**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**

**IN RE:**

**Georgia Power Company’s 2019 Rate Case**

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**Docket No. 42516**

**GEORGIA POWER COMPANY’S RESPONSE TO SIERRA CLUB’S**

**MOTION FOR RECONSIDERATION**

1. **INTRODUCTION**

Pursuant to Georgia Public Service Commission (the “Commission”) Rule 515-2-1-.08, Georgia Power Company (“Georgia Power” or the “Company”) provides this response (“Response”) to Sierra Club’s Motion for Reconsideration of the PSC Decision Allowing CCR Cost Recovery (“Motion”) regarding the Commission’s December 31, 2019 Short Order Adopting Settlement Agreement As Modified (“Short Order”) in Georgia Power’s 2019 Rate Case in Docket No. 42516. On January 10, 2020, Sierra Club filed its Motion requesting the Commission reconsider its decision to approve cost recovery of the Company’s coal combustion residual (“CCR”) costs as set forth in Paragraph 19 of the Short Order. A motion for reconsideration should only be heard on the issues properly before the agency in the underlying docket. Here, Sierra Club attempts to relitigate several issues decided in the Company’s 2019 Integrated Resource Plan (“IRP”) in Docket No. 42310. This is not the appropriate vehicle for reconsidering IRP issues; that docket has closed for reconsideration. In addition, a motion for reconsideration should be denied where the moving party simply raises positions and arguments that were considered and adjudicated in the underlying proceeding. *Order on Motions for Reconsideration and Clarification*, *In Re: Georgia Power Company’s 2016 Integrated Resource Plan and Application for Decertification of Plant Mitchell Units 3, 4A and 4B, Plant Kraft Unit 1 CT, and Intercession City CT*, Docket No. 40161 (Sept. 19, 2016). Sierra Club’s Motion raises no new arguments or issues. These arguments were fully considered in the underlying proceeding, as well as in the Company’s 2019 IRP, and were rejected by the Commission when it adopted the Settlement Agreement in the Short Order. (Short Order at 14.)

Contrary to Sierra Club’s assertions, the Company provided ample cost data to the Commission and Public Interest Advocacy (“PIA”) Staff in support of its CCR cost recovery request in this rate case. Although Sierra Club had access to and was provided this data, Sierra Club’s own witness admitted to not reviewing all of the information. Sierra Club provides no basis for its assertion that the Commission cannot determine the reasonableness or prudency of the Company’s CCR compliance costs in advance of a final permit from the Georgia Environmental Protection Division (“EPD”). To meet the stringent regulatory deadlines within the federal and state CCR rules, Georgia Power cannot delay ash pond closure work and wait to receive final permits from the Georgia EPD. In addition, Asset Retirement Obligations (“AROs”) historically have been recovered in advance, with the prudency of such expenditures reviewed in a subsequent Commission proceeding like a rate case. The Commission appropriately authorized recovery of these CCR ARO compliance costs in this case. The Company is closing its ash ponds and landfills in compliance with the legal requirements set forth in the new 2015 and 2016 federal and state CCR rules, respectively, not because the Company has done anything illegal. Georgia Power is compliant with the federal and state CCR rules and Sierra Club has provided no evidence to the contrary.

Sierra Club had ample opportunity to note its opposition and explain its positions as a participant in this rate case proceeding. The Commission thoughtfully considered Sierra Club’s positions, the same way it considered the positions of every other party in the case, and ultimately rejected Sierra Club’s arguments against the Company’s CCR cost recovery in favor of the Settlement Agreement. (Short Order at 14.) The Commission’s decision in this case is not a one-time approval of a projected cost estimate that cannot later be reviewed and revised. The Commission and interested parties like Sierra Club will have future opportunities to review and challenge the Company’s CCR compliance cost recovery.

Sierra Club’s motion asks the Commission to undo a sound and reasonable resolution in this case without sufficient reason or justification. Sierra Club has failed to show good cause for the Commission to reconsider its decision. Sierra Club’s Motion should be denied.

1. **LEGAL STANDARD**

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:

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).

A motion for reconsideration should only be granted if good cause is shown. Sierra Club did not provide any compelling reason or show good cause for the Commission to reconsider its decision in this case. The Commission has “exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm, or corporation subject to its jurisdiction.” O.C.G.A. § 46-2-23(a). The Company has the burden of proof to show that the increased rate or charge is just and reasonable. O.C.G.A. § 46-2-25(b). Georgia Power met its burden in this case.

