

SECURITIES AND EXCHANGE COMMISSION

Release No. 35-27986; 70-10269

Georgia Power Company

Order Authorizing Organization of Subsidiaries and Issuance of Preferred Securities

June 23, 2005

Georgia Power Company (“Georgia”), Atlanta, Georgia, a wholly-owned electric public utility subsidiary of The Southern Company (“Southern”), a registered holding company under the Public Utility Holding Company Act of 1935, as amended (“Act”), has filed an application-declaration (“Application”) with the Securities and Exchange Commission (“Commission”) under sections 6(a), 7, 9(a), 10 and 12(b) and rules 45, 52 and 54 of the Act. The Commission issued a notice of the filing of the Application on April 20, 2005 (Holding Company Act Release No. 27961). No request for a hearing was received.

A. Description of the Proposed Transactions

Georgia proposes to organize one or more subsidiaries for the purpose of effecting various financing transactions involving the issuance and sale of up to an aggregate of \$1,100,000,000 of preferred securities with a specified par or stated value or liquidation amount or preference per security (“Preferred Securities”), from time-to-time, through May 31, 2008. In connection with the issuance of the Preferred Securities, Georgia proposes to organize (1) one or more separate subsidiaries as a business trust under the laws of the State of Georgia or a statutory trust under the laws of the State of Delaware or other comparable trust in any jurisdiction that is considered advantageous by Georgia; or (2) any other entity or structure, foreign¹ or domestic,

¹ Georgia requests the Commission reserve jurisdiction over the use of a foreign entity as a Trust.

that is considered advantageous by Georgia (individually a “Trust” and collectively the “Trusts”).²

Trusts sponsored by Georgia have issued and outstanding a total of \$940,000,000 of preferred securities as of March 31, 2005.³ Georgia currently has authority to issue additional preferred securities in an aggregate amount of up to \$150,000,000 prior to October 31, 2005 pursuant to a Commission order (“Current Order”) dated October 23, 2002 (Holding Company Act Release No. 27584).⁴ Georgia proposes that the authority sought in the Application to issue up to an aggregate of \$1,100,000,000 of Preferred Securities supersede and replace the remaining authorization contained in the Current Order.

² Georgia states that the ability to use trusts in financing transactions can sometimes offer increased state and/or federal tax efficiency. Increased tax efficiency can result if a trust is located in a state or country that has tax laws that make the proposed financing transaction more tax efficient relative to the company’s existing taxing jurisdiction. However, decreasing tax exposure is usually not the primary goal when establishing a trust. Because of the potential significant non-tax benefits of these transactions, use of a trust can benefit an issuer even without a net improvement in its tax position.

Trusts can increase a company’s ability to access new sources of capital by enabling it to undertake financing transactions with features and terms attractive to a wider investor base. Trusts can be established in jurisdictions and/or in forms that have terms favorable to its sponsor and that, at the same time, provide targeted investors attractive incentives to invest and so provide financing. Many of these investors would not be participants in the sponsor’s bank group and they typically would not hold sponsor bonds or commercial paper. Thus they represent potential new sources of capital.

³ Georgia notes that it reclassified \$940,000,000 of outstanding mandatorily redeemable Preferred Securities as liabilities, effective July 1, 2003, pursuant to Financial Accounting Standards Board (“FASB”) Statement No. 150 “Accounting for Certain Financial Instruments with the Characteristics of both Liabilities and Equity.” Georgia states that the reclassification as a result of implementation of Statement No. 150 did not have a material effect on its Statements of Income and Cash Flows.

⁴ The Current Order authorized Georgia to issue up to \$650,000,000 aggregate amount of preferred securities. Under that order, Georgia has issued \$500,000,000 aggregate amount of preferred securities.

