

Tom Crawford's GEORGIA REPORT

Ga. Power files its own lawsuit against nuke contractors

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Georgia Power and the contractors it hired to build two nuclear reactors at Plant Vogtle are evidently headed to court to resolve a deep disagreement over who should have to eat more than \$900 million in cost increases on the massive construction project.

Attorneys for the utility giant filed a lawsuit in U.S. District Court in Augusta last Thursday against Westinghouse Electric Co. and Stone & Webster Inc. on the same day that the contractors sued Georgia Power and its partner companies in federal court in Washington, D.C.

The legal dispute casts a shadow over the nuclear project with an estimated price tag of \$14.5 billion that is still in the early stages of construction – the two reactors are not scheduled to begin generating electricity until 2016 and 2017 at the earliest.

“I can't remember where Georgia Power was involved in any litigation on a generation project where the controversy either came to the attention of the commission or jeopardized the construction completion date,” said Bobby Baker, who served on the Georgia Public Service Commission for 18 years before stepping down in 2010.

“That is not to say that there have not been projects in the past that went over budget – there have been numerous projects – but the commission would always rubberstamp the cost increase as a prudent expense,” Baker said.

The dispute over cost increases was first disclosed last spring in regulatory filings and later ballooned into several federal lawsuits and an attempt by the two sides to mediate their disagreement. Georgia Power said it filed the latest lawsuit against Westinghouse and Stone & Webster after “the mediation concluded unsuccessfully.”

The cost increases resulted from these changes in the nuclear plant construction:

- The contractors say they were required by the Nuclear Regulatory Commission (NRC) to build stronger, steel-reinforced “shield buildings” that would protect the nuclear systems if an aircraft crashed into Plant Vogtle. The additional cost was \$600 million.
- There was a delay in the issuance of a combined operating license for the Vogtle plant by the NRC, which the contractors claim added \$244 million to their project costs.
- Other changes ordered by the NRC to Vogtle's structural modules piled on more cost increases of \$74 million, the contractors allege.

In the lawsuit it filed last week, Georgia Power disputed each of the change orders cited by Westinghouse and Stone & Webster, some of which date back to 2009, and said the fault for the cost increases lies with the contractors.

In the case of the shield building, for example, Georgia Power contended that the contractors chose a “first-of-its-kind design . . . using structures for which there were no applicable NRC-approved codes or standards.”

“This choice, including the risks associated with obtaining NRC approval of a new design, was within Defendants’ reasonable control and it was foreseeable that the NRC would expect the design to be supported by testing and benchmarking,” Georgia Power argued in its lawsuit. “It was furthermore foreseeable that the NRC might not accept Defendants’ first-of-its-kind design.”

The lawsuits were filed just a few weeks before Georgia Power executives are scheduled to testify before the Public Service Commission about the latest cost-monitoring report on the Vogtle project. At some point, PSC members may have to decide whether they will allow Georgia Power to pass along Vogtle cost increases to its ratepayers or require the company’s shareholders to bear part of those financial costs.

The litigation over the cost increases could also reopen arguments from consumer and environmental organizations that it would have been more cost-effective for Georgia Power to build a natural gas-fired generation facility instead of capital-intensive nuclear reactors.

“Nothing filed by either party (Georgia Power and the contractors) explains why any of these change orders has remained outstanding for so long – particularly the one for the \$600 million shield building design change, which appears to have been issued on May 27, 2010,” said Helen O’Leary of the consumer organization Georgia Watch.