

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION  
STATE OF GEORGIA**

<b>In Re:</b>	)	
<b>Review of Georgia Power Company's</b>	)	
<b>Certificate of Public Convenience and</b>	)	<b>Dockets No. 27800 &amp; 29849</b>
<b>Necessity for Plant Vogtle Units 3 and 4</b>	)	

**NUCLEAR WATCH SOUTH MOTION TO COMPEL RESPONSE TO REQUEST FOR  
EMERGENCY PUBLIC HEARING ON VOGTLE 3 & 4**

Nuclear Watch South respectfully requests that the Georgia Public Service Commission (PSC) immediately respond to Nuclear Watch South Request for Emergency Public Hearing on Vogtle 3 & 4 to hear substantial issues surrounding the bankruptcies of Georgia Power's Vogtle construction consortium partners and to establish a schedule for public review of Georgia Power's Vogtle 3 & 4 expansion under construction in Burke County which was filed 30 days ago on April 18, 2017.

As cited in the Request, the PSC is authorized to initiate inquiries and hearings pursuant to O.C.G.A. § 46-2-20 (b).<sup>1</sup> The PSC has the power to investigate and subpoena information from the utilities which it regulates pursuant to O.C.G.A. § 46-2-20 (f) and (g).<sup>2</sup>

The request also asks that Georgia Power must be given an early deadline (June 30, 2017, or earlier) and required to submit, at minimum:

- 1) The complete and true construction schedule for Vogtle 3 & 4
- 2) The cost to complete Vogtle 3 & 4 construction
- 3) The cost to cancel Vogtle 3 & 4 construction

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<sup>1</sup> O.C.G.A. § 46-2-20 (b) The commission may hear complaints; in addition, it is also authorized to perform the duties imposed upon it of its own initiative.

<sup>2</sup> O.C.G.A. § 46-2-20 (f) The commission shall also have the power and authority to examine all books, contracts, records, papers, and documents of any person subject to its supervision and to compel the production thereof. (g) The commission shall have the power, through any of its members, at its discretion, to make personal visits to the offices and places of business of the companies under its supervision for the purpose of examination. Any Commissioner making a personal visit pursuant to this subsection shall have full power and authority to examine the agents and employees of any such company, under oath or otherwise, in order to procure information deemed by the Commissioner necessary to the work of the commission or of value to the public.

4) The cost to complete Vogtle 3 & 4 as a renewables facility

In the May 11, 2017, 16th Vogtle Construction Monitoring Review (VCM) hearing, Georgia Power testified that it would probably file its analysis of the path forward in June. A June date would satisfy the spirit of Nuclear Watch South's request, and we ask that the PSC move immediately to formalize a deadline no later than June 30, 2017, and to establish a schedule to hear the substantial issues surrounding the bankruptcies and soon-to-be-revised forecasts for increased costs and schedule delays on the twin reactors under construction.

**I. SUBSTANTIAL ISSUES AFFECTING THE PUBLIC INTEREST NEED TO BE  
HEARD ABOUT VOGTLE 3 & 4**

**A. The entire project so far has been funded with public funds:**

Georgia Power's entire portion of Vogtle 3 and 4 has been underwritten with public funds: \$2 billion through the Nuclear Construction Cost Recovery tariff collected from 2.3 million Georgia Power customers for the previous six (6) years in addition to \$8.3 billion loaned from the U.S. treasury at 0% interest. Georgia Power's customers have been forced to invest an average of \$500.00 *each* into Vogtle 3 & 4 construction through 2016.

Five months have elapsed since Vogtle 3 & 4's future was cast into doubt by \$10 billion shortfall shared by Georgia Power's Vogtle 3 & 4 construction consortium partners, Westinghouse and Stone and Webster/CB&I. During this period of uncertainty and repeated deadline extensions, Georgia Power's customers have paid \$23 million per month in NCCR (Nuclear Construction Cost Recovery) fees to Georgia Power, amounting to well over \$100 million since the financial meltdown began.

A decision needs to be made soon that includes citizen input on whether they want to continue to invest their hard-earned money, and indeed, condemn their grandchildren to invest their hard-earned money, in unneeded power reactors Vogtle 3 & 4.