Georgia states that it will acquire all of the common stock of any Trust for an amount not less than the minimum required by any applicable law and not exceeding 21% of the total equity capitalization from time to time of the Trust (i.e., the aggregate of the equity accounts of such Trust).⁵ The aggregate of such investment by Georgia is referred to as the “Equity Contribution.” Georgia may issue and sell to any Trust, at any time or from time to time in one or more series, subordinated debentures, promissory notes or other debt instruments (individually a “Note” and collectively the “Notes”) governed by an indenture or other document. The Trust will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it, from time to time, to purchase Notes. Alternatively, Georgia may enter into a loan agreement or agreements with any Trust under which the Trust will lend Georgia (individually a “Loan” and collectively the “Loans”) both the Equity Contribution to the Trust and the proceeds from the sale of the Preferred Securities by the Trust, from time to time, and Georgia will issue to the Trust Notes evidencing the borrowings. As of March 31, 2005, Georgia had outstanding \$969, 073,000 principal amount of Notes payable to trusts.

Georgia also proposes to guarantee (individually a “Guaranty” and collectively the “Guaranties”) (1) payment of dividends or distributions on the Preferred Securities of any Trust if, and to the extent, the Trust has funds legally available; (2) payments to the Preferred

⁵ The constituent instruments of each Trust, including its Trust Agreement, will provide, among other things, that the Trust’s activities will be limited to the issuance and sale of Preferred Securities, from time to time, and the lending to Georgia of the (1) resulting proceeds and (2) Equity Contribution to the Trust, and certain other related activities. Accordingly, Georgia proposes that no Trust’s constituent instruments include any interest or dividend coverage or capitalization ratio restrictions on its ability to issue and sell Preferred Securities, as each issuance will be supported by a Note and Guaranty, and such restrictions would not be relevant or necessary for any Trust to maintain an appropriate capital structure. Each Trust’s constituent instruments will further state that its common stock is not transferable (except to certain permitted successors), that its business and affairs will be managed and controlled by Georgia (or permitted successor), and that Georgia (or permitted successor) will pay all expenses of the Trust.

Securities holders of amounts due upon liquidation of the Trust or redemption of the Preferred Securities of the Trust; and (3) certain additional amounts that may be payable by the Preferred Securities. Georgia's credit would support any Guaranty.

Georgia states that each Note will have a term of up to fifty years. Prior to maturity, Georgia will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities, which dividend or distribution rate may be either fixed or adjustable, to be determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.⁶

The interest payments will constitute each respective Trust's only income and will be used by it to pay dividends or distributions on its Preferred Securities and dividends or distributions on its common stock. Dividend payments or distributions on the Preferred

⁶ It is expected that Georgia's interest payments on the notes will be deductible for federal income tax purposes and that each Trust will be treated as a passive grantor trust for federal income tax purposes. Consequently, holders of the Preferred Securities and Georgia will be deemed to have received distributions in respect of their ownership interests in the respective Trust and will not be entitled to any "dividends received deduction" under the Internal Revenue Code of 1986, as amended. The Preferred Securities of any series, however, may be redeemable at the option of the Trust issuing the series (with the consent or at the direction of Georgia) at a price equal to their par or stated value or liquidation amount or preference, plus any accrued and unpaid dividends or distributions, (1) at any time after a specified date not later than approximately ten years from their date of issuance, or (2) upon the occurrence of certain events, among them that (a) the Trust is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments or is subject to federal income tax with respect to interest received on the Notes issued to the Trust, or (b) it is determined that the interest payments by Georgia on the related Notes are not deductible for income tax purposes, or (c) the Trust becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events that are typical of a transaction of this type. Georgia also may have the right in certain cases, or in its discretion, to exchange the Preferred Securities of any Trust for the Notes or other junior subordinated debt issued to the Trust. In addition, rather than issuing Preferred Securities of a Trust, Georgia may instead issue Notes or other junior subordinated debt directly to purchasers.

Securities will be made on a monthly or other periodic basis and must be made to the extent that the Trust issuing the Preferred Securities has legally available funds and cash sufficient for such purposes. However, Georgia may have the right to defer payment of interest on any issue of Notes for up to five or more years. Each Trust will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five or more years, provided that, if dividends or distributions on the Preferred Securities of any series are not paid for up to eighteen or more consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Trust's rights under the related Note and Guaranty. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the Notes issued by Georgia.

