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Georgia Court of Appeals Sends Plant Vogtle Challenge Back to Fulton County Superior Court

Atlanta, GA—Groups challenging the Public Service Commission's (PSC) decision to continue the Vogtle nuclear expansion project despite billions in cost overruns will have another chance to make their case that the decision was procedurally flawed and unlawful.

In a [decision](#) issued late yesterday, the Georgia Court of Appeals remanded the case back to the Fulton County Superior Court, which dismissed the challenge on the basis that the decision wasn't final, without addressing its merits.

The appeal was brought by the Southern Environmental Law Center on behalf of Partnership for Southern Equity and Georgia Interfaith Power and Light, and the Barnes Law Group on behalf of Georgia Watch.

The groups are arguing that they should not have to wait until after the project is completed to press their claims that the Commission's December 2017 vote to continue the project was both legally and procedurally improper. The groups argue that deferring their appeal until after 2022, the current schedule for project completion, would not afford an adequate remedy for their claims.

The Court of Appeals vacated the part of the Fulton County Superior Court's ruling that declined to address the challengers' contention that postponing review would irreparably harm customers. The Court of Appeals returned the case to the Fulton County Superior Court with direction to determine whether the groups had met their burden to show that postponing their appeal until after the project is finished would not provide them an adequate remedy.

"We're glad to have another day in court to show that the Commission's decision to continue Plant Vogtle despite dramatic changes to the cost and schedule and increased risk to customers was rushed and procedurally improper," said Kurt Ebersbach, senior



attorney for the Southern Environmental Law Center. “We will make our case that the only way to undo the enormous harm to customers resulting from that decision is for the superior court to hear this case now.”

“After threatening to abandon the project unless the Commission caved to its demands, Georgia Power turned around and argued that this same decision wasn’t consequential enough for a court to look at it now,” said John F. Salter of the Barnes Law Group. “For judicial review to be meaningful, the Court of Appeal’s ruling lets us argue that a decision of this magnitude must be tested now—and not in three or more years when the project is finished and nothing good can be done.”

Background:

In early 2018, the groups filed their appeal in Fulton County Superior Court, charging that the Georgia Public Service Commission’s approval in the 17th Vogtle Construction Monitoring (VCM 17) docket to continue the nuclear expansion project despite a revised price tag amounting to billions of dollars in cost overruns violated state law and the Commission’s own rules concerning “ex parte” communications—i.e. private discussions between the Commissioners and one of the parties involved.

In May 2018, the groups filed a joint motion for limited discovery regarding the one-sided communications between the PSC and Georgia Power in the days leading up to the Commission’s decision to continue the vastly over-budget project, and to present evidence of those communications to the Court.

In an October 2018 hearing before the Fulton County Superior Court, the parties presented oral argument concerning the two pending motions before the Court: the motion seeking limited discovery, and a motion to dismiss filed by Georgia Power.

Issued on December 21, 2018—exactly one year after the PSC’s unanimous vote to approve to continue the project despite the dramatically changed circumstances—the Fulton County Superior Court ruled that dissatisfied customers cannot raise concerns about the unfairness of that process until 2022 or later, after the project is complete. The court dismissed the case on the basis that the appealed order was not final, without addressing the substance of the groups’ claims.

In briefs filed with the Court of Appeals in March and May, the groups argued that the PSC’s order was in fact a final decision because it was a contested case in which the only two issues set for determination were fully decided, and that waiting until after completion



of the project would not provide an adequate remedy. John F. Salter, of the Barnes Law Group, argued the case before the Court of Appeals.

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www.SouthernEnvironment.org

About Barnes Law Group: *The attorneys at Barnes Law Group have the unique charge of Making It Right for the citizens of Georgia and across the country. They are an unrelenting collection of individual talents that make up one of the most powerful and varied groups of litigators that always fall on the side of consumer advocacy and the rights of the individual.* www.barneslawgroup.com