

POWER OF THE LAW QUARTERLY

Winter 2017/18

SELC Intervenes to Halt Nuclear Plant Expansion

The construction of two new nuclear units at Plant Vogtle in Georgia has come to a critical tipping point.

Plant Vogtle Units 3 and 4 are the only nuclear units still under construction in the United States now that a nearly identical project at the V.C. Summer plant in South Carolina has been cancelled due to long delays and spiraling cost overruns.

Georgia Power is seeking continued regulatory approval of the project, even as its latest projections put the utility's price tag at \$12 billion, nearly double the original estimate. Originally scheduled for completion in 2016 and 2017, the two units are now at least six years behind schedule.

The project's ongoing problems were exacerbated when its lead contractor, Westinghouse, declared bankruptcy in March 2017. Now Georgia Power customers have increasingly begun to question whether the Vogtle project can be completed, and even if so, whether continuing it is worth the steadily mounting costs.

The only people who stand to benefit from its continuation are Georgia Power's shareholders. Georgia Power has already collected \$2 billion dollars from its customers to "finance" the project, but over half of those "financing" funds are actually nothing more than profits for the utility.

Georgians, especially individuals and families struggling to stay on top of their monthly bills, should not be forced to bear this enormous financial burden, especially for a project that may never generate electricity.

Georgia's energy picture has changed dramatically since the project was initially approved in 2009. Demand growth projections justifying the new units have not materialized. Instead, electricity demand has flattened even as Georgia's economy has grown, largely due to increased energy efficiency. As a result, continuing work on the units would only saddle customers with extremely expensive surplus capacity.

Georgia's reduced energy demands can more cheaply and responsibly be met through additional solar investments, for which Georgia is now a national leader, as well as through greater efficiency measures.

Not only are these resources far cheaper to deploy, they provide the added benefit of bill savings for utility customers.

Now the Georgia Public Service Commission will have to decide, based on a revised cost and schedule forecast, whether the nuclear project should continue.

SELC continues to advocate that redirecting investment in Vogtle to solar power and energy efficiency would be less risky, more affordable, and more than up to the job of powering Georgia's economy.

SELC is also making the case that, even if Georgia Power wants to continue down this risky path, it should not be allowed to shift risk away from its shareholders and make customers bear the entire burden of this boondoggle.

**This is a situation where
a gambler is doubling down
when it's really time to quit.
It's easy to keep gambling
when you are using
someone else's money.**

—SELC Attorney Kurt Ebersbach

REGIONAL HIGHLIGHTS

New Wilderness Bill Will Save Wild Public Lands in Virginia



SELC and the Virginia Wilderness Committee are applauding the introduction of the Virginia Wilderness Additions Act of 2017. Sponsored by Senators Tim Kaine and Mark Warner, this bill would add 5,600 acres to the Rough Mountain and Rich Hole wilderness areas in the George Washington National Forest. Passage of this measure will give these special places, located on the eastern slopes of the Allegheny Mountains in Bath County, the highest level of protection possible for federal lands.

This bill has garnered broad support among historically divergent interests, as a result of a win-win consensus

hammered out by the George Washington National Forest Stakeholder Collaborative. Through this process, wildlife managers, hunters, the timber industry, wilderness advocates, recreation organizations, and others agreed both to increased protections for core, intact areas of the forest *and* to increased timber harvesting and other active management in less sensitive places. The U.S. Forest Service included many of these recommendations in its current long-term plan for the forest, which recommends Congressional designation of an additional 27,000 acres of wilderness and an additional 70,000 acres of national scenic area on Shenandoah Mountain. This bill is the first piece of legislation under this framework, and SELC and our partners continue to advance the next phases of this effort.

Keeping Music City in Motion

Nashville ranks among the 10 worst U.S. cities for gridlock. This traffic takes a heavy environmental toll: Metro Nashville has struggled to meet health standards for ozone pollution, and greenhouse gas emissions are rising. Addressing these problems will be even more challenging as the region is projected to add one million people by 2035. Local leaders have recognized the impact of increasing traffic on quality of life, health, and the environment, and have begun to call for cleaner transportation options.

