BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

In Re:	]	
	]	
Review of Proposed Revisions and	]	
Verification of Expenditures Pursuant	]	Docket No. 29849
To Georgia Power Company's Certificate	]	
of Public Convenience and Necessity	]	
for Plant Vogtle Units 3 and 4,	]	
Thirteenth Semi-Annual Construction	]	
Monitoring Report	]	

Brief of the Southern Alliance for Clean Energy

COMES NOW the Southern Alliance for Clean Energy (hereafter "SACE") and submits its Post-Hearing Brief to the Georgia Public Service Commission. SACE incorporates by reference all of its briefs and pleadings submitted in previous construction monitoring review proceedings in Docket 29849.

SACE offers the following arguments and recommendations for the Commission's consideration.[1]

[1] SACE's brief does not address Georgia Power Company's January 21, 2016 filing, Application for Review and Approval of the Definitive Settlement Agreement for Plant Vogtle Units 3 and 4 and Amendment 7 to the Engineering, Procurement and Construction Agreement, nor the subsequent discussion during the January 28, 2016, Energy Committee meeting. Since it has not yet been determined how the Georgia Public Service Commission will proceed with consideration of the recent litigation settlement between the Owners and Contractors at the time that this brief is due, SACE determined that it was not appropriate to comment on that issue at this time.

<u>Recommendations</u>

1. The Commission should immediately conduct a prudency review if it allows the Company to collect more than the certified financing costs of $1.695 billion because it will have granted the Company a de facto increase in the total certified cost of the Project and violated the terms of the 8th Vogtle Construction Monitoring Review ("VCM") Order.
2. A viable mitigation strategy to meet the current commercial operation dates of June 2019 for Unit 3 and June 2020 for Unit should be presented in the 14th VCM and pinning or constraining the construction schedule should be stopped because it masks and distorts the schedule impact of construction delays on critical path activities.
3. The Commission should affirm that the $6.113 billion certified cost for Georgia Power Company's share of the Project costs is not an estimate.
4. Costs should be properly allocated where expenditures for Units 3 and 4 provide benefits to Units 1 and 2.

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Argument and Citation of Authority

I. By Allowing the Company to Collect More Than the Certified Financing Costs of $1.695 Billion the Commission Has Granted the Company a De Facto Increase in the Total Certified Cost of the Project Above the $6.113 Billion Certified Project Cost and Violated the Terms of the 8th VCM Order by Not Conducting a Prudency Review Before Increasing or Adjusting the Total Certified Cost of the Project

Since the First Vogtle Construction Monitoring review proceeding it has been uncontested that the total certified cost for Georgia Power Company's share of the Project is $6.113 billion and is composed of $4.418 billion in total construction and capital costs and $1.695 billion in total construction schedule financing costs. (Thirteen Semi-annual Vogtle Construction Monitoring Report, Table 1.1, p. 6) The 8th VCM Order provides in the ordering paragraphs, "ORDERED FURTHER, that consideration of Georgia Power's request to amend the certificate, and any further requests to increase the certified cost, should be held in abeyance until the completion of Vogtle Unit 3." While the Project certified financing costs are $1.695 billion the total current forecast financing costs have increased to $2.408 billion (*Id.*), but the Project's *certified* financing costs have not received approval from the Commission to increase to $2.408 billion.

The Company has made its intentions clear when it declared in its Twelfth VCM Hearing Request No. 2 filed on June 22, 2015, "The Company currently projects to collect approximately $3.2 billion through the NCCR tariff through the completion of Unit 3. Of this amount, $2.2 billion will pay for the costs of construction financing and $1 billion will pay for federal and state income taxes." (See Exhibit 1) Neither $2.2 billion nor $3.2 billion are the "certified" financing costs approved by this Commission. By collecting more than $1.695 billion through the NCCR tariff the Company is ignoring the Commission's prior orders in Docket 29849 unless a full prudency review is conducted and a new "certified" Project cost is approved.

