were received on February 12, 2024. On April 10, 2024, Georgia Power, Commission Staff ("Staff"), and the Independent Evaluator ("IE") identified the Competitive Tier and noncompetitive bids were released from further consideration.

On April 29, 2024, the Company, in consultation with Staff and the IE, extended the bid security due date to June 14, 2024 due to uncertainty of whether federal solar tariffs would be reinstated. The extension granted bidders more time to review the potential impacts of the tariffs on their bids. On May 16, 2024, the White House announced that the Biden-Harris Administration would take steps to remove a bifacial solar module exclusion under Section 201 of the U.S. Trade Act of 1974 ("Trade Act"), which previously excluded bifacial solar panels from a 15% tariff on imports from Southeast Asia. This reinstatement came after the Administration announced an increase to tariff rates under Section 301 of the Trade Act, which applied to: (1) imported Chinese

[1] *Order Approving Request for a Bid Refresh and Rule Waiver, Revised Battery Requirements, and Accompanying Modifications*, Georgia Power Company's CARES 2023 Utility Scale Renewable Request for Proposals, Docket No. 45084 (December 21, 2023).

solar cells and modules; and (2) imported Chinese lithium-ion non-electric vehicle ("EV") batteries. In response to the unknown impact to the CARES 2023 US RFP resulting from these changes in law, Georgia Power sought feedback from bidders and found that 60% of bids could be impacted.

On May 23, 2024, to address concerns from the (i) recently enacted tariffs on bifacial solar modules and lithium-ion non-EV batters and (ii) heightened reliability risk associated with including certain foreign-made battery components within projects connected to the Company's electric system, the Company filed a request seeking the Commission's approval of a bid refresh process and Commission rule waiver, revised battery requirements, and corresponding modifications to the CARES 2023 US RFP.

Specifically, the Company's May 23, 2024 request sought to include the following language in each of the applicable Pro Forma contracts from the CARES 2023 US RFP:

> For all Battery Energy Storage Systems (BESS) submitted as part of the "CARES 2023 Utility Scale RFP," all components of the Battery Management System (BMS), BESS Controller, and Site Controller (including controls, hardware and software) shall be sourced from and manufactured domestically or by our allied nations and shall not include components sourced from or manufactured by entities affiliated with or located in China, Russia, North Korea, Saudi Arabia, Serbia, Algeria, Venezuela, Iran, Iraq, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Syria, Lebanon, South Sudan, Pakistan, Cuba, and the Netherlands."

The Company's request to modify the BESS requirements in each of the applicable CARES 2023 US RFP Pro Forma Contracts was discussed at length during the Commission's May 30, 2024 Energy Committee meeting. Staff offered its recommendation to approve the request but withheld a recommendation on the BESS requirements until the market had an opportunity to provide feedback. Mr. Brad Carver, on behalf of the Advanced Power Alliance ("APA"), whose members participate as bidders in Georgia Power's RFPs, advocated for additional clarification on

the restrictions and requested a list of acceptable battery controller manufacturers. Mr. Bob Sherrier, on behalf of SELC, objected to the "sourcing" language included in the Company's request.

In response to feedback from SELC and APA, the Company provided revised BESS language for review on May 31, 2024. Georgia Power worked with Staff, APA, and SELC over several days to answer questions and offer solutions to stated concerns with the revised BESS requirements. On June 5, 2024, the Company provided the following BESS requirement language for Staff, SELC, and APA to consider:

> For all Battery Energy Storage Systems (BESS) submitted as part of the "CARES 2023 Utility Scale RFP," programmable electronic components of the (i) Battery Management System (BMS), (ii) BESS Controller, and (iii) Site Controller (including controls, hardware and software) shall not be sourced from or manufactured by Foreign Entities of Concern ("FEOC") as defined in 42 U.S.C. § 18741(5) and subsequently interpreted in "Interpretation of Foreign Entity of Concern," 89 Fed. Reg. 37085 (May 6, 2024) or sourced from or manufactured in one of the following countries: China, Russia, North Korea, Saudi Arabia, Serbia, Algeria, Venezuela, Iran, Iraq, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Syria, Lebanon, South Sudan, Pakistan, and Cuba. For purposes of this provision, the terms Battery Management System, BESS Controller, and Site Controller are defined as follows:
>
> - Battery Management System (BMS): A control system used to protect the battery and to provide key parameters, such as state of charge, battery health, and temperature.
> - BESS Controller: A controller used to manage multiple stacks or arrays of batteries. This controller manages the balancing of the batteries.
> - Site Controller: A control system used to manage one or more sources (Photovoltaic solar, batteries, etc.) to achieve facility level control.

At its June 6, 2024 Administrative Session, Staff recommended approval of Georgia Power's requested (1) Commission rule waivers; (2) bid refresh process; and (3) revised BESS requirements language. The Commission adopted a Commissioner motion to amend Staff's

recommendation to add back the Netherlands to the list of restricted countries as provided in the first paragraph of the revised BESS requirement language. As such, the Company's June 5th revised language, with the addition of the Netherlands, was approved.