A longtime advocate for a more livable Nashville, SELC has helped build support for investments in transit, including proposals for the city's first light rail line and a cleaner bus fleet. We also served on a committee convened by Nashville's Metropolitan Transit Authority that helped develop nMotion, a new long-range transit plan.



These plans may soon get the funding they need to move forward. The Tennessee General Assembly enacted legislation this year that enables certain localities to hold referenda to authorize local taxes to fund transit projects, and Nashville intends to be the first city to

hold such a referendum in May 2018. SELC is working with local officials, the business community, and other groups to build support for this measure to fund projects that will help make Nashville a cleaner, healthier place to live.

Keeping Carcinogens Out of Our Drinking Water

As part of a 2015 criminal plea agreement, Duke Energy admitted that bromide discharged into local waterways from its coal ash operations has caused carcinogens to form when it interacts with chlorine in downstream drinking water systems. These carcinogens have been found in dozens of treated drinking water supplies in North Carolina and other southern states. Some are so dangerous that EPA has set their health protection goal at zero—meaning that humans should not be exposed to any level of these pollutants.

Duke Energy adds bromide to the

coal-burning process to reduce mercury emissions from its power plants, despite widely available alternative technologies. Even after recognizing that bromide contaminates drinking water—and after multiple North Carolina communities reported spikes in carcinogens in their treated drinking water—the utility sought a permit to expand its use of bromide.

On behalf of Catawba Riverkeeper Foundation and Clean Air Carolina, SELC challenged Duke’s bromide use. In response, Duke withdrew requests to add bromide at six of its plants, and



North Carolina’s state environmental agency issued the first permits prohibiting the use of bromide at Duke’s coal-fired power plants.

Duke Energy Forced to Release Coal Ash Flood Maps

When an earthen dam failed at Duke Energy’s Dan River coal ash site in 2014, more than 20 million gallons of polluted water and 39,000 tons of toxic coal ash spilled into the nearby Dan River. Following the spill, a federal rule championed by SELC required utilities to post emergency action plans, including maps showing the areas that would be flooded if coal ash impoundments failed.

When the deadline for posting emergency information came last spring, however, Duke Energy published blacked-out maps and withheld contact information for emergency responders—the only utility in the nation to do so. SELC did not let Duke get away with this. We filed 10 notices of intent to sue for coal ash sites across North Carolina, and within two weeks, the company finally released the with-

held maps to the public.

“Now we know what Duke Energy was trying to hide,” said Frank Holloman, senior litigator and part of SELC’s regional Coal Ash Initiative. “Their dangerous coal ash lagoons threaten families, houses, property, lakes, and rivers if they fail. Duke Energy needs to move all of its coal ash to safe, dry, lined storage where it will not pollute and cannot harm our state’s families and drinking water.”

FERC Approves, States Delay Pipeline Permits

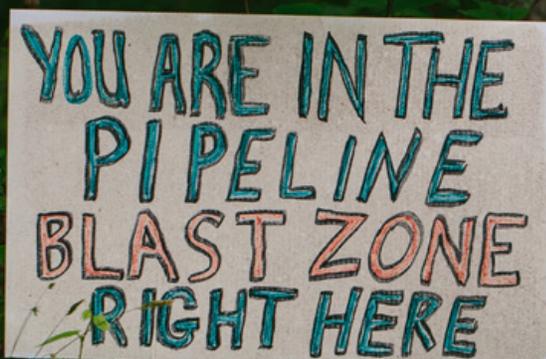
There are a lot of reasons why the people of Virginia and North Carolina don’t like the proposed Atlantic Coast Pipeline, not least the fact that its developers, Dominion Energy and Duke Energy, stand to profit handsomely from the \$5 billion project by forcing their customers to bear the cost. Pipeline opponents were disappointed in October when the Federal Energy Regulatory Commission approved the project. But they have reason to hope: the ACP is not a done deal.

Under the Clean Water Act, every state has the authority to

determine whether or not a federally permitted project, such as an interstate natural gas pipeline meets state water quality standards. If state regulators lack “reasonable assurance” that water quality will be protected during the pipeline’s construction or operations, they are obliged to halt the project, even if

FERC has approved it. New York and New Jersey recently blocked pipelines on those grounds.

