

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

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

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

Nuclear Watch South files this mandamus motion and complaint that the Georgia Public Service Commission (PSC) has failed to respond to Nuclear Watch South Request for Emergency Public Hearing on Vogtle 3 & 4 in accordance with laws governing the PSC.

I. Background

Nuclear Watch South filed on April 18, 2017, a request for an emergency public hearing to hear substantial issues surrounding the bankruptcies of Georgia Power's Vogtle construction consortium partners which affect the public and to establish a schedule for public review of Georgia Power's Vogtle 3 & 4 expansion under construction in Burke County. When the PSC failed to respond within 30 days, Nuclear Watch South filed on May 19, 2017, its Motion to Compel a Response to Request for Emergency Public Hearing on Vogtle 3 & 4.

Nuclear Watch South's legal petition to the PSC seeks a process for the public to address, among other issues, many hundreds of millions of public dollars that have been, and are being, collected and deposited as profit for Georgia Power's shareholders *without any meaningful action from the PSC* over the past six months while Georgia Power's Vogtle 3 & 4 consortium partners are mired in bankruptcy courts.

Nuclear Watch South's request asked that the PSC establish a deadline for Georgia Power 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

II. The Public Service Commission has failed in its legal obligation to respond to a legitimate public request in a specified timeframe

More than 60 days have elapsed without a response to Nuclear Watch South's request from the PSC, with one exception: on May 25, 2017, PSC staff attorney Jeffrey Stair sent Nuclear Watch South representative Glenn Carroll an e-mail stating: "It is Staff's intent to place these items on a future regularly scheduled Energy Committee meeting agenda for Commission consideration."¹

The Commission's inadequate response to Nuclear Watch South's request places it in noncompliance with its legal obligation to make a proper response to a legitimate request in a timely fashion as required by Georgia PSC Rule 515-2-1.05 which states: "All applications, petitions or complaints filed with the Commission, or actions initiated by the Commission, on Friday prior to the second Tuesday in each month **shall**, unless otherwise directed by the Commission, be assigned for hearing on the fourth Tuesday or some succeeding date, and likewise those filed or commenced subsequent to the Friday preceding the second Tuesday in the month and **not later** than Friday prior to the fourth Tuesday shall, unless otherwise directed by the Commission, be assigned for hearing on the second Tuesday in the following month, or some succeeding date." [*emphasis supplied*]

To be in compliance, the PSC should have placed Nuclear Watch South's request on the calendar

¹ The entire text of May 25, 2017 e-mail from Jeff Stair to Glenn Carroll:
Ms. Carroll:

The Georgia Public Service Commission Staff has received and reviewed Nuclear Watch South's Request for Emergency Hearing as well as Nuclear Watch South's Motion to Compel a Response. It is Staff's intent to place these items on a future regularly scheduled Energy Committee meeting agenda for Commission consideration.

As you are aware, Staff and its consultants are continuing their comprehensive review of Plant Vogtle Units 3 and 4, as well as preparing testimony to be offered in the upcoming Vogtle Construction Monitoring proceeding. Also, Georgia Power Company has not yet filed its revised cost and schedule estimates for Units 3 and 4, nor has the Company indicated what type of filing it may ultimately make at the Commission. Once the Company provides its updated projections, Staff and Intervenors will be in a better position to respond, as may be appropriate.

I will be sure to give you sufficient advance notice of when Nuclear Watch South's Request will be considered at an Energy Committee meeting.

[signed] Jeff Stair

on May 9, 2017, or established an specific alternative date. Staff attorney's reference in his May 25, 2017 e-mail to the open-ended, semi-annual Vogtle construction review process and assertion that "Georgia Power Company has not yet filed its revised cost and schedule estimates for Units 3 and 4, nor has the Company indicated what type of filing it may ultimately make at the Commission," do not satisfy the PSC's legal obligation to make a specific response to Nuclear Watch South's request for an emergency public hearing. As a matter of point, the particular excuse that Georgia Power hasn't made a move yet is precisely the problem Nuclear Watch South seeks relief from via an emergency public hearing.