1. **ARGUMENT**

**A. Sierra Club’s allegations related to the Company’s environmental compliance strategy should have been raised in the Company’s 2019 Integrated Resource Plan, not the Company’s 2019 Rate Case.**

Sierra Club’s contentions related to the Company’s ash pond and landfill closure plans are misplaced in this docket. Neither was at issue in this proceeding. Instead, pursuant to Commission Rule 515-3-4-.04(1)(c), the Commission reviewed and approved the Company’s environmental compliance strategy (“ECS”), including the Company’s plan to comply with federal and state CCR regulations, in the Company’s 2019 IRP in Docket No. 42310:

The Company’s Environmental Compliance Strategy (“ECS”) is approved. This includes specific approval of the Company’s plans to address coal combustion residuals (“CCR”) at the Company’s ash ponds and landfills. Stipulating Parties acknowledge that projected CCR compliance cost have been reviewed in this case, but agree that it is not necessary for the Commission to approve a specific budget for CCR compliance in this IRP proceeding. The Parties agree that the Company will seek recovery of such costs in its 2019 base rate case. The PIA Staff reserves the right to challenge the Company’s request in the 2019 base rate case, including, but not limited to, the period over which they are recovered and the method by which they are recovered. To ensure the Commission is updated on CCR compliance efforts the Company will provide semi-annual reports to the Commission. The Company and Commission Staff will collaborate upon the schedule and content of such reports. The Company will also file the ECS annually with the Commission no later than March 31st of each year.

(*2019 IRP Order Adopting Stipulation*, Stipulation Para. 16.)

The IRP was the appropriate forum for the Commission to consider the Company’s plans to comply with current and proposed environmental regulations. Sierra Club intervened, submitted testimony, and actively participated in the Company’s 2019 IRP, which immediately preceded the rate case in 2019. Sierra Club failed to address CCR related issues in the 2019 IRP, notably not including any discussion or even the words “coal,” “coal ash,” or “coal combustion residual” in its testimony in Docket No. 42310. (Tr. 2317-18.) Sierra Club is the only party in *this* proceeding that filed testimony questioning Georgia Power’s compliance with state and federal CCR regulations. (*See* Tr. 2292.) Sierra Club Witness Wilson, who also served as Sierra Club’s witness in the IRP, acknowledged on cross examination that her testimony does not challenge the Commission’s approval of the ECS. (Tr. 2345.) As clearly stated in the quoted paragraph above, the Commission’s approval of the Company’s ECS “includes specific approval of the Company’s plans to address coal combustion residuals (“CCR”) at the Company’s ash ponds and landfills.” (*2019 IRP Order Adopting Stipulation*, Stipulation Para. 16.) Therefore, Sierra Club’s arguments in the Motion related to the Company’s ash pond and landfill closure plans are untimely, moot, and should have been raised in the Company’s 2019 IRP.

**B. Sierra Club blatantly ignored the ample evidence Georgia Power provided in *this* proceeding for the Commission to determine that Georgia Power’s CCR costs are just, reasonable, and prudent.**

Sierra Club’s first argument is that the Commission’s decision is erroneous because the Company provided insufficient detail in the proceeding regarding its coal ash closure plan expenditures. (Motion at 3.) Contrary to Sierra Club’s assertion, the Company provided significant amounts of information and cost detail for the Commission to determine that Georgia Power’s CCR costs are just, reasonable, and prudent. (*See* Tr. 2308-09.) Of the 15 parties in this docket, *only* Sierra Club challenged the sufficiency of the information provided by the Company. (*See* Tr. 2336.) In fact, PIA Staff, the party that participated most fully in the evaluation of the Company’s CCR ARO compliance spending in the 2019 IRP and rate case dockets, acknowledged that the Company provided a detailed breakout of CCR ARO costs. (Tr. 1205.)