In North Carolina and Virginia, following SELC’s extensive comments on the environmental impact of the ACP, both states delayed decisions on Clean Water Act permits. The ACP cannot move forward without them, and SELC will continue to urge state regulators to meaningfully evaluate the project’s impact on the waterways and water quality of Virginia and North Carolina.



WHAT'S HAPPENING IN YOUR STATE?

ALABAMA

Wilsonville mayor presses Alabama Power on local coal ash hazards

Wilsonville Mayor Lee McCarty hosted a town hall meeting in October to give his constituents an opportunity to talk about living downstream from the Gaston Electric Generating Plant and its 269-acre coal ash pond. Gaston has powered Wilsonville since the 1950s, and it's one of the area's biggest employers, but this history has not stifled Mayor McCarty's displeasure with Alabama Power's decision to leave its coal ash in an unlined pit near the Coosa River. "The number one thing we're supposed to do as elected officials is to look out

for the health, safety, and welfare of our citizens," McCarty said, and he invited SELC's Frank Holleman and Keith Johnston to speak about what utilities in neighboring states are doing with their waste. "Georgia Power is moving its coal ash away from waterways in many places," said Holleman. "Duke Energy is doing it. TVA has been ordered to do it. Every utility in South Carolina is moving its ash to safe, dry, lined storage. I've just got to believe that if South Carolina can do it, Alabama can do it too."



GEORGIA

Protecting Ebenezer Creek, a National Natural Landmark

Ebenezer Creek, a blackwater tributary of the Savannah River, is one of only four waterways designated by the Georgia General Assembly as a Scenic River. It is also a National Natural Landmark, a designation awarded by the U.S. Department of the Interior based on its "outstanding condition, illustrative value, rarity, diversity, and value to science and education." But all of this did not stop the Georgia Environmental Protection Division from issuing a Clean Water Act permit that would allow a turpentine

oil manufacturer to pipe partially treated wastewater into the city of Springfield's wastewater treatment plant, which discharges directly into Ebenezer Creek. SELC identified deficiencies in the permit and encouraged Springfield officials to carefully consider the risks that the new pollution source poses to Ebenezer Creek's unique ecosystem. In mid-November, the city unanimously voted to deny the company's request for the city to accept its wastewater.

NORTH CAROLINA

Saving old growth in the Southern



SOUTH CAROLINA

S.C. Supreme Court ruling puts the brakes on Mark Clark Extension

For more than a decade, SELC has opposed the construction of the Mark Clark Extension, a costly and destructive highway that would plow through Johns and James Islands, destroy extensive freshwater wetlands and salt marshes, and usher sprawling development into rural areas near Charleston. We have kept the project in check by remaining engaged in the ongoing permitting process—to date, no state or federal permits have been issued. In October, our perseverance paid off: the South Carolina Supreme Court accepted our friend-of-the-court brief and refused to hear a lawsuit filed by Charleston County that would have forced the state Infrastructure Bank to commit \$750 million to the Mark Clark Extension, allowing the bank to re-direct much-needed funding to other, more essential transportation projects.

A n Appalachians

Old growth forests in the South are exceedingly rare, surviving in isolated pockets on a tiny fraction of the land. Most of those remnant stands are in our national parks and forests, and preserving them has been at the heart of SELC's mission for thirty years. In keeping with that history, we are opposing a Forest Service proposal to log old growth timber within North Carolina's Nantahala National Forest. This stand shows no signs of historical logging and includes mature oak trees that are more than 200 years old. Our forest team is arguing that preserving mature forests should be a high priority for the Forest Service, and is offering an alternative that would protect both the Nantahala old growth and the nearby Brushy Ridge Natural Heritage Area, part of which is also threatened by the logging proposal.

