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Southern Co. Ends Fight With Ga. Nuclear Plant Partner

By **Keith Goldberg** · (Listen to article

Law360 (September 30, 2022, 4:35 PM EDT) -- Southern Co. said Friday that it's settled litigation with a minority partner over how to divvy up cost overruns for the \$20 billion Vogtle nuclear power plant expansion project in Georgia.

Southern Co. unit Georgia Power Co., the majority owner of the Vogtle plant, inked a settlement agreement Thursday with the Municipal Electric Authority of Georgia, which claimed in a state court lawsuit that the Vogtle project crossed a cost overrun threshold of \$2.1 billion and potentially triggered cost-allocation and ownership stake changes.

Georgia Power said in a U.S. Securities and Exchange Commission filing Friday that under the settlement, it will pay a portion of MEAG's future construction costs, which are estimated to be as much as \$76 million and won't include any adjustments for force majeure. Georgia Power said it will also pay 20% of MEAG's construction costs that exceed the project's current, forecasted price tag.

MEAG said in its own **filing** with the Municipal Securities Rulemaking Board on Thursday that Georgia Power will reimburse 15% of MEAG's share of the Vogtle project's actual construction costs that are between \$18.7 billion and \$19.6 billion, and 20% of MEAG's share of the project's actual costs that exceed \$19.6 billion.

MEAG will keep its approximately 23% ownership stake, divided between three of its subsidiaries, in the Vogtle project.

Georgia Power said in its SEC filing that litigation with Vogtle's other minority owners, electricity cooperative Oglethorpe Power and the city of Dalton, Georgia's municipal utility, over the project's cost overruns remains active and that the company's potential financial exposure could be as much as \$165 million of further pre-tax charges to its income.

The Vogtle project, which involves the construction of two additional nuclear power plant units, was first approved by Georgia utility regulators in 2009 but has been plagued by construction delays and billions in cost overruns.

In a 2018 co-owner agreement, Georgia Power — which owns the biggest stake in the project and is building the new reactors after taking over the project from now-bankrupt Westinghouse — agreed to take on more of any cost overruns than its co-owners.

According to a financial statement released by Georgia Power shortly after the 2018 agreement was announced, Vogtle's co-owners will pay their proportionate shares of construction costs based on their ownership interest up to the estimated cost at completion, plus \$800 million in additional construction costs.

But Georgia Power will be on the hook for 55.7% of any construction cost overruns between \$800 million and \$1.6 billion, and 65.7% of any construction cost overruns between \$1.6 billion and \$2.1 billion, according to the financial statement.

If cost overruns exceeded \$2.1 billion, Vogtle's co-owners would have the option of tendering a portion of their ownership interest to Georgia Power in exchange for the utility's covering all of their remaining share of construction cost overruns. Georgia Power would also have the option of canceling the project instead, the financial statement said.

At the time, the cost of the Vogtle project was estimated to be \$17.1 billion. But when MEAG lodged its state court complaint in June, it said the co-owners voted on and approved an updated estimated budget of \$20.5 billion in February, which MEAG contends means cost overruns have exceeded the \$2.1 billion threshold.

Meanwhile, Oglethorpe Power moved to cap its contributions to the project and exercise the option for Georgia Power to absorb its share of future cost overruns in exchange for an additional sliver of ownership.

Georgia Power argued that the 2018 estimated cost of the project was actually \$18.4 billion, which means the \$2.1 billion threshold hadn't been crossed, according to MEAG's complaint.

Representatives for Southern Co. and MEAG declined to comment further Friday.

MEAG is represented by Michael B. Terry, Kamal Ghali, Megan E. Cambre and Eliza L. Taylor of Bondurant Mixson & Elmore LLP.

Southern Co. is represented by Brandon R. Keel, David L. Balser and Peter Starr of King & Spalding LLP.

The case is Municipal Electric Authority Of Georgia et al. vs. Georgia Power Company, case number 2022CV366416, in the Superior Court Of Fulton County, State Of Georgia.

--Editing by Ellen Johnson.

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