The Company responded to over 75 data requests (including subparts) in the rate case related to CCR AROs and CCR compliance costs. Included in these responses were comprehensive descriptions of the Company’s compliance plan and multiple layers of detailed cost information for closure activities. For example:

* In response to rate case data requests STF-L&A-10-1, STF-L&A-5-13, and STF-PIA-14-5, the Company provided information on historical and projected future CCR compliance-related costs. (*See* Sierra Club Exhibit 1.)
* The Company provided annual ash pond and landfill spending by plant and pond/landfill as part of its trade secret responses to data requests STF-L&A-1-23 and STF-L&A-1-25 in the 2019 IRP, which were both incorporated into the rate case record as part of PIA Staff Exhibit RS/T-11. (Staff Exhibit 18.)
* The Company provided substantial cost detail by plant, pond, *and* activity in response to IRP data request STF-L&A-1-10, which was incorporated into the record in this case as GPC Exhibit 40. Included in GPC Exhibit 40’s 1500 pages of data were the Company’s project specific closure plans and engineering drawings, constructability reviews and assumptions used as the basis for the ash pond closure schedules, methods and cost estimates for each of the Company’s eleven coal plants.

The detailed information Sierra Club maintains the Company failed to provide (*i.e*., detailed information identifying how money was spent or will be spent on things such as drilling monitoring wells, drafting reports, permit applications, generic compliance costs, hiring experts, dewatering ash basins or excavating coal ash (Motion at 4)) is exactly the type of detailed cost information the Company included in GPC Exhibit 40. Sierra Club and, more importantly, the Commission, had access to detailed studies, analyses, and cost details sufficient to support Georgia Power’s CCR ARO costs. In fact, Georgia Power even accommodated Sierra Club’s request in this case for access to the CCR-related data requests responses from the IRP pursuant to a second confidentiality agreement. (Tr. 2335.)

The fundamental flaw in Sierra Club’s argument is not that Georgia Power didn’t provide sufficient cost detail in this proceeding, but that neither Sierra Club nor its witness conducted a sufficient review of the available information. (*See* Tr. 2335-36.) Sierra Club’s Witness Wilson testified in the rate case that she “[had] not looked at every document,” (Tr. 2344), and admitted that she had not even reviewed the Company’s closure plans and cost information provided in IRP data request STF-L&A-1-10. (Tr. 2336.) Sierra Club’s witness agreed that it is important for Sierra Club to review all the data before accusing the Company of not providing sufficient data for the Commission to make a determination. (Tr. 2336.) However, that is exactly what Sierra Club’s Motion does. It is inappropriate for Sierra Club to challenge the sufficiency of the cost detail for Georgia Power’s closure plans and CCR costs when Sierra Club and its witness failed to review the extensive cost and budget information that Georgia Power produced. (*See* Tr. 2335-36.) The Commission and PIA Staff, the entity charged with representing the public interest, evaluated the sufficiency of the record information provided to support the Company’s requested CCR cost recovery and did not find such information lacking. (Tr. 1205.) Sierra Club has not met its burden for reconsideration of this issue and its motion should be denied.

**C. The Commission appropriately ordered cost recovery for Georgia Power’s ash pond closure activities in advance of a final permit from Georgia EPD.**

Sierra Club’s second argument is premised upon the fact that the Company has not yet received ash pond closure permits from Georgia EPD. (Motion at 5.) Sierra Club argues that it is premature to allow cost recovery because the Commission cannot determine whether Georgia Power’s CCR costs are reasonable until the closure plans are final, permits have been issued, and the money has been spent. These arguments ignore both the legal requirements with which Georgia Power must comply and the reasoned timing for collection of ARO costs. Georgia Power cannot delay ash pond closure work and compliance activities to wait for final issuance of state permits due to the stringent regulatory deadlines within the federal and state CCR rules. (Tr. 2646.) The Company has been operating under dual compliance obligations under both the federal and state CCR rules. The federal CCR rule contains compliance obligations and currently does not contain a separate permitting requirement. (*Id*.) Georgia Power must complete certain compliance requirements and generally proceed with work that would be required regardless of the ash pond closure method and status of its permits at the Georgia EPD. (Tr. 2646-47.) For example, the Company must conduct ash pond closure studies, create detailed engineering designs, develop and implement comprehensive site-specific groundwater monitoring plans, develop and implement site-specific dewatering processes, and initiate certain construction activities regardless of which closure method ultimately is required for the specific ash pond. (Tr. 2647.) Moreover, as Sierra Club’s Witness Wilson acknowledged, some of that work must be done in advance of permits being issued. (Tr. 2330.) Georgia Power must execute a highly coordinated action plan in order to achieve ash pond closure compliance for its 29 ash ponds and 12 landfills by the regulatory deadlines. By necessity, some of that work is already underway. (Tr. 2647.)