VIRGINIA

The South's first carbon cap-and-trade program

While federal climate protection efforts are in limbo, SELC is promoting action at the state level to reduce carbon emissions from the power sector. In Virginia, with our advice and encouragement, the McAuliffe administration has proposed a carbon cap-and-trade program that would require power producers to buy an allowance for every ton of carbon they emit. This would create a market-based incentive for utilities to opt for low- or no-carbon resources, especially when building new generating capacity. The plan is for Virginia to link up with the Regional Greenhouse Gas Initiative, a cap-and-trade program involving nine East Coast states, and could be in place by late 2018.

TENNESSEE

SELC defends Gallatin win

After a stunning victory in our lawsuit against the Tennessee Valley Authority for Clean Water Act violations at its Gallatin power plant, SELC is now defending this precedent-setting decision, which TVA appealed to the U.S. Sixth Circuit. In our win in August, the judge ordered TVA to excavate the 10 million tons of coal ash held in the plant's leaking, unlined pits and move the waste to dry, lined storage. The same issues will now be judged in a parallel case brought by the Tennessee Department of Environment and Conservation. The state suit was scheduled to go to trial in December, but in an effort to derail the proceedings, TVA has moved the case to federal court—the very court that ruled against the utility in August. Along with TDEC, we are asking the court to send the case back to state court so that the trial can go forward.



NANCY PIERCE/FLIGHT BY SOUTHWINGS



Beth Alexander and her colleagues prepare for—and celebrate—our Gallatin lawsuit. SELC is now defending the precedent-setting decision that TVA must excavate its coal ash.

Chesapeake Bay communities say no to fracking

SELC is helping local communities on the western shore of the Chesapeake Bay put protections in place to guard against the potential impacts of hydraulic fracturing for natural gas in the underlying Taylorsville Basin. Last year we helped King George County adopt strong restrictions on fracking, and in November, Richmond County banned fracking altogether, following in the footsteps of Augusta County in western Virginia, which did so in February. These decisions were strongly influenced by mounting scientific evidence of the health and safety risks posed by fracking, evidence which also helped SELC successfully defend new statewide rules requiring public disclosure of fracking chemicals.

INSIDE STORY

Transparency & Accountability: Tools to Fight Back in the Age of Trump

When it comes to protecting the environment, government transparency is vital to making sure agencies are doing their jobs and not letting polluters off the hook.

Just ask Kym Hunter.

This talented and diligent SELC attorney is spearheading our new Government Transparency Project and in the past year has won four victories that improve government accountability in North Carolina. Most recently, she negotiated a settlement with the state Department of Agriculture that ensures free access to records relating to the environmental impacts of hog farming—records the agency had initially tried to charge Waterkeeper Alliance \$4,000 just to review.

In addition to guaranteeing citizens the fundamental right of access to public information, this work is also preserving one of SELC's essential legal tools: inspecting public records and government documents allows us to see how decisions are being made, and enables us to challenge actions that would weaken or ignore environmental protections.

Kym's interest in transparency was sparked by the policies of the administration of former Governor McCrory, which systematically thwarted public access to information on government decision-making. While McCrory was governor, anyone seeking public records—from newspapers to SELC and our environmental partners—faced steep fees, long delays, and a persistent lack of cooperation, all of which undermined our work in the public interest.

In response, SELC and a group of eight media companies and advocacy groups filed suit, finally reaching a settlement with the state in August that guarantees the citizens of North



“Public records and public information compiled by the government are first and foremost the property of the people.

—SELC Attorney Kym Hunter

Carolina ready access to government activity, records, and meetings.

Groups across North Carolina now routinely turn to SELC to assist them with their public records concerns. The more open policies of the new Cooper administration, along with our expertise on transparency laws, allow us to help groups of all sizes gain access to the information they need to perform their various roles in protecting our health and environment. In November, Kym Hunter was asked to join the board of directors of the North Carolina Open Government Coalition.

SELC now has its sights set on the Trump Administration—and EPA Administrator Scott Pruitt's \$25,000 secret phone booth. “I can't think of a better illustration of this administration's low regard for transparency,” Kym explains. Right from the start, Pruitt's EPA has been obstructing public access to information, from

stripping climate science from government web sites to unlawfully withholding documents. The Freedom of Information Act forbids that. It clearly recognizes that government transparency and accountability, not secretive decision-making, serve the public interest.