Georgia states that the Notes and related Guaranties will be subordinate to all other existing and future unsubordinated indebtedness for borrowed money of Georgia and will have no cross-default provisions with respect to other indebtedness of Georgia (i.e., a default under any other outstanding indebtedness of Georgia would not result in a default under any Note or Guaranty). However, Georgia may be prohibited from declaring and paying dividends on its outstanding capital stock and making payments in respect of pari passu debt unless all payments then due under the Notes and Guaranties (without giving effect to the deferral rights discussed above) have been made.

If any Trust is required to withhold or deduct certain amounts in connection with dividend, distribution or other payments, the Trust may also have the obligation to "gross up" the payments so that the holders of the Preferred Securities issued by the Trust will receive the same

payment after the withholding or deduction as they would have received if no withholding or deduction were required. In that event, Georgia's obligations under its related Note and Guaranty may also cover the "gross up" obligation. In addition, if any Trust is required to pay taxes with respect to income derived from interest payments on the Notes issued to it, Georgia may be required to pay the additional interest on the related Notes as shall be necessary in order that net amounts received and retained by the Trust, after payment of the taxes, shall result in the Trust's having funds as it would have had in the absence of the payment of taxes.

For financial reporting purposes, each Trust will be a variable interest entity. On March 31, 2004, Georgia prospectively adopted FASB Interpretation No. 46R, "Consolidation of Variable Interest Entities" which requires the primary beneficiary of a variable interest entity to consolidate the related assets and liabilities ("FIN 46R"). The adoption of FIN 46R had no impact on Georgia's net income. Georgia accounts for its investment in each Trust under the equity method in accordance with FIN 46R, since Georgia does not meet the FIN 46R definition of a primary beneficiary.⁷

The Notes that will be payable by Georgia to the Trusts will be presented as a separate line item on Georgia's balance sheet. Interest payable on the Notes will be reflected as a separate line item on Georgia's income statement and appropriate disclosures concerning the Preferred Securities, Guaranties and Notes will be included in the notes to Georgia's financial statements.

⁷ The primary beneficiary under FIN 46R is the enterprise "that will absorb a majority of the entity's expected losses, receive a majority of the entity's expected residual returns, or both." If one of the parties will absorb a majority of the entity's expected losses and another party receives a majority of the expected residual returns, "the enterprise absorbing a majority of the losses shall consolidate the variable interest entity." In the case of Georgia's Preferred Securities, the security holders have the risk of absorbing the majority of the losses through the risk of default by Georgia or the Trusts, and therefore are the primary beneficiaries.

B. General Financing Parameters and Use of Proceeds

1. Effective Cost of Capital

Georgia states that the effective cost of capital on the Preferred Securities and the interest rate on the Notes will not exceed competitive market rates available at the time of the issuance of the securities having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; provided that, in no event will the effective cost of capital exceed 300 basis points over U.S. Treasury securities having comparable maturities.

2. Issuance Expenses

Georgia states that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security that is the subject of the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

3. Common Equity Ratio

Georgia represents that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent.⁸ Georgia requests the Commission to reserve jurisdiction over any guarantees or securities that do not satisfy these conditions.

4. Investment Grade Criteria

Georgia further represents that no guaranties or other securities may be issued in reliance upon any authorization granted by the Commission pursuant to the Application, unless upon original issuance (1) the security to be issued, if rated, is rated investment grade; (2) all outstanding securities of Georgia that are rated are rated investment grade; and (3) all

⁸ In regard to a Trust maintaining a minimum amount of common equity, see the discussion in footnote 5, *supra*.

outstanding securities of Southern that are rated are rate investment grade (collectively, “Investment Grade Criteria”). For purposes of this provision, a security will be deemed to be rated “investment grade” if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Georgia requests that it be permitted to issue a security that does not satisfy the foregoing conditions if the requirements of rule 52(a)(i) and rule 52(a)(iii) are met and the issue and sale of the security have been expressly authorized by the Georgia Public Service Commission. Georgia also requests the Commission to reserve jurisdiction over any guaranties or securities that do not satisfy these conditions.