The 12th VCM Order stated, "SB 31 provides for collection of 100% of the financing cost associated with the certified construction cost of the plant along with the Company's authorized ROE. (11th VCM Order, p. 7)" (Order on the Twelfth Semi-Annual Vogtle Construction Monitoring Report for the Period July 1, 2014 Through December 31, 2014, p. 6; Document No. 159853) (Emphasis in original) The language of SB 31[2] (O.C.G.A. § 46-2-25) and the Commission's 8th VCM Order create a precarious Catch-22 situation where SB 31 allows the Company to collect 100% of its financing costs associated with the certified construction cost of the Project that will be in excess of $1.695 billion, but the 8th VCM Order mandates that there be a prudency review *before* the total certified cost of the Project is increased above $6.113 billion. Collecting $3.2 billion through the NCCR tariff will increase the total Project cost from $6.113 billion to $7.6 billion. Either the Company may not collect more than $1.695 billion in

[2] SB 31 is the Georgia Energy Financing Act, passed in 2009, which allows a utility to charge customers in advance for financing costs associated with building new nuclear generation. Available at http://www.legis.ga.gov/Legislation/en-US/display/20092010/SB31.

financing costs through the NCCR tariff or the Commission must conduct a prudency review before Unit 3 is complete to consider whether to increase the total certified cost of the Project above $1.695 billion.

The situation is further complicated because it cannot be argued that the financing costs in excess of $1.695 billion are theoretical in nature or will not be collected until the completion of Unit 3. They are not theoretical; customers have been paying in advance for the financing costs since January 2011 and have paid over $1.5 billion to date. (STF-76-27) Further, the Company will collect over $1.695 billion by the 2nd Quarter of 2016.

It may be argued that the hundreds of millions of dollars in taxes being collected through the NCCR tariff are not financing costs and should not be counted towards the total certified financing cost of $1.695 billion. But if that argument is made then no taxes at all should be collected through the NCCR tariff because SB 31only allows for the collection of "financing costs" and the Company's allowed return on equity ("ROE"). SB 31 did not include language on how taxes should be considered, nor were taxes mentioned in the language.

The Commission has three options it may pursue.

- First, collection of the NCCR tariff, including taxes, may continue until $1.695 billion is collected at which time all collections must stop.

- Second, the Commission may allow the continued collection of the NCCR tariff until $1.695 billion is collected, but make a determination that taxes are not financing costs pursuant to the terms of SB 31 and order a refund of all taxes illegally collected to date.
- Finally, the Commission may allow for the continued collection of the NCCR tariff, including taxes if they are determined to be financing costs pursuant to SB 31, but a prudency review must be held to determine whether the current certified cost of the Project may be increased from the current $6.113 billion by increasing the certified financing costs of $1.695 billion.

Not addressing this issue and ignoring the problem is not an option, and creates a direct conflict between Senate Bill 31 and the Commission's orders in Docket 29849.

A. <u>Taxes Are Not Financing Costs and Georgia Power Company Customers Are Paying an Additional 48% Tax Gross Up On All Financing Costs Pre-Collected Through the Nuclear Construction Cost Recovery ("NCCR") Tariff</u>

Both Georgia Power Company and the Public Service Commission Advocacy Staff acknowledged that a 46% tax gross up on all financing costs is being collected from customers. (Tr. 122 and 432) Also, in response to a hearing request regarding the tax gross up rate, Philip Hayet[3] responded by stating, "The requested implied tax gross up calculation is 48% (1282.3 / 866)." (SACE Hearing Request No. 1, January 6, 2016) As has been argued in the previous section, O.C.G.A. §46-2-25 (c.1)(1) or SB 31 provides in part, ". . . a utility shall recover from its customers, as provided in this subsection, the costs of financing associated with the construction of a nuclear generating plant which has been certified by the commission." The legislation does not specifically provide for the collection of taxes associated with the collection of financing costs associated with the construction of a nuclear generating plant, and the Company does not include taxes in its report on financing costs. (Thirteenth Semi-annual Vogtle Construction Monitoring Report, p. 6, Table 1.1)