On June 21, 2024, SELC filed its Motion for Reconsideration. SELC's motion seeks reconsideration of the Commission's Order restricting procurement of battery components from specific countries, namely the Netherlands. Additionally, SELC's motion seeks reconsideration of the Commission's June 18, 2024 decision to approve the same BESS restrictions in Georgia Power's 2029-2031 All-Source Capacity RFP.

III. LEGAL STANDARD

The Commission has the authority to regulate public utilities in Georgia.[2] Commission decisions must be supported by "any evidence" in the record.[3] Under the "any evidence" test, any evidence on the record "substantiates the administrative agency's finding of fact and conclusion of law."[4] Such evidence must provide a rational basis for the Commission's decision.[5] As clearly explained by the Georgia Court of Appeals, "[n]othing in O.C.G.A. § 50-13-17 . . . requires the [Commission] to affirmatively list all of the evidence or arguments it considered so as to show that it has considered everything."[6] "Nor does O.C.G.A. § 50-13-17 . . . require that the [Commission] explain why it rejects as unpersuasive certain evidence or arguments."[7] A party dissatisfied with a Commission order may file a motion for reconsideration under Commission Rule 515-2-1-.08. The rule on reconsideration provides, in relevant part:

[2] *Lasseter v. Ga. Pub. Serv. Com.*, 253 Ga. 227, 319 (1984); *see also* O.C.G.A. § 46-2-23.
[3] *C&M Enters. of Ga. LLC v. Williams*, 346 Ga. App. 79, 816 S.E.2d 44 (2018) (quoting *Pruitt Corp. v. Ga. Dep't of Cmty. Health*, 284 Ga. 158, 664 S.E.2d 223 (2008)).
[4] *Flowers v. Georgia Real Estate Comm'n*, 141 Ga. App. 105, 232 S.E.2d 586 (1977); *see also* O.C.G.A. 50-19-19.
[5] O.C.G.A. § 50-13-19(h).
[6] *Ga. Power Co. v. Ga. Pub. Serv. Com.*, 196 Ga. App. 572, 396 S.E.2d 562 (1990).
[7] *Id.*

> Any party of record that is dissatisfied with an order of the Commission may apply for rehearing, reconsideration, clarification and/or oral argument within ten days from the effective date of the order. This application shall be filed as a written petition in which it is stated with particularity the matters claimed to have been erroneously decided, the alleged errors underlying the decision and the relief sought. . . . If, in the opinion of the Commission, good cause has been shown in said petition for rehearing, reconsideration and oral argument, the application shall be granted for such further relief as may be directed.

GA. COMP. R. & REGS. 515-2-1.-08 (2020).

IV. ARGUMENT

A. SELC Has Failed to Provide Any Compelling Reason or Show Good Cause for the Commission to Reconsider its Decision.

A motion for reconsideration should only be granted if good cause is shown.[8] SELC fails to provide any compelling reason or show good cause for the Commission to reconsider its decision in this matter. Other than claiming that the revised BESS language imposes a market restriction, SELC fails to identify any harm to themselves or to Georgia Power customers as a result of this change. SELC did not establish—or even allege—that the RFP would fail to procure the resources sought, or that the RFP would result in unjustifiably higher costs to customers. There is no justifiable cause for the Commission to reconsider its decisions.

Respectfully, after learning for the first time at Energy Committee that any person had an objection to the Company's revised BESS requirement language, Georgia Power voluntarily revised its request based on the feedback from SELC, APA, and Staff. Georgia Power reviewed its request, reconsidered the parameters of the proposed restrictions, and included clarifying edits and definitions to reduce the alleged "overly broad" language. While Staff and SELC asked questions that Georgia Power, through counsel, answered (see SELC Attachment 2), no other

[8] Ga. Comp. R. & Regs. R. 515-2-1-.08.

person offering feedback proposed any actual edits or alternative language for Georgia Power to consider. The Commission does not need to reconsider its decisions—the Company already revised its request, which was included in the updated language supported by Staff, APA, and ultimately adopted by the Commission.

On June 6, 2024, during its Administrative Session, the Commission adopted a motion to amend Staff's recommendation to include the Netherlands, which was unanimously approved by the Commission. There, Commissioner Pridemore raised concern that the Netherlands is among the foreign entities identified by the U.S. Department of State and the U.S. Department of the Treasury as a "typical conduit to materials out of Iran and Syria."[9] Clearly the Commission's determination is supported by evidence in the record and provides a sufficient rational basis for its decision. The Commission's determination also reflects its commitment to ensuring the safety of Georgia Power's grid infrastructure and its customers. SELC's disappointment with the Commission's decision does not justify reconsideration. Therefore, the Commission should deny SELC's motion for reconsideration.

B. The Revised BESS Requirements are Not Unreasonable, Arbitrary, or Capricious.

Georgia Power filed updated requirements for BESS resources based on the heightened reliability risk associated with including certain foreign made battery components within projects connected to the Georgia Power electric system. Security experts warn that breaches to the batteries' communication systems could destabilize the electricity grid through manipulated surges and cuts in current. BESS require careful monitoring and control of voltage, current, and

[9] *Administrative Session*, Georgia Public Service Commission (June 6, 2024) (statement of Commissioner Tricia Pridemore).

temperature conditions. Threats to these monitoring components could lead to a thermal runaway event resulting in overheating, a fire, or an explosion.