5. Use of Proceeds

Georgia will use the proceeds from the sale of the securities in connection with its ongoing construction program, to pay scheduled maturities and/or refundings of its securities, to repay short-term indebtedness to the extent outstanding and for other general corporate purposes.

C. Miscellaneous

The proposed transactions are subject to rule 54 under the Act, which provides that, in determining whether to approve an application which does not relate to any “exempt wholesale generator” (“EWG”) or “foreign utility company” (“FUCO”), the Commission shall not consider the effect of the capitalization or earnings of any EWG or FUCO which is a subsidiary of a registered holding company if the requirements of rule 53(a), (b) and (c) under the Act are satisfied.

Georgia states that Southern currently meets all of the conditions of rule 53(a). At March 31, 2005, Southern’s “aggregate investment” (as defined in rule 53(a)(1)) in EWG’s and FUCO’s was approximately \$265 million, or approximately 4.58% of Southern’s consolidated

retained earnings” (as defined in rule 53(a)(1)), which were \$5.784 billion as of March 31, 2005.⁹

In addition, Southern has complied and will continue to comply with the record-keeping requirements of rule 53(a)(2), the limitation under rule 53(a)(3) on the use of operating company personnel to render services to EWGs and FUCOs, and the requirements of rule 53(a)(4) concerning the submission of copies of certain filings under the Act to retail rate regulatory commissions. Further, Georgia states that none of the circumstances described in rule 53(b) has occurred. Rule 53(c), by its terms, is inapplicable since the requirements of paragraphs 53(a) and 53(b) are satisfied.

Georgia states that its issuance of the Notes and the Guarantees has been authorized by the Georgia Public Service Commission. Georgia currently has authority from the Georgia Public Service Commission to issue an aggregate of \$2.19 billion of preferred securities and other long-term debt.

No other state or federal commission has jurisdiction over the proposed transactions. Georgia states that the fees and expenses to be incurred in connection with the proposed transactions (other than those described in section B above and other than underwriting discounts and commissions) are estimated not to exceed \$2,665,000.

⁹ Although Southern owns all of the equity in four indirect subsidiaries (EPZ Lease, Inc., Dutch Gas Lease, Inc., GMAOG Lease, Inc. and NUON Lease, Inc.), Southern has no direct or indirect investment or any aggregate investment within the meaning of rule 53 in these FUCOs, including any direct or indirect guarantees or credit positions related to any capital or financing leases (see Southern’s application on Form U-1, File No. 70-9727 for further information). Southern has executed limited keep-well commitments whereby Southern would be required to make capital contributions to SE Finance Capital Corp. II, SE Finance Capital Corp., or SE Finance Company, Inc. if there is a shortfall in the scheduled debt service resulting from certain changes in the payments due from Southern under the Southern Company Income Tax Allocation Agreement. The maximum potential capital contributions required under these commitments is the unamortized balance of the related loans, which total approximately \$403 million as of March 31, 2005.

Due notice of the filing of the Declaration has been given in the manner prescribed by rule 23 under the Act, and no hearing has been requested of, or ordered by, the Commission. Based on the facts in the record, the Commission finds that the applicable standards of the Act are satisfied and that no adverse findings are necessary.

IT IS ORDERED, that jurisdiction is reserved in regard to Georgia's request: (1) to use a foreign entity as a Trust; (2) to issue guarantees or securities at a time when Georgia's common equity as a percentage of capitalization (inclusive of short term debt) is less than thirty percent; and (3) to issue guarantees and securities when the Investment Grade Criteria are not met.

IT IS FURTHER ORDERED, under the applicable provisions of the Act and the rules under the Act, that the Declaration, other than as to those matters where jurisdiction is reserved, be permitted to become effective immediately, subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

L. Lynn Taylor
Assistant Secretary