In the May 11, 2017, 16th Vogtle Construction Monitoring Review (VCM) hearing before the PSC, Georgia Power testified that it would probably file its analysis of the path forward in June. A June date would, indeed, satisfy the spirit of Nuclear Watch South's request which suggests a June 30, 2017, deadline in its 4/18/17 Request for Emergency Public Hearing.

However, at the June 1, 2017, PSC Energy Committee meeting, Commissioner Lauren "Bubba" McDonald offered a motion for Georgia Power to voluntarily cease CWIP collection and use the traditional AFUDC (Allowance for Funds Used During Construction) mechanism to recover its costs in the rates when the project is complete. While Nuclear Watch South has stated its appreciation for Commissioner McDonald's initiative, the motion, and the meeting, fail to address the central question of a timely and direct response to Nuclear Watch South's request for an emergency public hearing as required by law. Significantly, at the June 1, 2017, meeting Georgia Power's attorney Kevin Greene revealed in verbal exchange with Commissioner Stan Wise, that Georgia Power would *not* supply the requested information about costs and schedule on Vogtle 3 & 4 in June and anticipates submitting plans in August 2017, *or later*. Greene's statement validated press reports about Southern Company CEO statements before the May 24, 2017, Southern Company annual shareholder meeting: "Fanning said Wednesday he now hopes to have that evaluation completed in August or 'late summer.'"²

² *Southern Co. CEO: Time needed for new Vogtle plan*, by Matt Kempner, **Atlanta Journal-Constitution**, May 25, 2017 <http://www.myajc.com/business/southern-ceo-more-time-needed-for-new-vogtle-plan/5tKTIa1WpXKx95F5qPyWeL/>

At the PSC's Administrative Affairs meeting on June 6, 2017, the Commission voted to indefinitely delay a decision on Commissioner McDonald's motion pending further study. Nuclear Watch South's request was still not on the agenda. The PSC stated concern about breaking the law if it passes a symbolic motion asking for Georgia Power to voluntarily cease collection of the Nuclear Construction Cost Recovery tariff enabled by the Georgia legislature in the 2009 Georgia Nuclear Energy Financing Act. It is seeking input from the State of Georgia Attorney General, but did not establish a time frame to do so.

PSC meetings on June 15, 2017, also failed to include Nuclear Watch South's request on the agenda.

The total effect of the PSC's inaction is that, so far, Georgia Power has, *de facto*, set the agenda and the schedule for the Georgia Public Service Commission's response (or lack thereof) to not only Nuclear Watch South's request, but to the entire circumstance clouding the future construction of Vogtle 3 & 4. To let this situation persist is an egregious lapse of PSC oversight protection for the people of Georgia who are captive customers to Georgia Power's profitable monopoly and who are paying almost \$50 million per month for continued construction at Vogtle 3 & 4.

The situation forces Nuclear Watch South to point out via this Mandamus Motion, that the PSC's inaction places the PSC in flagrant violation of Georgia PSC Rule 515-2-1.05 which regulates the PSC's response to the public and establishes a standard for timely response to a legitimate request.

III. The Public Service Commission has broad legal powers which authorize it to protect public interests and processes

Nuclear Watch South has repeatedly cited the laws which empower the PSC to decertify³ Vogtle

³ 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

3 & 4 (which it should do because Nuclear Watch South has proven since 2013 using Georgia Power's own SEC-filed annual report data that power from the \$18 billion dollar reactors is not needed as Georgia Power is 30% overbuilt in a shrinking energy market) and also to obtain information from the utilities which it regulates, and to establish any processes it needs to get information (including to grant Nuclear Watch South's Request for Emergency Public Hearing or to establish another mechanism to bring transparency and public input to the Vogtle question such as a facilitated stakeholder meeting).