In all of its filings the Company does not include the amount of taxes paid on the financing costs in its total Project financing. (*Id.*) The Company breaks down the financing costs into three separate categories: (1) Return on CWIP in Rate Base; (2) AFUDC – Accrued through Dec. 2010, and; (3) Return on Unamortized AFUDC Balance. (*Id.*) No listing for taxes is included in financing costs. Because taxes on the pre-collected financing costs are not included in the recovery of financing costs they should not be collected from ratepayers. All taxes

[3] SACE Hearing Request No. 1 Response: "The Company performed the tax gross up calculation. The tax gross up rate that Mr. Baker has requested can be derived from information the Company supplied in the 13th VCM Table 1.1, and in response to Staff Discovery request STF-76-27. From Table 1.1, the Financing Costs as of June 30, 2015 are $866 million, and from STF-76-27, the total cash collections through the NCCR tariff as of June 30, 2015 is $1,282.3 million. The requested implied tax gross up calculation is 48% (1282.3 / 866)."

collected from January 2011 either should be refunded to ratepayers or credited towards any remaining financing costs until the $1.695 billion in certified financing costs is collected. No further financing costs should be collected until the certified cost is changed after a full prudency review is completed and approved.

B. The Nuclear Construction Cost Recovery Tariff Has Increased 66% Since 2011 from 5.8619% to 9.7357%

Georgia Power Company residential and commercial customers currently pay an additional 9.7357% surcharge (Docket No. 32539, Document No. 160772, Georgia Power Company's Update of the NCCR Tariff, NCCR-6, filed October 30, 2015) on their monthly bill because of the NCCR tariff which has increased by 66% since January 2011 when the surcharge was first assessed. Cash collections through the NCCR tariff from January 2011 through the Second Quarter of 2015 collected $1,242,260,000 (STF-76-27), and another $150,000,000 to $200,000,000 was probably be collected through the end of 2015 bringing collections through 2015 to approximately $1.390 to $1.440 billion. By April 2016 $1.695 billion will be collected through the NCCR tariff.

The Thirteenth Semi-annual Vogtle Construction Monitoring Report shows that the certified Project financing costs of $1.695 billion have increased to $2.408 billion. (p. 6, Table 1.1) A 46% tax gross up on the $2.408 billion total current forecasted financing costs adds an additional $1.107 billion (Tr. 432) for a total of $3.515 billion to the total amount of financing costs and taxes.

II. A Viable Mitigation Strategy To Achieve the Current Commercial Operation Dates of June 2019 for Unit 3 and June 2020 for Unit 4 Should Be Presented In the 14th VCM and Pinning or Constraining the Construction Schedule Should Be Stopped Because It Masks and Distorts the Schedule Impact of Construction Delays on Critical Path Activities

According to the PSC Advocacy Staff witnesses the use of pinning or constraining the construction schedule for nine critical path activities "masks the schedule impact of current delays" (Tr. 261) and causes them concern. (Tr. 298) Pinning the construction schedule as Fluor Enterprises, Inc. ("Fluor") transitions into its new role of construction manager should only be a short-term solution to allow Fluor time to develop a viable mitigation strategy, but it should not be used as a long-term subterfuge to cover-up additional persistent construction delays for critical path activities.

The PSC Advocacy Staff testified that meeting the current commercial operation dates ("CODs") will be a challenge (Tr. 292), and they ". . . believe it is unlikely the contractor will be able to develop and implement mitigation strategies that will prevent the existing delays from impacting the CODs." (Tr. 293) Even though Fluor faces a daunting challenge to develop any workable mitigation strategy there is a pressing urgency to reduce construction delays for the Project and a mitigation strategy should be presented in the 14th VCM filing. Critical path activities have been significantly delayed, but the integrated project schedule ("IPS") has not changed because of pinning. (Tr. 314)

Leaving nine critical path activities pinned for an extended period of time is not a viable or realistic option. Either Fluor can develop some mitigation strategy or it cannot. Pretending that some magical mitigation strategy could be developed some time in the future to get the Project back on schedule is a clumsy way of trying to cover up major systemic construction problems. If a mitigation strategy is not presented by the time the 14th VCM Report is filed the pinning of the critical path activities should be removed and an honest integrated project schedule should be used that is based on actual construction realities.