Following EPA's failure to respond to record requests, SELC filed a federal lawsuit in August to compel

the agency to supply documents related to its “regulatory reform” effort. “President Trump and Scott

Pruitt are creating a hit list of health, safety, and environmental protections behind closed doors,” Kym concludes. “Every American has the right to know what they are up to, and the right to the information we need to fight back against policies that will harm the people and places we love.”



The Washington Post

EPA spending almost \$25,000 to install a secure phone booth for Scott Pruitt

IN THESE CHALLENGING TIMES, THE SOUTHERN ENVIRONMENTAL LAW CENTER IS *YOUR TEAM*

Dear SELC Friends,

We really have our work cut out for us here at the Southern Environmental Law Center, and we hope we can count on your financial support and partnership at this critical time.

You know what I'm talking about. We are facing a president who pulled the U.S. out of the Paris Climate Accord, and who has signed executive orders seeking to dismantle environmental oversight and regulation. And an EPA Administrator who previously led a national crusade in court challenging the air, water, and global warming protections of the very agency he is now in charge of.

They're not hiding their agenda: it's not America first, it's fossil fuels first. Forget science and the future of the Earth. It is unconscionable and outrageous.

SELC has different values, and a very different vision. We believe in being responsible stewards of our natural areas, from the mountains to the coast. We know it's important to be good neighbors and to care about the health and wellbeing of the people around us. It is our responsibility to act today, to ensure a bright, sustainable future for generations to come.

My message to you today is: take heart, but take action. Join with us. SELC is essential right now because we have the *power of the law*. The law is the great equalizer. It doesn't matter how big or powerful our opponents may be—Duke Energy, TVA, the Trump administration—with the law, facts, and science on our side, we will prevail. We may not win every fight, but with our law and policy approach, we will move things forward.

SELC is the principal line of defense for fundamental federal safeguards that protect the South—with the federal Clean Water Act as our top priority. The South has more miles of rivers and more acres of wetlands than any other region in the continental U.S., so this organization is taking the lead on challenging the Trump/Pruitt plan to radically cut back the Clean Water Act's scope and protections. On behalf of 63 other organizations, we recently submitted a detailed critique of the administration's proposal, and we ultimately expect to win this case in the U.S. Supreme Court.

We will vigorously protect our region's special places, such as by preventing the South Atlantic from being opened to offshore oil and gas drilling. Our strong legal case is backed up by opposition from three southern governors, 130 coastal communities, and businesses, trade groups and tourism associations up and down the coast. We have more than 200 active projects and lawsuits going right now, many with national or global impact.

This is SELC's time, and the Southern Environmental Law Center is your team. You can count on us.

Thanks for your help and interest,



Rick Middleton
SELC Founder and Executive Director

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North Carolina's Brad Stanback Selected for 25th Dockery Award

We are very pleased to announce that Brad Stanback was presented with the 25th annual James S. Dockery Jr. Environmental Leadership Award at SELC's fall meeting in Asheville.

Few live and breathe the North Carolina mountains like this year's award-winner, Brad Stanback, and few

so embody a conservation ethic in their day-to-day life. A naturalist, a citizen scientist, and a softspoken but tireless champion, Brad is deeply committed to the conservation and restoration of the southern environment. His decades-long leadership with the American Chestnut Foundation, his support of and guidance to a broad array of North

Carolina environmental organizations, and his recent appointment to the North Carolina Wildlife Resources Commission,

are all a testament to his dedication.

For every positive environmental outcome publicly associated with Brad Stanback, he brings dozens more to fruition without fanfare—through knowledge and insights shared, connections made, and good work done, often by his own hands. At his Winterberry Farm, a model of conservation land management, he is restoring beaver populations and personally cultivating American chestnut hybrids that are resistant to the blight that wiped out these trees.



Brad Stanback & Rick Middleton

The James S. Dockery Environmental Leadership Award was created in 1993 in memory and appreciation of our beloved first board chair. Our selection places a special emphasis on leaders at the state and local levels, especially those who have helped build institutions that do excellent environmental work over the long term. In that respect, Brad exemplifies the guiding spirit behind the award: environmental passion, local knowledge and engagement, and big vision.