Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza, 600 Peachtree Street NE, Suite 3000
Atlanta, GA 30308

troutman.com

**Brandon F. Marzo**
D 404.885.383
brandon.marzo@troutman.com

August 6, 2024

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

**Re: Georgia Power Company's Application for the Certification of Plant Yates Units 8-10**

Dear Ms. Tanner:

Enclosed for filing with regard to the above-referenced proceeding is the Post-Hearing Brief of Georgia Power Company.

Please call me at 404-885-3475 if you have any questions regarding this filing.

Sincerely,

Brandon F. Marzo

Enclosure

**BEFORE THE**
**GEORGIA PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| In Re: | ) | |
| | ) | |
| Georgia Power Company's 2023 Integrated Resource Plan Update, Application for the Certification of Plant Yates Units 8-10 | ) | Docket No. 55378 |

# POST-HEARING BRIEF OF GEORGIA POWER COMPANY


Steven J. Hewitson
Brandon F. Marzo
Allison W. Pryor

Attorneys for
Georgia Power Company

TROUTMAN PEPPER
HAMILTON SANDERS LLP
600 Peachtree Street, NE
Suite 3000
Atlanta, Georgia 30308-2216
(404) 885-3000


Dated: August 6, 2024

## TABLE OF CONTENTS

**I. INTRODUCTION ..... 1**

**II. PROCEDURAL HISTORY AND BACKGROUND ..... 1**

**III. STANDARD OF REVIEW ..... 3**

**IV. ARGUMENT ..... 4**

A. The proposed construction monitoring procedure is reasonable and should be approved. 4

B. SACE/Sierra Club Witness Lin's recommendations should be rejected. ..... 7

1. *Witness Lin did not review the Company's resource mix or economic analysis, which include appropriate and relevant analyses of fuel costs.* ..... 7

2. *The fuel cost recovery clause protects customers from intermittent fluctuations in fuel costs.* ..... 9

3. *Witness Lin's fuel cost policy arguments are not appropriate in this resource certification proceeding.* ..... 11

**V. CONCLUSION ..... 12**

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| In Re: | ) | |
| | ) | |
| Georgia Power Company's 2023 Integrated Resource Plan Update, Application for the Certification of Plant Yates Units 8-10 | ) | Docket No. 55378 |
| | ) | |
| | ) | |
| | ) | |

# POST-HEARING BRIEF OF GEORGIA POWER COMPANY

## I. INTRODUCTION

This matter pending before the Georgia Public Service Commission (the "Commission") is Georgia Power Company's ("Georgia Power" or the "Company") Application for the Certification of Plant Yates Units 8-10 ("Certification Application"). The Certification Application for Plant Yates Units 8-10 ("Yates 8-10") was filed pursuant to Georgia Power's 2023 Integrated Resource Plan Update ("IRP Update"). The Commission approved Yates 8-10 as part of the Company's 2023 IRP Update.

The certification of Yates 8-10 benefits all Georgia Power customers by preserving and protecting reliability and supporting the continued economic development of our state. Accordingly, the Commission should approve the Company's Certification Application.

## II. PROCEDURAL HISTORY AND BACKGROUND

The Commission's May 8, 2024, Procedural and Scheduling Order ("PSO") identified several limited issues to be addressed in this proceeding. As stated in the PSO:

> The issues to be addressed shall include those which are required pursuant to the IRP Act, O.C.G.A § 46-3A-1 et seq., and the Commission's implementation of Rule 515-3-4 as well as all other related issues this Commission deems appropriate.

> Should the Commission issue an order approving, denying, or modifying the requests made by the Company in its January 31, 2024 application?
>
> Should the Commission grant the requested certificate or deny the requested certificate and authorize a specific alternative means of supplying the requirements found by the Commission to exist?
>
> **Standard Certification Issues**
>
> Pursuant to O.C.G.A. § 46-3A-3(a), after January 31, 1992, no utility shall commence the construction of an electric plant, sell an existing plant or any portion thereof which is included in the retail rate base or which has been certified, enter into a long-term purchase of electric power, or make expenditures for a demand-side capacity option for serving the utility's Georgia retail customers without having first obtained from the commission a certificate that public convenience and necessity requires, or will require, such construction, sale, purchase, or expenditure.
>
> **Additional Issues**
>
> The current filings are in part a result of Commission directives from previous orders. Additional issues to be addressed in Docket No. 55378 with respect to the certification of Plant Yates Units 8-10 shall include any issues and directives of the Commission from its prior orders whether or not expressly identified in this [PSO].