**B. Vogtle 3 & 4 are not needed and should be canceled sooner instead of later:**

Nuclear Watch South has submitted testimony that power from Vogtle 3 & 4 is not needed in the 8th, 12th, 13th and 14th Vogtle Construction Monitoring reviews. Neither Georgia Power nor the Public Interest Advocacy staff have refuted the Georgia Power performance data providing the basis for Nuclear Watch South's finding. This data has been in the record for more than three years and Georgia Power's performance trends, *i.e.*, slack sales and excess capacity, have deepened. Georgia Power's performance trends are mirrored in other U.S. markets, affecting its wholesale prospects as well. *Updated Georgia Power Key Financial and Operating Data 2006-2016 is attached to this Motion as Attachment 1.*

At the May 11, 2017, 16th VCM hearing, a public witness referred to a new study on the record: "Plant Vogtle Decision Point: Time to Chart a Different Course." This brand-new report was commissioned by Southern Environmental Law Center and Vote Solar and produced by Greenlink Group out of Georgia Tech. It articulates a clear-eyed analysis of multiple significant trends which have emerged since the decision to build Vogtle was first taken. It concludes that, bankrupt Vogtle partners coupled with the dramatic downward shift in energy consumption despite a handsome uptick in economic growth, make this the time to cancel the 42% complete, unneeded plants. *"Plant Vogtle Decision Point: Time to Chart a Different Course" is attached to this Motion as Attachment 2.*

The report notes the addition of more than 2,000 Mw of solar in Georgia which has come on-line cheaply and quickly while Vogtle 3 & 4 continue to rack up delays and cost overruns. It compares the cost of efficiency (1.1¢/kwh), utility-scale solar (5.6¢/kwh) and new nuclear at Vogtle (8.3-10.3¢/kwh). It says: "while Plant Vogtle has and will continue to exert significant upward pressure on customer bills, investments in solar and energy efficiency do the opposite. In fact, Georgia Power's recent solar investments under the Commission's leadership are projected to save customers several hundred million dollars over the next few decades."<sup>3</sup>

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<sup>3</sup> *Georgia Power Company's Application for Certification of the 2015 and 2016 Advanced Solar Initiative Prime Power Purchase Agreements and Request for Approval of the 2015 Advanced Solar Initiative Power Purchase Agreements*, Georgia Public Service Commission Docket No, 38877, Hearing Transcript (Dec. 2, 2014), at 50

During the 16th VCM hearing, Concerned Ratepayers of Georgia cross-examined Georgia Power witnesses about Georgia Power's annual report data which show that Georgia Power is overbuilt by several percentage points while experiencing slack electricity demand. An objection was raised from the Commission bench with the erroneous assertion that the Georgia Power performance information had never been admitted into the record.

" Georgia Power Key Financial and Operating Data" was indeed stricken from the record in the 13th VCM because of Nuclear Watch South's failure to address Georgia Power's periodic payment request. That defect was easily cured and updated " Georgia Power Key Financial and Operating Data" has now been placed into the record in 8th (2014), 12th (2015) and 14th (2016) VCMs. Indeed, Public Witness Sue Stoudemire attached it to her testimony and submitted it to the record at the May 11, 2017, 16th VCM public hearing.

Additional comments were added to the record from the Commission bench that the Georgia Power data in question was not supported by a "white paper." Now, with the SELC report, credible expert analysis has been supplied to the Commission that will help in facing the tough decision that must now be made, that is, to cancel a partially complete, multi-billion project.

### **C. Key information about Plant Vogtle construction must be produced**

The Commission and the public lacked key information about the Vogtle 3 & 4 construction project since the beginning: 1) The complete and true construction schedule for Vogtle 3 & 4; 2) The cost to complete Vogtle 3 & 4 construction; 3) The cost to cancel Vogtle 3 & 4 construction.

The official cost of the unneeded power reactors at Vogtle 3 & 4 have practically doubled as has the project's timeline forecast. Georgia citizens are being forced to invest hundreds of dollars

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(Georgia Power Witness Leach stating that net savings to customers from the ASI-Prime solar projects would "reach several hundred million dollars.") (Witness Leach) "Well, I think it's safe to say, for this many megawatts over a 30-year period, 25- to 30-year period, it's going to reach several hundred million dollars."

each in Georgia Power's pig-in-a-poke Vogtle project. The Commission must take immediate action and exercise its considerable power, discussed below, to protect Georgia citizens from further financial obligation to the failing, unnecessary nuclear project.