The Commission is not required to wait until a permit is issued to determine the reasonableness and prudency of costs the Company has incurred and will incur over the next three years to comply with the federal and state CCR rules. Sierra Club incorrectly links the recovery of the Company’s prudently incurred CCR compliance costs with an unissued permit (which is not within the Commission’s jurisdiction), rather than evaluating whether costs incurred and projected to be incurred are just, reasonable, and prudent in light of the known federal and state CCR regulations with which the Company must comply. Moreover, the vast majority of the Company’s CCR compliance costs are accounted for as AROs, which historically have been recovered in advance with the prudency of such expenditures reviewed in a subsequent Commission proceeding. This type of post-spend prudency review occurs in contested proceedings such as the rate case, where interested parties like Sierra Club may intervene and participate. Further, the Company will only recover the actual CCR compliance costs spent, thus removing any concern related to over-recovery. (Tr. 2643.)

The fact that the permits are not fully issued by the Georgia EPD is not unusual or non-traditional. (Tr. 2328.) Many utilities, including those referenced by Sierra Club in testimony, have begun compliance activities prior to the full issuance of permits. (*Id*.) Utilities must comply with strict deadlines set forth in the federal and state rules. Georgia Power is no different. The Company must spend money and begin compliance activities now, even in advance of state permit issuance. To wait to recover the CCR compliance costs until the closure plans are final and the state permits are issued would deny Georgia Power the timely recovery of prudently incurred costs. Wholesale rejection of this category of costs would create a fictional finding of imprudence in the Short Order and inappropriately presuppose imprudence of future expenditures. Further, to delay recovery as Sierra Club suggests would increase costs to customers. The Commission fully considered this issue in the rate case, as well as in the IRP, and rejected Sierra Club’s position by adopting the reasonable settlement of these issues between the Company and its customers.

**D. The Commission appropriately considered Georgia Power’s legal compliance with coal ash regulations in ordering CCR cost recovery.**

Sierra Club’s third claimed error is that the “environmental remediation required by the closure plans and other applicable law is necessitated by the Company’s illegal coal ash storage and disposal in and near groundwater and surface water.” (Motion at 6.) This assertion is factually incorrect and fails to recognize the evidence before the Commission. First, contrary to Sierra Club’s assertion, Georgia Power is in compliance with federal and state CCR rules. (Tr. 2645.) Indeed, the Company’s ECS, which included Georgia Power’s plan to comply with coal ash regulations, was the subject of a separate proceeding where it was fully considered by this Commission in the IRP as required under Commission Rules. (Tr. 2636.) Sierra Club has provided no evidence supported by the U.S. Environmental Protection Agency (“EPA”) or Georgia EPD that the Company’s handling of coal ash, including the use of ash ponds for treatment systems for power plant wastewater, is illegal. PIA Staff agreed that the Company complied with previous regulations and continues to comply with current regulations. (*See* Tr. 1400.) When questioned by Sierra Club on this point, PIA Staff Witness Smith also affirmed twice that he was not aware of any information that shows the Company’s handling of coal ash has been illegal. (Tr. 1354-56.) Moreover, PIA Staff Witness Smith clarified that Georgia Power has developed a plan to conduct coal ash remediation because of a “legal requirement,” not any illegal activity by the Company. (Tr. 1355.) Since the Company is “starting to incur significant amounts of cost related to that,” PIA Staff Witness Smith explained that the PIA Staff believes “recovery of these costs that are prudently incurred at this point is appropriate.” (Tr. 1355-56.)

Second, ash ponds were originally designed, installed and operated to function as a treatment system for power plant wastewater and have effectively operated as such for decades. (GPC Exhibit 39 at 13.) Historically, the EPA-approved industry practice was to send CCR wastewater produced during the generation process to an ash pond for treatment. (*Id*.) Georgia Power has operated and continues to operate its ash ponds in compliance with its National Pollutant Discharge Elimination System (“NPDES”) permits, which incorporate the ash pond treatment system, limit surface water effluent discharge, establish water quality expectations, and require the Company to monitor water quality in and around the ash ponds. (GPC Exhibit 39 at 13, 22.) The Company also complies with the groundwater monitoring obligations set forth in both the federal and state CCR rules. (GPC Exhibit 39 at 22.)