*See* PSO at 2–3; *see also* Commission Rule 515-3-4-.06(6) ("Once [an integrated resource] plan has been approved, the Commission may limit the scope of issues it will consider in the review of subsequent plans to those issues directly related to material changes.").

Pursuant to the PSO, the Company filed its direct testimony in support of the Certification Application on May 21, 2024. (*See Direct Testimony of Jeffrey R. Grubb and Michael A. Bush*, Docket No. 55378 (May 21, 2024).) On June 21, 2024, PIA Staff filed the direct testimony of Steven D. Roetger. (*See Direct Testimony and Exhibit of Steven D. Roetger*, Docket No. 55378 (June 21, 2024).) Also on June 21, 2024, the Sierra Club and Southern Alliance for Clean Energy ("SACE," and collectively, "SACE/Sierra Club") filed the direct testimony of Albert Lin. (*See Direct Testimony and Exhibits of Albert Lin*, Docket No. 55378 (June 21, 2024).) On July 10, the Company filed the rebuttal testimony of the panel of Jeffrey

R. Grubb and Michael A. Bush. (*See Rebuttal Testimony of Jeffrey R. Grubb and Michael A. Bush*, Docket No. 55378 (July 10, 2024).)

The Commission held a hearing on the Company's Certification Application, including direct and rebuttal testimony, on July 24, 2024 ("Certification Hearing").

## III. STANDARD OF REVIEW

"The Commission shall determine which combinations of resource options. . . best serve the public interest considering economics, safety, reliability, flexibility, risk, equity among ratepayers and classes, customer bills, externalities, and other factors the Commission deems appropriate." (Commission Rule 515-3-4-.05(4).) "Based upon the evidence of record presented at the hearing on the [certification] application, the Commission shall render a decision either approving the application, approving it subject to stated conditions, approving it in part and rejecting it in part, rejecting it as filed, or providing an alternate capacity resource certification . . . ." (Commission Rule 515-3-4-.07(5).) The Commission shall approve an application for certification upon finding

> that there is or will be a need for the proposed capacity resource at the time that [it] is proposed to be utilized to assure an economical and reliable supply of electric power and energy for the Georgia retail customers of a utility, that the certificate is required by the public convenience and necessity, and that the certificate complies with the provisions of this chapter and the rules of the commission.

(O.C.G.A. § 46-3A-4(a); *see also* Commission Rule 515-3-4-.07(5) ("A utility's application shall be approved if found to be in the public interest and to substantially comply with these regulations.”))

## IV. ARGUMENT

The Commission should certify Yates 8-10, which are needed beginning in the winter of 2026/2027 to assure an economical and reliable supply of electricity for Georgia Power's customers and required by the public convenience and necessity. Yates 8-10 were approved as part of the Company's 2023 IRP Update. (*See* Order Adopting Stipulated Agreement, Docket No. 55378 (April 26, 2024) ("IRP Update Order") at 14 ("Stipulation item 12 approves the Plant Yates combustion turbines 8-10 as part of the Company's 2023 IRP update").) As the Commission noted, "[t]he Stipulation represents a reasonable path to ensuring that Georgia Power can continue to serve its existing and growing customer base with the reliability that customers value and expect, while continuing to support Georgia's growing and thriving economy." (IRP Update Order at 7.) Accordingly, the Commission has already acknowledged and supported the need for Yates 8-10 in connection with the 2023 IRP Update. None of the arguments raised by Intervenors in this certification proceeding warrant reconsideration or alteration of the Commission's prior ruling. Nevertheless, with respect to the certification of Yates 8-10, the Company supports the implementation of a construction monitoring process.

### A. The proposed construction monitoring procedure is reasonable and should be approved.

The Commission should approve the proposed construction monitoring process outlined by the Company and PIA Staff. As an initial matter, a similar monitoring process was successfully used on the Plant Vogtle Units 3 and 4 ("Vogtle") project, which kept PIA Staff and the Commission informed and up to date on all aspects of the construction project. Further, the Company and PIA Staff testified extensively regarding their willingness to collaborate and engage to ensure that the process is sized appropriately for Yates 8-10. Finally, the process can be adjusted

as necessary throughout the Yates 8-10 project to ensure PIA Staff and the Commission continue to receive all the information necessary to stay fully apprised of the project's progress.