O.C.G.A. 46-2-20 (f) and (g) empowers the PSC in the current instance (in which Georgia Power has refused to make important information available to the PSC for six months) to raid the company's offices if necessary to get the information it needs.⁴

O.C.G.A. § 46-2-20 (b) is the basic law empowering the PSC to establish any process it needs to get at the truth and the law pursuant of which Nuclear Watch South makes its Request for Emergency Public Hearing.⁵

IV. The Public Service Commission must exercise its powers for the protection of both the public *and* Georgia Power

As stated above, and repeatedly, in every forum offered by the PSC, Georgia Power is overbuilt

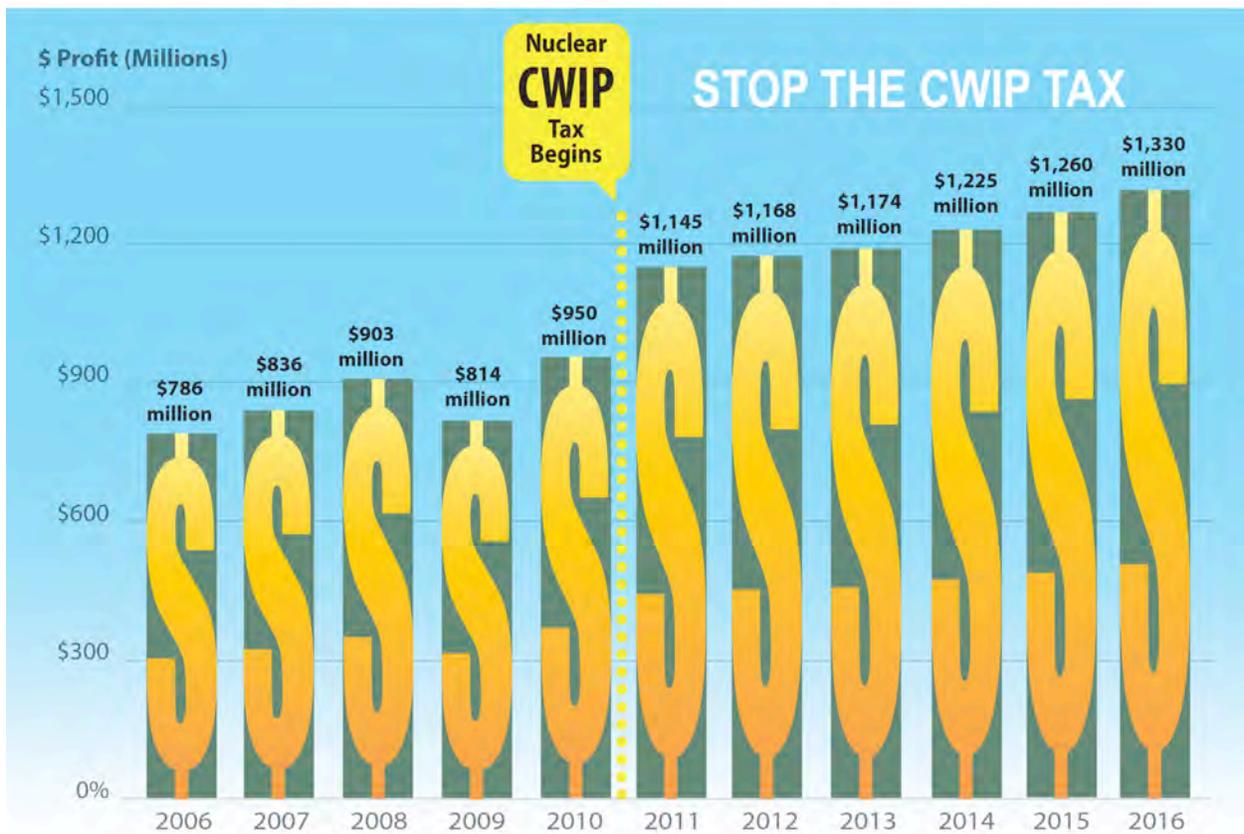
any additional certificated capacity resource is needed to assure a reliable supply of electric power and energy for the utility's Georgia retail customers, *the commission may modify or revoke the certificate*. If the utility cancels, abandons, or increases some or all of the capacity resource as a 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]*

⁴ 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.