A. After Five (5) Years of Work on the Vogtle Project Only 26.4% of the Construction Is Complete Based on Total Project Man Hours

It is hard to conceive that if only 26.4% of the Project construction is complete the remaining 73.6% of construction for the total Project can be accomplished in only four years and six months when both units are scheduled to be complete based on the current commercial operation dates of June 2019 and June 2020. To assume that 73.6% of the construction can be accomplished in less time than it has taken to complete 26.4% of the work so far is not reasonable or believable even if a considerable amount of time to date has been allocated to rework. Common sense and past experience with the Project clearly indicate that the current commercial operation dates will not be met and an additional delay beyond the current 39 months will occur. The real question is how long?

According to the Public Service Commission Advocacy Staff witnesses the current commercial operation dates of June 2019 for Unit 3 and June 2020 for Unit 4 are "challenged, very challenged" (Tr. 260) and "unlikely." (Tr. 293) Advocacy Staff Witnesses Roetger and Jacobs stated, "While mitigation may be effective in maintaining the current delays or reducing them to some degree, based on past performance we believe that it is unlikely that the Contractor will be able to develop and implement mitigation strategies that will prevent the current existing delays from impacting the current completion dates for Units 3 and 4 of June 2019 and 2020, respectively." (Direct Testimony of Steven D. Roetger and William R. Jacobs, Jr., Ph.D., Docket 29849, 13^{th} VCM, p. 30)

To date, the Advocacy Staff forecasts or assessments regarding construction schedule delays have been 100% correct and the Company's have been 100% wrong. (Tr. 293) Based on their past track record, when the Advocacy Staff witnesses testified in this proceeding that it is "unlikely" the current commercial operation dates will not be met, it is a safe bet that the current commercial operation dates will not be met.

III. It Has Never Been Suggested Before in the Vogtle Construction Monitoring Review Process That the $6.113 Billion Certified Cost for Georgia Power Company's Share of the Project Costs Is An "Estimate"

The certified cost of $6.113 billion for Georgia Power Company's share of the Vogtle Project for Units 3 and 4is not an "estimate" (Tr. 254), but is a certified cost that was approved by the Commission in its First VCM Order. (First VCM Order, Docket 29849, Document 126580; February 26, 2010) A Stipulation between the Georgia Public Service Commission Public Interest Advocacy Staff and Georgia Power Company was incorporated within the First VCM Order, and Paragraph 4 of the Stipulation provided,

> In future Semi Annual Reports, unless and until otherwise ordered by the Commission, the Company will report against a total certified cost of $6.113 billion (which is the effective certified amount after recognizing the effects of SB 31) and the Company will use the first page of Staff's Exhibit 5 as a template. Nothing herein shall prevent any party from requesting a change in the certified amount.

Nothing in the First or subsequent VCM Orders suggests that the certified amount of $6.113 billion is anything less than the fixed benchmark cost from which all economic and financial comparisons must be made since the first Vogtle construction review proceedings. Not until the Eighth VCM review when the Company made a formal request to change the total certified cost of $6.113 billion was there any consideration made to suggest a change to the certified cost. In the Eighth VCM Order the Commission denied the Company's request and ordered that no prudency review and possible change to the total certified cost would be done until Unit 3 was complete. (8th VCM Order, p. 6)

In its 12th VCM Order this Commission reaffirmed the importance of the certified cost of the Project when it held, "SB 31 provides for collection of 100% of the financing cost associated with the **certified** construction cost of the plant along with the Company's authorized ROE. (11th VCM Order, p. 7)" (Order on the Twelfth Semi-Annual Vogtle Construction Monitoring Report for the Period July 1, 2014 Through December 31, 2014, p. 6; Document No. 159853) (Emphasis in original) This position has not changed over successive VCM Orders. In the 8th VCM Order the Commission clearly recognized the importance of the certified cost when it held in Paragraph 4 of its Findings and Conclusions,