The proposed construction monitoring process was used previously on Vogtle, and PIA Staff Witness Roetger testified that PIA Staff and the monitoring consultants were "extremely satisfied" with the process as well as the level of access to project personnel and information provided by the Company. (Tr. 116, 130.) The Vogtle construction monitoring process provided PIA Staff—and in turn, this Commission—with visibility across all aspects of the project, which enabled parties to stay sufficiently informed and develop independent opinions on the status of the Vogtle project. (*Id.* at 131.) The use of this process on the Yates 8-10 project will benefit from this prior experience, including lessons learned, with the Vogtle project. All parties—GPC, PIA Staff, the Commission, and other interested stakeholders—are already familiar with the procedures and types of information to be disclosed. Moreover, to the extent the Vogtle monitoring process had any issues, those were all resolved by the time the Vogtle 3 & 4 project achieved commercial operation.

PIA Staff and the Company each acknowledge that the Yates 8-10 project is different in size and scope to Vogtle. (*Id.* at 114 ("The breadth and depth necessary to monitor the Plant Vogtle expansion will not be necessary for this Project.").) Therefore, the Company and PIA Staff have agreed to collaborate to ensure the construction monitoring process is appropriately sized for Yates 8-10. (*Id.* at 25 ("The Company will work with [PIA] Staff to ensure that it has the requisite information necessary to evaluate the progress and status of construction at [Yates 8-10]."); *id.* at 50 ("On the construction monitoring, I think, we will absolutely be tracking everything and working with PIA Staff there."); *id.* at 123 (noting PIA Staff's confidence "that the details for this monitoring program can be worked through via discussions with the Company,"); *id.* at 131 (PIA

Staff noting that it would be helpful to meet with the Yates project team to develop an initial list of reports and data); *id.* at 279 ("[T]he Company will collaborate with PIA Staff to develop reporting requirements that are appropriate for Yates 8-10.").) The Commission can rest assured that the construction monitoring process will be appropriately adapted for use on Yates 8-10.

On cross-examination of PIA Staff, SACE/Sierra Club inquired about imposing economic penalties for "missed deadlines" on the construction monitoring process. (*Id.* at 126.) The imposition of such penalties is wholly unnecessary. As a preliminary matter, neither the Company nor PIA Staff expects any significant delays to occur on Yates 8-10, and both testified that they are highly confident in the project's successful completion. (*Id.* at 25 ("Georgia Power is highly confident in its ability to successfully execute the project"); *id.* at 132 (indicating that PIA Staff believes the projects "will be constructed, tested, and brought into commercial operation very successfully").)

The Company also presented testimony regarding the construction consortium's substantial experience building these types of resources, including a recent similar project for Southern Company that was successfully completed on time and under budget. (*Id.* at 23, 39, 85.)

In the event there are unexpected delays, the proposed construction monitoring process ensures that PIA Staff and this Commission will be apprised of the status at every step of the way. To the extent the PIA Staff questions any delay-related costs, the prudency of those costs can be challenged and fully litigated at the end of the process. (*Id.* at 126 ("[I]f [PIA] Staff makes a determination that some of those costs may be imprudent, then [PIA Staff] would certainly challenge them at the end of the process.").) Moreover, the IRP Update Stipulation already provides significant customer protections related to project construction costs. (*See* Stipulation at

19, para. 12.) For all these reasons, the proposed construction monitoring process is reasonable, prudent, and in the public interest. Accordingly, it should be approved.

### B. SACE/Sierra Club Witness Lin's recommendations should be rejected.

SACE/Sierra Club Witness Lin recommends that, notwithstanding the Commission's prior approval of Yates 8-10 in the IRP Update, including the necessary timeline for construction, the Commission should delay certification of Yates 8-10. The Commission should reject Witness Lin's recommendations. Witness Lin failed to review key information related to the Company's 2023 IRP Update as plainly evidenced through cross examination. Further, Witness Lin's arguments about fuel price volatility mistake the effect of such volatility on customers, based on his misunderstanding of how the fuel clause works in Georgia. Finally, Witness Lin raises policy arguments regarding determination of fuel costs, which are irrelevant to this resource certification proceeding and should be rejected.