## **II. FORGING A PATH FOR GEORGIA ENERGY FUTURE TOGETHER: PSC, GEORGIA POWER AND THE PUBLIC**

### **A. The Commission has the responsibility and the authority to intervene on Vogtle 3 & 4**

The PSC has considerable, broad powers it has not yet used in addressing Vogtle 3 & 4 problems. On the PSC website it states, in part <sup>4</sup>:

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#### What Is The Commission's Role And Responsibility?

The Georgia Public Service Commission has exclusive power to decide what are fair and reasonable rates for services under its jurisdiction. It must balance Georgia citizens' need for reliable services and reasonable rates with the need for utilities to earn a reasonable return on investment. The Commission protects consumers' interests while abiding by legal standards in setting rates. All matters scheduled for public hearing are heard by the Commissioners or in special cases, by an appointed hearing officer in open session.

In regulating rates, the Commission does not guarantee profits to service providers. It is the company's responsibility to make prudent, sound business decisions to produce earnings. When regulated companies bring a rate request before the PSC, it may be taken up first by one of the Commission's three standing committees on which the commissioners serve: Telecommunications, Energy, or Administrative Affairs.

Assisting the commissioners are experts on utility operations. These experts may provide testimony and make recommendations at rate, arbitration or other proceedings. To protect the public interest and to fulfill its responsibilities, the Commission may:

- ▶ Conduct investigations, hearings, and gather evidence
- ▶ Inspect properties, books and papers of regulated companies
- ▶ Determine costs
- ▶ Make and enforce rules
- ▶ Issue orders giving effect to Commission decisions
- ▶ Institute judicial proceedings to enforce orders, rules and regulations

Administrative sessions of the Georgia Public Service Commission are held the first and third Tuesday of each month in hearing room number 110 at 244 Washington St. in Atlanta.

Proceedings are open to the public.

"The Georgia Public Service Commission has exclusive power to decide what are fair and reasonable rates for services under its jurisdiction. It must balance Georgia citizens' need for reliable services and reasonable rates with the need for utilities to earn a reasonable return on investment. ...

"In regulating rates, the Commission does not guarantee profits to service providers. It is the company's responsibility to make prudent, sound business decisions to produce earnings. ...

"Assisting the commissioners are experts on utility operations. These experts may provide testimony and make recommendations at rate, arbitration or other proceedings. To protect the public interest and to fulfill its responsibilities, the Commission may:

- ▶ *Conduct investigations, hearings, and gather evidence*
- ▶ *Inspect properties, books and papers of regulated companies*
- ▶ *Determine costs*
- ▶ *Make and enforce rules*
- ▶ *Issue orders giving effect to Commission decisions*
- ▶ *Institute judicial proceedings to enforce orders, rules and regulations"*

*[emphasis added]*

Every day that the decision to stop constructing Plant Vogtle is delayed is costly to the consumers the PSC is supposed to protect. Georgia Power is reluctant to make the decision for many reasons we will discuss below, but a primary consideration for them is the fact that they, and only they among the Vogtle construction consortium, are making a good profit from the mismanaged nuclear project. As it states on your website, the utilities you regulate are not guaranteed profits by you. On the other hand, their high rate of return may provide some needed capital to get out of the Vogtle project.

Since \$10 billion of the public's money is the investment already lost on Vogtle 3 & 4 so far, it would subvert your mandate to the public to delay establishing a public process for dealing with the bankruptcies.

**B. What can we do with the steam generators? How will the loan guarantees be repaid if Vogtle is cancelled?**

Nuclear Watch South has identified two large issues which affect the decision to cancel Vogtle 3 & 4. In the absence of any other forum for sharing productive ideas about the daunting prospect of abandoning the Vogtle construction site, we offer the following observations.

Georgia Power has not stated any interest in converting Vogtle 3 & 4 to natural gas plants nor would they be able to entertain the prospect as both the Construction Work in Progress (CWIP) *or* NCCR tariff and the U.S. tax-funded loan guarantees are clearly earmarked as nuclear incentives for nuclear build. The CWIP and loan guarantees have invested \$10 billion in Vogtle 3 & 4. It strongly appears to have been a bad bet on behalf of the public pocketbook.

The notion to convert to another steam-producing energy form readily arises as the expensive steam generators for both new units are already in place. However, there is another possibility to consider, which is the historic need to replace steam generators for pressurized water reactors. Georgia Power could remove the steam generators from the construction budget by placing them into Vogtle 1 & 2 maintenance budgets as back-up inventory which would be of practical use and also improve the Vogtle 3 & 4 financial dilemma with which we are faced.

