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# Nate Monroe: Plant Vogtle lawsuit was another privatization ploy

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COMMENTARY | One of the outside lawyers who helped lead the unsuccessful legal challenge to rid JEA of a decade-old agreement to help build two nuclear reactors in Georgia explicitly framed the effort internally as an attempt to make the public utility more attractive to potential buyers, according to a confidential February 2018 memo, a motivation city and JEA leaders never voiced as the challenge moved its way through the courts.

The memo, which has not been previously reported, shows in plain writing that the fight against JEA's Plant Vogtle obligation was — from the beginning — inextricably tied to the success or failure of a separate project later led by former CEO Aaron Zahn to sell JEA to a private company. Zahn and Mayor Lenny Curry repeatedly voiced concerns about Plant Vogtle, but they never tied JEA and City Hall's joint lawsuit to walk away from that deal as a pot sweetener for future JEA bidders.

Instead, the two men attacked what they said were the unfair terms of the deal on JEA's end, claimed it was an illegal agreement and in federal court accused JEA's partners on the project of mismanagement and potentially worse behavior. “The citizens and ratepayers in northeast Florida rely on JEA to manage the electric utility system in a prudent manner and to protect them from unjust, ill-considered, or extortionate contracts,” lawyers for JEA and the City of Jacksonville wrote in their lawsuit.

But the February 2018 memo — written before Zahn took over as interim CEO — makes it clear privatization was front-and-center as JEA and the city began planning ways to walk away from Plant Vogtle, even as it went unmentioned in JEA's court filings and as city and utility officials denied they were planning to privatize the agency: "Jacksonville's new young Republican mayor is out to shrink government, and wants to privatize JEA — quickly, while

the market is 'right.' He says within 3-5 months," Allen Maines, a lawyer with the firm Holland & Knight, wrote to a JEA official in a memo detailing possible legal strategies.

"Obviously, Plant Vogtle and the (agreement) greatly affect valuation."

Holland & Knight has billed JEA about \$5 million since 2018 related to Vogtle litigation, and the utility spent another \$13 million on the formal privatization process. That means JEA actually spent closer to at least \$18 million on separate efforts intended to attract a buyer.

A 2008 purchase-power agreement between JEA and one of Vogtle's co-owners, the Municipal Electric Authority of Georgia, put JEA on the hook for a portion of the construction costs and obligated it to purchase power from the nuclear reactors for 20 years. A decade ago, the nuclear power industry was thought to be in the budding phase of a renaissance that never really came, and the years since became instead a near-death knell for the industry. Vogtle is the only remaining active nuclear power project in the United States.

The two reactors are years behind schedule and billions of dollars over budget, with JEA's own obligation having ballooned to as much as \$4 billion spread over 20 years.

Taking on Vogtle was Zahn's first high-profile project after he took over as interim CEO in April 2018. He began it months before unveiling plans to put JEA out for sale.

Zahn ultimately settled on a long-shot strategy: Initiate an uphill legal fight to invalidate the 2008 agreement and, meanwhile, begin a public-relations campaign in Georgia seeking to shame the Municipal Electric Authority of Georgia and the other Vogtle co-owners into canceling the project.

Curry provided political cover for Zahn during these efforts, sometimes echoing Zahn's concerns about the "burden" the agreement would place on ratepayers. Ultimately, the city joined JEA in suing the Municipal Electric Authority of Georgia, a move that led one of the nation's credit rating agencies to downgrade the ratings for both City Hall and the utility.

The 2018 memo provides context to explain Zahn and Curry's strong interest in fighting Vogtle's co-owners: Getting rid of the Vogtle obligation was critical to any buyer who had an interest in purchasing the utility.

"I realize that one underlying assumption to privatization is that prospective purchasers will not be interested unless JEA sheds itself of (the Plant Vogtle agreement)," the Holland & Knight lawyer wrote.

The agreement was a tricky impediment to privatization because the portion of the Vogtle reactors JEA was responsible for financing were backed by tax-exempt bonds only available to a public agency. Transferring that agreement to a private company would mean, at minimum, losing that tax exempt status, substantially driving up the cost.

The Holland & Knight lawyer warned JEA it "may not be possible to shed the ... exposure quickly" but wanted to discuss a "creative way to nevertheless privatize without giving away the farm."

JEA and its attorneys settled on a multi-pronged approach to take on Vogtle that failed on almost every level. The hard-knuckle PR blitz only infuriated Georgia officials and created a major rift between JEA and its partner, the Municipal Electric Authority of Georgia, that would later impede settlement talks.

They tried to lobby federal officials, which not only failed to persuade them but was later followed up by Department of Energy officials joining Vogtle's co-owners in objecting to JEA's legal challenges.

They tried to take their case to the Federal Energy Regulatory Commission, an unusual venue for a public utility to take a dispute of this kind. That, too, failed and in the process enlisted public utilities from around the United States as opponents to JEA's legal arguments.

They proposed a settlement to the Municipal Electric Authority of Georgia that would have provided JEA an actual ownership stake in the reactors, but that proposal never came to fruition (holding an actual ownership stake in Vogtle, as opposed to JEA's position as a mere purchaser of the reactors' power, would have been more attractive to a private bidder).

Instead, even as Zahn framed the future Vogtle costs and the rate increases needed to cover them as a reason to privatize JEA, utility officials quietly crafted a workaround that would allow a buyer to acquire JEA and leave the city stuck with Vogtle — meaning ratepayers would have still been on the hook. One utility executive called this manufactured loophole "elegant."

A federal judge in June ruled against JEA, finding the contract legal and enforceable, and two weeks ago the utility and its Georgia partner announced they reached a settlement on a few outstanding claims that will more or less restore the pre-Zahn status quo.

Interim JEA CEO Paul McElroy, who championed the Vogtle deal when he was the utility's finance chief in 2008, has recently called it a "nuclear plant project that became a train wreck." But some utility officials still believe — assuming the Vogtle reactors *do* come online

one day — the agreement may not be such a bad deal in the end, especially if there is a return of federal regulations that target carbon-rich power sources like coal and even cleaner natural gas.

*Nate Monroe's City column appears every Thursday and Sunday.*

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