#### *1. Witness Lin did not review the Company's resource mix or economic analysis, which include appropriate and relevant analyses of fuel costs.*

SACE/Sierra Club argues that fuel cost was not appropriately considered, if at all, in the economic evaluation for Yates 8-10. (Tr. 270–71.) This argument wholly ignores the vast record from the 2023 IRP Update proceeding and should be rejected.

During the hearing, Witness Lin testified that he had reviewed "Georgia Power's application, Witness testimony, and discovery in this case, along with relevant Georgia law and a variety of documents from other Commission proceedings."[1] Yet, cross examination revealed that he failed to review material information that should have impacted his analysis, only some of

[1] Witness Lin admitted on cross-examination that his review of other Commission proceedings did not include any review of other resource certification proceedings. (Tr. 267.)

which was confidential or redacted. (*See* Tr. 264 (admitting that he had "not reviewed the confidential and redacted information"); *id.* at 268 ("I have not looked in any detail and did not see any of the redacted or confidential information."); *id.* at 270 ("Again, with the information that was marked confidential and redacted, which I did not review . . . .").)

As a preliminary matter, the public disclosure version of the Resource Mix study plainly shows that the Company considers fuel forecasts as part of that analysis. Therefore, even if his review was limited to public disclosure versions of information, Witness Lin should have known that the Company already considers fuel costs in its analysis. To the extent Witness Lin claims that he is lacking the confidential details of these analyses, SACE/Sierra Club could have gained access to the associated confidential information under Commission rules and practice, but failed to do so. *See* Commission Rule 515-3-1-.11(3) ("Any person who is a party or intervenor in a docket . . . and desires access to protected information submitted to the Commission . . . may petition the Commission for such access.") and 515-3-1-.11(3)(a) ("Any person who is granted access to protected information . . . shall be required to enter into a protective agreement with the affected party or utility"). Had Witness Lin reviewed this information, he would have learned the details of the Company's fuel cost and economic analyses, that PIA Staff had considered such detailed information in connection with the IRP Update, and that the Commission was fully aware of the specific fuel cost projections when it approved Yates 8-10.

In short, Witness Lin's analysis was based on incomplete information. (*See* Tr. 271 ("I can't say to what level [the Commission and PIA Staff] looked at [fuel costs]. I can only conclude that based on the summary figures provided in the actual fuel mix study and the questions given that more consideration should have been given to the price volatility of fuel.").) Witness Lin's failure to request and review available data related to fuel costs, his lack of insight into how that

information was considered by Georgia Power in its resource planning and economic analyses, specifically including its evaluation of Yates 8-10, and his unawareness of how PIA Staff and the Commission considered this information are all fatal to his argument. The record is clear that Georgia Power analyzed and evaluated detailed fuel costs in its economic and planning analyses. (*See* Economic Analysis of Capacity Resources, Docket No. 55378 (October 27, 2023) (Trade Secret); Updated Economic Analysis of Capacity Resources, Docket No. 55378 (January 12, 2024) (Trade Secret).) It is also clear, that PIA Staff and the Commission had access to and considered fuel costs in approving Yates 8-10. Accordingly, SACE/Sierra Club's recommendation that certification of Yates 8-10 should be delayed so that fuel costs can be considered should be rejected.

*2. The fuel cost recovery clause protects customers from intermittent fluctuations in fuel costs.*

SACE/Sierra Club's assertions regarding the customer impact of natural gas price volatility should be disregarded because they ignore how fuel costs are recovered in Georgia. Witness Lin attempts to argue that market fluctuations negatively impact Georgia Power customers and devotes a significant portion of his direct testimony discussing national and international trends in natural gas prices. (Tr. 149-55; 157-60.) However, his arguments erroneously conflate the impact of natural gas market fluctuations on the Company with the impact to customers.

Customers who pay for fuel through the fuel cost recovery ("FCR") clause are not subjected to daily price volatility or uncertainty related to the cost of fuel. By design, the Company handles natural gas market fluctuations up front for those customers. While these customers pay fuel costs, those rates are established in its FCR proceedings that are conducted before the Commission approximately every three years, consistent with O.C.G.A. § 46-26-2 and this Commission's prior orders. (*See, e.g.*, Order Adopting Stipulation, Docket No. 44902 (May 25,

2023) ("Georgia Power shall file an FCR-27 application no later than February 28, 2026.").) Customers rates do not change until the FCR is reset by the Commission. This process has served customers well for over a decade. Fuel cost proceedings not only allow for full review and audit of the Company's filing, the submission of testimony, and for the full litigation of issues through an evidentiary hearing, but by their very nature, they result in a consistent fuel rate applied over three years that significantly mitigates variations or volatility in customer bills due to market fluctuations. Instead, fluctuations in fuel costs are absorbed and managed by the Company during the period of time that a given FCR rate is in place. Adjustments to those fuel costs, either up or down, are requested, reviewed, and included in subsequent FCR proceedings.