⁵ 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.

while enduring a protracted, national downturn in electric sales, *i.e.*, power from Vogtle 3 & 4 is not necessary and does not meet the "public convenience" test. 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 cannot lead with the decision to decertify Vogtle construction because, among other reasons, a primary consideration for the company is the fact that they, and only they, among the Vogtle construction consortium, are making a good profit from the mismanaged nuclear construction project.

Georgia Power Profits 2006-2016



Source: Georgia Power Company annual reports 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016

Chart: © 2017 Nuclear Watch South, www.nuclearwatchsouth.org

Figure 1: Georgia Power Profits 2006-2016

But, in fact, Georgia Power also *needs* for the PSC to initiate decertification in order to clear the way for the company to recover its sunk costs, an important point of O.C.G.A. § 46-3A-6 which states: "If the utility cancels, abandons, or increases some or all of the capacity resource as a

result of such [PSC initiated] 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." *Id. Annotated.*

V. Conclusion

Nearly six months have elapsed since Toshiba's December 27, 2016, revelation of billions of dollars in losses from its U.S. nuclear projects, including Vogtle, a mere five days after the PSC's notorious \$2 billion Christmas gift to Georgia Power on December 22, 2016.⁶

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, the same overruns which the PSC approved five days before the shocking Toshiba announcement. We ask, "Is this any way to build a nuclear plant??"

But the public has not been given a seat at the negotiating table even though it is our money that has been invested and lost on the unneeded nuclear project. During this protracted period of financial unraveling, Georgians have transferred \$250 million from their pockets to Georgia Power's bankroll which Georgia Power has then plowed back into the unneeded radioactive waste manufacturing facility less than half-built on the banks of the Savannah River.

Indeed, the argument to cancel Vogtle grows stronger with each passing day (and the seemingly infinite construction delays continue to accrue at the rate of one day for every single day of construction). The 16th Semiannual Vogtle Construction Monitoring Review (VCMR) currently underway at the PSC has contributed significant new insights. In testimony filed June 8, 2017,

⁶ *How Georgia officials pantsed you over the holidays*, by Matt Kempner, **Atlanta Journal-Constitution**, January 6, 2017 <http://www.myajc.com/business/kempner-how-georgia-officials-pantsed-you-over-the-holidays/kKdADfa9OhQqqcscxu5CQK/>

economic expert Philip Hayet testifies that Vogtle 3 & 4 are no longer economic to complete. Vogtle construction monitors Steven Roetger and Dr. William Jacobs filed, at the same time, testimony highlighting ongoing extreme delays of over 300 days which occurred in 2016 on several critical paths and redacted information concerning idle workers.

Even so, participation in the 16th VCMR has been unsatisfying to date for public witnesses, who, unlike the rich monopoly Georgia Power (which the PSC regulates), are rudely interrupted and shut down if their remarks exceed three minutes. Public witnesses, ordinary citizens who take time off work to come to obscure, poorly noticed, PSC hearings, often suffer hostile challenges to their testimony and written comments from the Commissioners. The current Public Service Commission has established a new low standard in its lack of sensitivity to the public it serves as the largest boondoggle in construction history since the Biblical Tower of Babel continues to drain public money while the PSC fiddles around and does nothing.

The Christian minister who gave the devotion prior to the June 6, 2017, PSC administrative session told an illuminating story about Nero, the infamous Roman emperor who "fiddled while Rome burned." He testified that Nero needed to burn some buildings in order to conduct his own building program, but the fire got out of hand and burned most of Rome. The story of Rome burning is a rich metaphor for the bungled Vogtle project which is enriching a powerful monopoly, Georgia Power, while impoverishing Georgia citizens. Indeed, Georgia Power burns our hard-earned money on an unnecessary construction project, while the PSC takes a nap or "phones it in" not even showing up for the few important public hearings about Vogtle 3 & 4.

Nuclear Watch South is backed by many Georgia laws cited above in its demand for an effective public process to bring the public's interest to the table to address the Vogtle situation.

This Mandamus Motion to Compel Response to Request for Emergency Public Hearing on Vogtle 3 & 4 underlines the serious legal requirement for the Commission to take 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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