

**Steven J. Hewitson**  
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May 6, 2021

Mr. Reece McAlister  
Executive Secretary  
Georgia Public Service Commission  
244 Washington Street, S.W.  
Atlanta, Georgia 30334

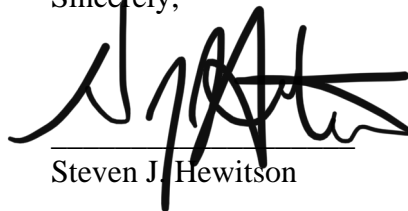
RE: Verification of Expenditures Pursuant to Georgia Power Company's Certificate of Public Convenience and Necessity for Plant Vogtle Units 3 and 4, Twenty-fourth Semi-annual Construction Monitoring Report; Docket No. 29849

Dear Mr. McAlister:

Enclosed for filing with regard to the above-referenced proceeding is the Response of Georgia Power Company to Concerned Ratepayers of Georgia's Motion to Compel.

Please call me at 404-885-3475 if you have any questions.

Sincerely,



Steven J. Hewitson

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

In Re:

Verification of Expenditures Pursuant	)	
to Georgia Power Company's Certificate	)	
of Public Convenience and Necessity for	)	
Plant Vogtle Units 3 and 4, Twenty-fourth	)	Docket No. 29849
Semi-annual Construction Monitoring Report	)	
_____	)	

**RESPONSE OF GEORGIA POWER COMPANY TO**  
**CONCERNED RATEPAYERS OF GEORGIA'S MOTION TO COMPEL**

Georgia Power Company ("Georgia Power" or the "Company") hereby files its Response in opposition to the Motion to Compel filed by Concerned Ratepayers of Georgia ("CRG") on April 26, 2021 ("Motion to Compel"). The Commission should deny the Motion to Compel for the reasons stated below.

**I. BACKGROUND**

On March 25, 2021, CRG filed a data request in Docket No. 29849. On April 23, 2021, the Company filed a response letter explaining that CRG does not have discovery rights in this proceeding and, therefore, Georgia Power is not obligated to respond to CRG's discovery request. As explained by Georgia Power in that letter, only the Georgia Public Service Commission ("Commission"), through its Staff, has discovery rights in this proceeding pursuant to O.C.G.A. § 46-2-57. On April 26, 2021, CRG filed the Motion to Compel disagreeing that only the Commission's Staff has discovery rights, claiming that the Commission's March 23, 2021 Amended Procedural and Scheduling Order ("PSO") did not exclude intervenors from conducting

discovery, and declaring an entitlement to discovery as a long-term participant in these proceedings.

## **II. ARGUMENT**

### **A. The Commission, not Intervenors, has Responsibility for Discovery.**

The Georgia Administrative Procedures Act (“APA”)<sup>1</sup> does not provide a basis for discovery for intervenors such as CRG. The APA does not deprive participants of discovery; rather, through the APA, the Georgia legislature has vested the responsibility for conducting discovery in the hands of the administrative agency. Therefore, in a proceeding before the Commission, the Commission itself is vested with the responsibility for discovery. Georgia courts have recognized that discovery rights in administrative proceedings are outlined by the APA, and differ from the discovery rights found in Georgia’s Civil Practice Act. See Georgia State Bd. of Dental Exam’rs et al. v. Daniels, 137 Ga. App. 706 (Feb. 18, 1976) and Georgia Bd. of Dentistry v. Pence, 223 Ga. App. 603 (Nov. 19, 1996).

### **B. Discovery before the Commission is limited by the Georgia legislature.**

While the Commission has been vested with the responsibility for discovery, this authority is not without limit. Except for the two limitations described in Section C below, the Georgia legislature has limited discovery before the Commission to the Commission Staff and its agents.

In relevant part, O.C.G.A. § 46-2-57(a) provides as follows:

(a) In any case pending before it, the commission, in addition to its now existing authority to do so, is authorized to issue an order permitting its employees and agents to take depositions and otherwise obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the investigation, proceeding, or petition before the commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in civil actions.

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<sup>1</sup> O.C.G.A. § § 50-13-1 et. al.

O.C.G.A. § 46-2-57(a) authorizes the *Commission* through its *employees and agents* (i.e. Staff) to obtain discovery of any non-privileged matter that is relevant to the subject matter of an investigation, proceeding, or petition before the Commission. Consistent with its statutory rights, the Commission authorized its Staff, and no other party, to issue discovery in this case as clearly stated in the PSO. CRG is neither an employee nor agent of the Commission and is not a member of Commission Staff. Therefore, CRG is not entitled to discovery in this proceeding. CRG's disagreement that only the Commission Staff has discovery rights is nothing more than a statement of opinion that blatantly ignores the plain reading of O.C.G.A. § 46-2-57(a). Accordingly, Georgia Power has no legal obligation to provide a substantive response to CRG's request for information and the Company declines to do so voluntarily.

**C. The current proceeding does not fall into the limited class of cases where the Georgia legislature or Commission have granted intervenors discovery rights.**

Except in two limited scenarios, intervenors do not have general discovery rights in proceedings before the Commission. Pursuant to O.C.G.A. § 46-2-57(a), intervenors granted party status in gas company rate cases are granted discovery rights. Similarly, pursuant to O.C.G.A. §46-2-26(d), formal intervenors in utility fuel cases have the right to examine all records used in preparing the testimony and exhibits of the utility, which is a form of limited discovery rights. Outside of these two limited, enumerated situations, intervenors do not have general discovery rights in proceedings before the Commission. The Vogtle Construction Monitoring proceeding is neither a gas company rate case nor a fuel cost recovery proceeding. Therefore, CRG is not entitled to discovery rights in this proceeding.

**D. The Commission does not have the authority to grant the Motion to Compel.**

Except as authorized in O.C.G.A. § 46-2-57(a) as described herein, the Commission does not have the authority to grant discovery rights in this proceeding. The Commission has only such powers as the Georgia legislature has expressly, or by fair implication, conferred upon it. Georgia Power Co. v. Georgia Public Service Commission, 85 S.E.2d 14, 211 Ga. 223 (1954). The Georgia legislature has not conferred upon the Commission the authority to grant discovery to parties or persons other than its employees or agents. Therefore, absent such legislative authorization, the Commission does not have the general or specific authority to grant CRG's Motion to Compel.

**III. CONCLUSION**

Except in the limited circumstances noted above, neither of which applies here, Georgia law does not grant intervenors discovery rights in proceedings before the Commission and the Commission cannot grant such a right or compel discovery without legislative authorization to do so. Georgia Power respectfully requests that the Commission deny CRG's Motion to Compel in this proceeding.

Respectfully submitted, this 6th day of May 2021.

A handwritten signature in black ink, appearing to read 'K. C. Greene', written over a horizontal line.

Kevin C. Greene  
Steven J. Hewitson  
Allison W. Pryor  
Attorneys for Georgia Power Company


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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing RESPONSE OF GEORGIA POWER COMPANY TO CONCERNED RATEPAYERS OF GEORGIA'S MOTION TO COMPEL IN DOCKET NO. 29849 upon all parties listed below via electronic service or by hand delivery and addressed as follows:

Reece McAlister Executive Secretary Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 <a href="mailto:reecem@psc.state.ga.us">reecem@psc.state.ga.us</a>	Preston Thomas Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 <a href="mailto:pthomas@psc.state.ga.us">pthomas@psc.state.ga.us</a>
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This 6th day of May 2021.

A handwritten signature in black ink, appearing to read 'S. Hewitson', written over a horizontal line.

Steven J. Hewitson  
Attorney for Georgia Power Company

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