If the project is cancelled, the terms of the DOE loan guarantee (which have been withheld from the public), according to a story in the **Atlanta Journal and Constitution** about Commissioner Echols' effort to engage Energy Secretary Rick Perry, require that the \$8.3 billion in loan guarantees be repaid in five years. The article states: "Congressional Research Service noted that those loan guarantees came with this price: 'If the Vogtle project is terminated, the borrowers must repay the entire outstanding loan amount in five years.' But the CRS also said that the Secretary of Energy has the power 'to modify the loan agreement terms and take other steps upon a default.'"<sup>5</sup>

Georgia Code which empowers the PSC to take strong, instant action to protect consumers from

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<sup>5</sup> *The first suggestion of a federal rescue for Plant Vogtle*, by Jim Galloway, **Atlanta Journal-Constitution**, April 26, 2017, <http://politics.blog.ajc.com/2017/04/26/inside-the-envelope-was-the-first-suggestion-of-a-federal-rescue-for-plant-vogtle/>

regulated utility monopolies also protects Georgia Power. If the PSC initiates decertification of Vogtle 3 & 4 for not meeting the public necessity test, and if Georgia Power has not committed fraud, concealment, failure to disclose, etc. then Georgia Power may recover its sunk costs, plus the cost to cancel the project.<sup>6</sup> Indeed, Georgia Power would forego anticipated additional profits on pre-collection of construction financing costs, plus profit on the unneeded power from the reactors, but Georgia Power's profit is not the mission of the PSC. The mission of the PSC is to protect the consumers.

Despite whatever efforts the PSC has made to protect consumers with respect to expensive, new nuclear build, Georgia consumers are going to have to pay back what has been invested so far. Given the Georgia Code protections for Georgia Power, the loan repayment is the responsibility of the Georgia ratepayers. As the project is a stated 42% finished, more than half the cost is yet to be borne. To invest further in unneeded, expensive power supply is a disservice to the consumer. Georgia customers are facing a multi-billion repayment, no matter what. To double the size of Georgia electricity users debt load would be a grave disservice not only to us, but to our grandchildren.

The only bright financial spot in the Vogtle story comes from Georgia Power's profits, profits that can be drawn on to help repay the DOE loan. Any additional money that Georgia Power gains in negotiating the bankruptcy proceedings with its former partners can similarly be utilized for loan guarantee repayment.

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<sup>6</sup> Georgia Code O.C.G.A. § 46-3A-6: Upon application of a utility or *upon its own motion*, the commission may reexamine any certificate granted under this chapter to determine whether *new forecasts of future requirements require the modification of the construction, purchase, sale, or expenditure for a certificated capacity resource*. *If upon such reexamination the commission finds that the certificated capacity resource is no longer needed or that any additional certificated capacity resource is needed to assure a reliable supply of electric power and energy for the utility's Georgia retail customers, the commission may modify or revoke the certificate*. If the utility cancels, abandons, or increases some or all of the capacity resource as a result of such modification or revocation of the certificate, it may recover through any rate-making vehicle over a reasonable period of time, absent fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct, the amount of its investment in such capacity resource, along with the cost of carrying the unamortized portion of that investment, net of actual salvage value, to the extent such investment is verified as made pursuant to the certificate. The commission shall disallow such investment and costs resulting from fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct. *[emphasis added]*



### III. CONCLUSION

Nearly five months have elapsed since Toshiba's 12/27/16 revelation of billions of dollars in losses from its U.S. nuclear projects. During that time, Westinghouse has entered bankruptcy, Toshiba is rumored to be planning bankruptcy, and construction partner CB&I is being accused of falsifying information in the merger with Westinghouse that were terms of the settlement in which Georgia Power accepted almost \$2 billion in cost overruns which you approved four days before the Toshiba announcement.

The public has not been given a seat at the negotiating table even though it is our money that has been invested and lost. During this protracted period of financial unraveling, Georgians have transferred more than \$100 million from their pockets to Georgia Power's bankroll, and which has then been plowed back into the unneeded radioactive waste manufacturing facility on the banks of the Savannah River.

This Motion to Compel Response to Request for Emergency Public Hearing on Vogtle 3 & 4 petitions the Commission for immediate action to establish a process and a timeframe for Georgia Power to submit information and an emergency public hearing to decide the issues outlined above.

Respectfully submitted,

  /s/  

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