Third, Georgia Power designed its ash pond closure plans and compliance strategy to comply with the new 2015 and 2016 federal and state CCR rules, respectively. (*See* GPC Exhibit 39 at 18-20.) As mentioned previously, the Company’s closure plan for each of its 29 ash ponds is currently under review by the Georgia EPD. (GPC Exhibit 39 at 15.) Whether Georgia Power’s closure plans meet the technical requirements in the federal and state CCR rules related to groundwater and surface water is a matter that falls within the jurisdiction of the Georgia EPD. (GPC Exhibit 39 at 15-16.)

Finally, both the federal and state CCR rules provide aggressive windows for utilities to achieve compliance. The fact that Georgia Power is in the process of making these changes to comply with the new regulations does not mean the Company’s prior or current handling of coal ash, including the use of ash ponds as treatment systems for power plant wastewater, is illegal. Once again, Sierra Club’s argument is unfounded, not supported by evidence from the EPA or Georgia EPD, and fails to form a basis for a disallowance of prudently incurred CCR compliance costs.

**E. The Company will keep the Commission apprised of the work and progress on CCR compliance costs through regularly scheduled compliance filings and through the normal course of Commission oversight.**

The Commission’s decision in this case is not a one-time, carte blanche approval of a projected cost estimate that cannot later be reviewed and revised. In fact, it is the opposite. As part of the Company’s 2019 IRP, the Company agreed to provide semi-annual reports to the Commission to ensure the Commission is updated on CCR compliance efforts. (Tr. 2644.) The Company’s ash pond closure strategy and plans will also be included in the annual review of the Company’s ECS. (*Id.*)As provided in Paragraph 19 of the Short Order, the projected CCR ARO compliance costs will be updated in 2020 and 2021 through compliance filings to set the actual ECCR tariff rates for 2021 and 2022. (Short Order, Para. 19.) In addition, the Company’s work, progress and CCR expenditures will also be reviewed through the Annual Surveillance Report process and in future IRPs and rate cases.

**F. No action by the Commission or the Company prejudiced Sierra Club’s due process and equal protection rights.**

Sierra Club intervened in the rate case, filed testimony, and actively participated in this proceeding to advocate its positions without objection to its participation. Sierra Club similarly intervened, filed testimony, and actively participated in the separate IRP docket where the substantive issues of the Company’s ECS, including Georgia Power’s ash pond closures plans, were decided. In both proceedings, Sierra Club was afforded party status and treated the same as all other intervenors. The Commission considered Sierra Club’s positions just as it considered the positions of every other party to the case. In fact, the challenged provision of the Commission’s Short Order demonstrates the Commission’s comprehensive consideration of all parties’ positions on the CCR cost recovery issue through its approval of the collaborative resolution reached between the Company and customer intervenors in the Settlement Agreement. Paragraph 19 provides for CCR AROs to be recovered through the ECCR tariff, removes forecasted contingency from the annual CCR ARO and ECCR expenditure projections, authorizes application of the full weighted average cost of capital to the under-recovered balance of CCR AROs, staggers the ECCR adjustment each year during the Alternate Rate Plan, and provides for annual updates to the projected CCR ARO costs through scheduled compliance filings. Each approved component of Paragraph 19 incorporates the case position of one or more parties, including the Commission’s PIA Staff and certain intervenors. Sierra Club’s unsupported suggestion that its due process and equal protection rights have been violated is incorrect.

Sierra Club criticizes the Short Order for lacking prudence, “any rational basis,” and “any adequate stated determining principles.” This critique mischaracterizes the reasoning in the Short Order. Such statements ignore that the Short Order is “short” and not in fact final. The Commission specifically stated in the ordering paragraphs that a more detailed order “further explaining its decisions, findings and conclusions” would follow. Therefore, Sierra Club’s objections to the depth of the legal rationale supporting the Commission’s decision is premature and ignores the clear wording of the Commission’s Short Order.

1. **CONCLUSION**

For the reasons stated herein, the Commission should reject Sierra Club’s Motion in its entirety.

Respectfully submitted this 21st day of January 2020.

TROUTMAN SANDERS LLP

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