

SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28044; 70-10300)

Georgia Power Company et al.

Order Authorizing Sale and Leaseback of Generation Assets

October 7, 2005

Georgia Power Company (“Georgia Power”), Atlanta, Georgia and Savannah Electric and Power Company (“Savannah Electric” and together, “Applicants”), Savannah, Georgia, both public utility company subsidiaries of The Southern Company (“Southern”), a registered holding company have filed with the Securities and Exchange Commission (“Commission”) an application-declaration (“Application”) under sections 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935, as amended (“Act”) and rule 54 under the Act. The Commission issued a notice of the proposed transaction on August 3, 2005 (HCAR No. 28012).

Georgia Power owns an approximate 84% undivided interest in the plant known as Plant McIntosh Combined Cycle Units 10 and 11 (“Project”) in Effingham County, Georgia (“County”). Savannah Electric owns an approximate 16% undivided interest in the Project. Georgia Power and Savannah Electric purchased the Project from Southern Power Company, an affiliate of Georgia Power and Savannah Electric, in May 2004, when it was under construction.

Georgia Power and Savannah Electric completed construction of the Project and the Project became operational in June 2005. As a result, the Project is deemed to be a “utility asset” under the Act. Georgia Power and Savannah Electric expect to enter into the “sale/leaseback” transaction described below. Georgia Power and Savannah Electric,

therefore, now request approval of the transfer of the Project to the Effingham County Industrial Development Authority (“Authority”) in connection with the “sale/leaseback” transaction described below.

Under a tax abatement agreement (“Tax Abatement Agreement”), the County (acting by and through its Board of Commissioners), the Board of Tax Assessors of Effingham County, the Authority, Georgia Power and Savannah Electric have agreed to a reduced amount of property taxes due from Georgia Power and Savannah Electric to the County over a period of approximately 20 years (“Abatement”). The Abatement will be achieved as follows:

(a) Georgia Power and Savannah Electric will sell an interest in the Project to the Authority in an amount not to exceed \$65,000,000 (“Sale Price”). To raise the money for the Sale Price, the Authority will issue and sell its revenue bonds (“Revenue Bonds”) to Georgia Power and Savannah Electric (or their assignees), pro rata in accordance with Georgia Power and Savannah Electric’s respective ownership interests (“Leased Interests”), in the aggregate amount of the Sale Price.¹ Applicants state that since the Sale Price equals the cost of the Revenue Bonds, no money will be exchanged among Georgia Power, Savannah Electric and the Authority.

(b) Simultaneously with the sale of the Project to the Authority, Georgia Power and Savannah Electric will lease, pro rata in accordance with their Leased Interests, the Project back from the Authority for a term of approximately 20 years (the

¹ In December 2003, the Authority issued \$350,000,000 in Revenue Bonds. In December 2004, the Authority issued \$160,000,000 in Revenue Bonds. After the Commission’s approval, the Authority will issue up to \$65,000,000 in Revenue Bonds. The aggregate amount of the Revenue Bonds previously issued and the Revenue Bonds contemplated hereby will not exceed \$575,000,000 and will equal the approximate total cost of the Project.

estimated useful life of the Project) under a lease agreement (“Agreement”). The Agreement provides for lease payments to be made by Georgia Power and Savannah Electric, pro rata in accordance with the Leased Interests, at times and in amounts which correspond to the payments with respect to the principal of and interest on the Revenue Bonds whenever and in whatever manner the Revenue Bonds shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

(c) The Agreement provides for lease payments to be deposited with a trustee (“Trustee”) under an indenture between the Authority and the Trustee (“Trust Indenture”) under which the Revenue Bonds will be issued and secured. Applicants state that since Georgia Power and Savannah Electric will make lease payments in the same amounts and at the same times that the Trustee will pay interest and principal on the Revenue Bonds to Georgia Power and Savannah Electric, no lease payments or Revenue Bond payments actually will be paid by or to Georgia Power and Savannah Electric. The Agreement is a capital lease, and the lease payments have a legal, contractual right of offset against the Revenue Bond payments. As a result of this legal right of offset, the capital lease asset and the revenue bond liability are netted for financial statement purposes. Such right of offset has a netting effect, meaning that neither the Agreement nor the Revenue Bonds have any impact on either of Georgia Power’s or Savannah Electric’s balance sheet.² The Trust Indenture will provide for the specific terms of the Revenue Bonds, including a final maturity of January 1, 2025 and an interest rate of 5.00%. The Trust Indenture will also specify the term and details of the Revenue Bonds and will contain various

² See Financial Accounting Standards Board Interpretation No. 39: Offsetting of Amounts Related to Certain Contracts (An Interpretation of APB Opinion No. 10 and FASB Statement No. 105) General Principle, paragraph 5.

provisions, covenants and agreements to protect the security of the bondholders, including the following: (1) pledging and assigning the rents, revenues and receipts of the Authority derived from the Project to secure the payment of the Revenue Bonds; (2) describing the redemption provisions and other features of the Revenue Bonds; (c) setting forth the form of the Revenue Bonds; (3) establishing the various funds and accounts to handle the Revenue Bonds proceeds and revenues of the Project and setting forth covenants regarding the administration and investment of these funds and accounts by the Trustee; (4) setting forth the duties of the Trustee; (5) defining events of default and provisions for enforcing the rights and remedies of the bondholders in those events and (6) restricting the issuance of additional bonds and the terms upon which the same may be issued and secured. The Agreement obligates Georgia Power and Savannah Electric to pay, pro rata in accordance with the Leased Interests, the fees and charges of the Trustee.

(d) The Agreement permits Georgia Power and Savannah Electric (or their assignees), pro rata in accordance with their Leased Interests, to buy the Project back from the Authority for a nominal purchase price at the expiration (or earlier termination) of the Agreement.

(e) Accordingly, Georgia Power and Savannah Electric are treated as the owners of the Project for financial accounting purposes and federal income tax purposes, and Georgia Power and Savannah Electric are in fact the beneficial owners of, with full control over, the Project. Applicants state that the Tax Abatement Agreement obligates Georgia Power and Savannah Electric, pro rata in accordance with their Leased Interests,

to make level property tax payments on the lease payments, plus a fee to the County and the Authority.

Applicants state that, for purposes of rule 54 under the Act, Southern currently meets all of the conditions of rule 53(a). As a result, the Commission will not consider the effect on the Southern system of the capitalization or earnings of any Southern subsidiary that is an exempt wholesale generator or foreign utility company, as each is defined in sections 32 and 33 of the Act respectively, in determining whether to approve the proposed transaction.

Applicants state that fees, commissions and expenses to be incurred in connection with this Application are estimated to be approximately \$15,000. Applicants further state that no state or federal regulatory agency, other than the Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of this Application, as amended, has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of, or ordered by, the Commission. On the basis of the facts in the record, it is found that the applicable standards of the Act and rules under the Act are satisfied, and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and rules under the Act, that the Application, as amended, be granted and 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.

J. Lynn Taylor
Assistant Secretary