Accordingly, Georgia Power requested to revise its BESS Requirements to prohibit components of the Battery Management System, BESS Controller, and Site Controller from being sourced from or manufactured in (1) China, Russia, Iran, and North Korea, or (2) those countries under direct influence from or susceptible to pressure from one of the "big four" countries. This change was recommended by the broader Southern Company System cyber security team to be implemented system wide immediately. The Company intends to make this change for all BESS to be procured in ongoing or upcoming Company RFPs—including the CARES RFP, All Source, Winter 2027_2028 BESS RFP, and 500 MW ESS RFP. Georgia Power has also taken steps to swap out the communications components of existing and proposed Company-Owned BESS facilities in compliance with this requirement.

The country list included in the revised BESS requirements was prepared based on feedback from the Company's cyber security organization due to security concerns related to the equipment and controls exported from the identified countries. These enumerated countries have the demonstrated capability and intent to directly impact critical infrastructure (including power grid components like BESS), which includes disruption to material or technology suppliers/manufacturers with a presence in those countries. In addition, countries like Saudi Arabia and Pakistan have Department of State travel advisories due to terrorism risks and missile/drone attacks. Consistent with physical safety risks and the fact that terrorists are allowed to freely operate in those countries, the Company assessed that those governments would also be susceptible to pressure from one or more of the "big four" as described above. The proposed change to the BESS requirements is not arbitrary or capricious. Rather, it is intended to ensure that Georgia

Power maintain appropriate cyber security protocols, maintain the physical security of generation connected to the system, and protect the integrity of the electric system as whole.

C. Contrary to SELC's Allegation, the Commission's Adoption of the Motion to Amend Staff's Recommendation is Not Preempted by Federal Law or in Violation of Federal Foreign Affairs Powers.

The revised BESS requirements included in the CARES 2023 US RFP and All-Source RFP are not preempted by federal law nor do they encroach on federal control of foreign affairs. The U.S. Department of Energy ("DOE") has promulgated its final interpretative rule on the statutory definition of a FEOC.[10] The DOE's statutory definition provides that a foreign entity is a FEOC if it is "owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation."[11] The interpretative rule also includes entities designated as a foreign terrorist by the Secretary of State and is included on the Specially Designated National and Blocked Persons List maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control.[12] Additionally, a foreign entity is a FEOC if it is "determined by the Secretary [of Energy], in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States."[13]

The Commission's order restricts procurement of battery components from FEOC's—including China, Russia, North Korea, and Iran—as well as identified countries who function as a conduit for those countries, including the Netherlands. The list of restricted countries provided by

[10] 42 U.S.C. § 18741(5) (subsequently interpretated in "Interpretation of Foreign Entity of Concern," 89 Fed. Reg. 37079 (May 6, 2024) (codified at 10 C.F.R. Ch. III).
[11] 89 Fed. Reg. 37080 (May 6, 2024) ("covered nations" are the People's Republic of China, the Russian Federation, the Democratic People's Republic of North Korea, and the Islamic Republic of Iran).
[12] *Id.*
[13] *Id.*

Georgia Power and adopted by the Commission are guided by the federal government's statutory definition of a FEOC. The Company's list does not make independent judgments about the conduct of foreign governments but rather identifies and implements federal guidance regarding those countries who qualify as a FEOC or a conduit for a FEOC. The BESS country list reflects Georgia Power's commitment to keep its customers safe from potential harm. Therefore, the Commission's adoption of the motion to amend Staff's recommendation is not preempted by federal law, and the Commission should deny SELC's Motion for Reconsideration.

D. SELC Lacks Standing to Request Reconsideration of the Commission's Decisions in these Dockets.

As provided in the Commission Rules and acknowledged by SELC in its Motion for Reconsideration, any party of record that is dissatisfied with an order of the Commission may apply for rehearing, reconsideration, clarification and/or oral argument within ten days from the effective date of the order. However, SELC is not a party of record in either Docket No. 45084 or 55268 because both dockets are for Georgia Power RFPs and neither is considered a contested case pursuant to O.C.G.A. § 50-13-19(a). As such, there are no parties of record. Even if parties of record were appropriate—which they are not in such cases—SELC has not even filed an intervention in either docket.

To be clear, stakeholders have had ample opportunity to participate and provide input under the Commission's prescribed RFP process. Indeed, SELC and other stakeholders provided feedback on the Company's Request. SELC was allowed to make the same arguments in their petition for reconsideration at the Commission's Energy Committee where this issue was considered. However, a motion for reconsideration is legally limited to parties of record. SELC is not a party of record and, therefore, lacks standing to bring its Motion for Reconsideration.

V. CONCLUSION

SELC lacks standing and has not provided a compelling reason or good cause for the Commission to reconsider its decisions in Docket Nos. 45084 and 55268. For the reasons set forth above, the Commission should deny SELC's Motion for Reconsideration.

Respectfully submitted, this 1st day of July, 2024.

/s/ Allison W. Pryor
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Attorney for Georgia Power Company

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