> The Commission finds and concludes that maintaining the certified amount at $6.113 billion provides significant ratepayer protections. First, the Company will retain the burden to prove that costs in excess of the certified amount were reasonable and prudent. Second, as financing charges recovered under the Nuclear Construction Cost Recovery ("NCCR") tariff accrue only on **"certified"** costs as they are recorded in the Company's construction work in progress account, the Company would be unable to collect financing costs through the NCCR tariff on costs above those that have been certified. Id. at 22. See, O.C.G.A. 46-2-25(c.1).

While the total certified cost of $6.113 billion is not a permanently fixed cost, as is standard practice for most large construction projects, there is a set process that must be followed before any change can occur. The total certified cost is not an estimate and has never been treated as an estimate and can only be changed after a full prudency review by the Commission is complete. Until that time the $6.113 billion is the guide stone or benchmark for all financial reviews concerning this Project and cannot be disregarded or ignored.

IV. Costs Should Be Properly Allocated Where Expenditures for Units 3 and 4 Provide Benefits to Units 1 and 2

The Thirteenth Semi-annual Vogtle Construction Monitoring Report and the response to STF-73-6 from the Company state that expenditures associated with the construction of Vogtle Units 3 and 4 benefit Vogtle Units 1 and 2. Footnotes 1 and 3 to Table 1.1 in the 13th VCM Report unequivocally state that expenditures for Units 3 and 4 benefit Units 1 and 2. Footnote 1 refers to the EPC Base Fixed Semi Annual Escalation and states, "Includes $28 million for EPC Joint Use buildings (that benefits Vogtle 1 & 2)." Footnote 3 refers to transmission interconnection expenses and states, "Includes $23 million for Transmission that benefits Units 1 and 2." Discovery response STF-73-6 provides that, "Training Center B includes $4 million that benefits Units 1 and 2." While the exact amount of expenses that benefit Units 1 and 2 are subject to review, it is uncontested that there are construction expenses for the Project that provide direct benefits to Units 1 and 2.

Allocating the appropriate portion of the construction costs that benefit Units 1 and 2 will not deny the Company recovery of those costs. No one has suggested that costs that benefit Vogtle Units 1 and 2 should be denied. The allocated costs for Units 1 and 2 can be recovered through the upcoming rate case that will be filed later this year. And it is a long-standing principal of utility rate making that costs be properly allocated to the cost causer or appropriate utility account.

Additionally, every effort ought to be made by the Commission to reduce the capital expenditures and related financing costs of the Project because of the enormous cost overruns that have accrued and the hyper-accelerated financing cost recovery allowed for Vogtle 3 and 4. Allocating any costs to standard rate recovery mechanisms will help reduce the burden imposed on ratepayers through the accelerated financing rate recovery of the NCCR tariff.

V. Conclusion

Based on the foregoing facts and arguments the Southern Alliance for Clean Energy requests that the Commission direct that the following actions be taken in its 13th VCM Order:

1. The Commission should immediately conduct a prudency review if it allows the Company to collect more than the certified financing costs of $1.695 billion.
2. The Commission should direct that any mitigation strategy be presented in the 14th VCM proceeding and pinning or constraining the construction schedule should be stopped.
3. The Commission should affirm that the $6.113 billion certified cost for Georgia Power Company's share of the Project costs is not an estimate.
4. Costs should be properly allocated to Units 1 and 2 where expenditures for Units 3 and 4 benefit Units 1 and 2.

Respectfully submitted this 29th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Brief of the Southern Alliance for Clean Energy** was filed in Docket 29849 with the Georgia Public Service Commission's Executive Secretary by hand delivery. An electronic copy of same was served upon all parties listed below by electronic mail, unless otherwise indicated, and addressed a follows:

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This 29th day of January, 2016.

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