BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
	)	**Docket No. 29849**
Georgia Power Company's Application to Adjust Rates to Include Reasonable and Prudent Plant Vogtle Units 3 and 4 Costs.	)	

STAFF RESPONSE TO NUCLEAR WATCH SOUTH AND GEORGIA WAND'S PETITION TO HOLD IN ABEYANCE

On October 27, 2023, Nuclear Watch South ("NWS") and Georgia WAND filed a Petition to Hold in Abeyance ("Petition") in this matter. The Petition is without merit and should be denied. The Commission is lawfully complying with court orders and the Georgia Constitution that states in Article IV, ¶ 1, ¶1(a) that members of the Commission "shall serve until their successors are elected and qualified."

I. BACKGROUND

Nuclear Watch South and Georgia Wand ("Petitioners") filed their Petition to Hold in Abeyance on October 27, 2023, and requested that the Commission place it on the November 2, 2023, Energy Committee agenda for a decision. This proceeding had been pending since August 30, 2023, and, with the exception of the rebuttal round, all of the testimony in the case had already been filed. NWS and Georgia Wand waited two months to file its motion, but then expected the Commission to rule on it four days after being filed. Any urgency that NWS claims might exist is dispelled by the fact that they have failed to act for the last two months. Accordingly, the matter should be ruled on by the Chairman after other parties have had adequate time to respond.

The Petition was filed in the Prudency review case, however neither Petitioner has filed an application to intervene in that case. Under O.C.G.A. §§ 50-13-14 and 46-2-59 and Commission Rule 515-2-1-.06, prospective interveners must file an application to intervene, which Petitioners have not. Accordingly, the Petitioners are not parties to this proceeding.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Commissioners Echols and Johnson are lawful members of the Commission and are able to cast a vote on this matter or any other.

The October 27, 2023 Petition states "any proceeding in which two unelected commissioners participate or vote unduly jeopardizes the authority and legitimacy of this Commission's decision and renders is vulnerable to judicial challenge and reversal" and that "any decision by the Commission as currently constituted [is] vulnerable to judicial challenge and reversal." These statements are without merit. Commissioner Echols was lawfully elected as a Commissioner and Commissioner Johnson was lawfully appointed as a Commissioner. They remain Commissioners until their successors are elected and qualified.

The Georgia Public Service Commission was created by the Georgia Constitution. The Constitution expressly provides that "Members shall serve until their successors are elected and qualified." Ga. Const. art. IV, ¶ 1, ¶1(a). Concerning Commissioner Johnson, Georgia law provides that: "Any vacancy in the commission shall be filled by the Governor. Any person so appointed shall hold his office until the next regular general election and until his successor for the balance of the unexpired term has been elected and has qualified." O.C.G.A. § 46-2-4 (emphasis added). Successors have not been elected and qualified. Thus, Commissioners Echols and Johnson "shall" continue to serve until such time as that occurs.

The Federal Court that enjoined the District 2 and 3 elections explicitly acknowledge this fact:

> [C]ounsel for … Secretary [Raffensperger] made clear the State's position on what would happen under Georgia law in the event that the Court enjoined the PSC races on the November 2022 ballots: The commissioners currently holding the positions for Districts 2 and 3 (Echols and Johnson) would "holdover" in those positions "until such time as there was an election." The Court agrees with the Secretary's analysis under Georgia law.

Rose v. Raffensperger, 619 F. Supp. 3d 1241, 1271 (N.D. Ga. 2022)

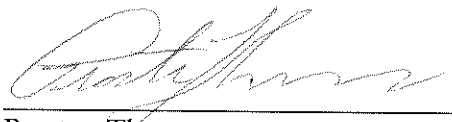
III. CONCLUSION AND RECOMMENDATIONS

The petition is without merit and should be denied. The Commission is lawfully complying with court orders and the Georgia Constitution that states in Article IV, ¶ 1, ¶1(a) that members of the Commission "shall serve until their successors are elected and qualified." If Petitioners have issues with the federal courts' orders, those courts would be the proper forum to raise those concerns. Furthermore, as noted above, neither Petitioner has filed an application to intervene in this matter, and thus are not parties of record in this proceeding.

WHEREFORE, Staff respectfully requests that the Commission deny the Petition in the above-captioned docket, thereby allowing the prudency determination hearing to proceed according to the Procedural and Scheduling Order.

This 22nd day of November, 2023.

Respectfully submitted,



Preston Thomas