Indeed, Witness Lin acknowledged this reality at the Certification Hearing. When questioned during cross-examination by counsel for PIA Staff that "the customer is not experiencing the bouncing up and down volatility like the utility is; correct?", Witness Lin stated: "That is probably true." (Tr. 263.) Ultimately, Witness Lin confirmed that his testimony demonstrates that there have been "sustained periods of low [natural gas] prices," (*id.* at 258) and further that "there are periods of low natural gas prices that last longer than the spikes or volatility." (*Id.* at 259.)

Accordingly, and by Witness Lin's own admission, it is Georgia Power that encounters and manages fuel cost volatility, *not* FCR customers. Witness Lin's argument incorrectly asserts that such volatility imposes a burden on FCR customers that should be addressed through a delay in certification. This argument is nonsensical. As discussed previously, fuel costs have already been accounted for in detail when the Company considered the resources selected in the 2023 IRP Update. Furthermore, as this Commission has already recognized in its IRP Update Order, the Company is facing an urgent capacity need. (*See* IRP Update Order at 14.) Therefore, this

certification is proceeding on an expedited timeline that is "necessary to meet near-term capacity needs in this unique case." (*Id.*) For these reasons, and for those detailed herein, delay is not an option. The Commission should approve Georgia Power's Certification Application without modification or delay.

*3. Witness Lin's fuel cost policy arguments are not appropriate in this resource certification proceeding.*

Witness Lin's recommendation to delay certification "to provide additional time to create an updated policy on how the [FCR] policy is implemented in Georgia," (Tr. 140) ignores the Company's well-established capacity needs and are not appropriate for consideration in this proceeding. At best, these arguments are better raised in the Company's FCR proceedings. As explained above, the Company participates in regular FCR proceedings before the Commission where, prior to the approval of any adjustments for fuel cost recovery, fuel costs are subject to review and audit by the Commission, PIA Staff, and intervening parties. SACE/Sierra Club, by virtue of its participation in the Company's recent FCR 26 proceeding in Docket No. 44902, is already familiar with this process and with its ability to raise fuel policy-related arguments for consideration by the Commission in the appropriate forum.

When asked by counsel for PIA Staff if one could "simply raise the issue in the next FCR that the associated costs be allocated to the costs causers; i.e., the data centers?", Witness Lin aptly stated: "[T]hat is probably a worthy debate to have in the future in the next FCR, but today we're talking about Yates." (*Id.* at 265.) Witness Lin is correct. This proceeding is about the Company's Certification Application for Yates 8-10, which are critical resources proposed as part of the Company's near-term solution to its increasing and accelerated capacity needs, and which were reviewed and approved in the 2023 IRP Update. Tellingly, the Commission's PSO, which

identified several limited issues to be addressed in this certification proceeding, did not include fuel cost recovery policy and practices.

Accordingly, SACE/Sierra Club's arguments regarding modified fuel cost recovery practices in this docket should be disregarded and would be more appropriately asserted in FCR proceedings.

## V. CONCLUSION

This Commission has already approved Yates 8-10 as reasonable and appropriate resources to address the Company's capacity needs beginning in the winter of 2026/2027 in accordance with its 2023 IRP Update. Accordingly, Georgia Power's Certification Application benefits all customers by preserving and protecting reliability and supporting the continued economic development of our state. Approval of the Certification Application is therefore in the public interest. For the reasons set forth above, and based on the record in this docket, the Commission should approve the Company's Certification Application without delay.

Respectfully submitted, this 6th day of August, 2024.


Steven J. Hewitson
Brandon F. Marzo
Allison W. Pryor
*Attorneys for Georgia Power Company*

TROUTMAN PEPPER HAMILTON SANDERS LLP
Bank of America Plaza
Suite 3000
600 Peachtree Street N.E.
Atlanta, GA 30308-2216
(404) 885-3000