

JONES DAY
Anna Kordas, Esq.
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
E-mail: akordas@jonesday.com

Joseph E. Finley, Esq.
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 581-8409
Facsimile: (404) 581-8330

Gregory M. Gordon, Esq.
Dan B. Prieto, Esq.
2727 North Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

BALCH & BINGHAM LLP
T. Joshua R. Archer (pro hac vice to be filed)
Brooke W. Gram (pro hac vice to be filed)
30 Ivan Allen Jr. Blvd. N.W., Suite 700
Atlanta, GA 30308
Telephone: (404) 261-6020
Facsimile: (404) 261-3656

Attorneys for the Vogtle Defendants

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**WESTINGHOUSE ELECTRIC
COMPANY, *et al***

Debtors.¹

**Chapter 11
Case No. 17-10751 (MEW)

(Jointly Administered)**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors' principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.



**AZZ, INC., a Mississippi corporation, and
THE CALVERT COMPANY, INC., a
Mississippi Corporation**

Plaintiffs,

v.

**SOUTHERN NUCLEAR OPERATING
COMPANY, INC., GEORGIA POWER
COMPANY, OGLETHORPE POWER
CORPORATION, MUNICIPAL
ELECTRIC AUTHORITY OF GEORGIA,
THE CITY OF DALTON, GEORGIA, and
WECTEC GLOBAL PROJECT
SERVICES, INC., N/K/A STONE &
WEBSTER, INC.,**

Defendants.

Adv. No. 18-01016 (MEW)

**ANSWER AND COUNTERCLAIMS OF SOUTHERN NUCLEAR OPERATING
COMPANY, INC., GEORGIA POWER COMPANY, OGLETHORPE POWER
CORPORATION, THE CITY OF DALTON, GEORGIA, AND MUNICIPAL ELECTRIC
AUTHORITY OF GEORGIA TO PLAINTIFFS' COMPLAINT**

Defendants Southern Nuclear Operating Company, Inc. ("SNC"), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and the City of Dalton, Georgia (the "Vogle Owners", together with SNC, the "Vogle Defendants") file their Answer to AZZ, Inc. and The Calvert Company, Inc.'s ("Plaintiffs" or "AZZ") Complaint.

AFFIRMATIVE DEFENSES

As of the filing of this answer, the Vogle Defendants are unaware of all the facts and circumstances giving rise to the claims set forth in Plaintiffs' Complaint. The following affirmative and general defenses are raised so as not to be waived as a matter of law. These defenses will be relied upon to the extent the facts developed show they apply.

First Defense

The Complaint fails to state a claim against the Vogtle Defendants upon which relief may be granted.

Second Defense

Plaintiffs' claims against the Vogtle Defendants are barred in whole or in part due to Plaintiffs' failure to satisfy conditions precedent or subsequent.

Third Defense

Plaintiffs' claims against the Vogtle Defendants are barred because the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") lacks jurisdiction over the Plaintiffs' claims against the Vogtle Defendants.

Fourth Defense

Plaintiffs' claims against the Vogtle Defendants are barred because Plaintiffs must first seek recovery from persons or entities other than the Vogtle Defendants before seeking to recover from the Vogtle Defendants.

Fifth Defense

If Plaintiffs were damaged in any way, Plaintiffs failed to mitigate their damages, and any award to which Plaintiffs might otherwise be entitled must be reduced as provided by law.

Sixth Defense

If Plaintiffs were damaged in any way, all damages were caused by independent, unforeseeable, superseding and/or intervening acts of persons or entities other than the Vogtle Defendants or over whom the Vogtle Defendants had no control.

Seventh Defense

If Plaintiffs were damaged in any way, all of said damages are the result of Plaintiffs' own actions, and any award to which Plaintiffs might otherwise be entitled must be reduced as provided by law.

Eighth Defense

Plaintiffs are not entitled to any damages because all damages are subject to back charges, setoff, recoupment, or any other contractual or legal defense.

Ninth Defense

Plaintiffs are not entitled to any relief on their claims related to the Vogtle Subcontract and Bridge Agreement, as these terms are defined in the Complaint, because Plaintiffs' work under the Vogtle Subcontract and the Bridge Agreement was defective and deficient.

Tenth Defense

Plaintiffs' claims against the Vogtle Defendants are barred by the doctrines of waiver, estoppel and/or laches.

ANSWER TO UNNUMBERED PARAGRAPH TITLED "COMPLAINT"

The Vogtle Defendants admit Plaintiffs are seeking certain relief against the Vogtle Defendants and Defendant WECTEC Global Project Services, Inc. ("WECTEC") as described in this Paragraph. The Vogtle Defendants deny Plaintiffs are entitled to such relief.

ANSWER TO UNNUMBERED PARAGRAPH TITLED "NATURE OF THIS ACTION"

The Vogtle Defendants admit Plaintiffs are seeking certain relief against the Vogtle Defendants and WECTEC as described in this Paragraph. The Vogtle Defendants deny Plaintiffs are entitled to such relief.

ANSWERING THE SPECIFIC ALLEGATIONS IN THE COMPLAINT

Subject to and without waiving any of the above defenses, the Vogtle Defendants respond to Plaintiffs' allegations as follows:

**ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"JURISDICTION AND VENUE"**

1.

The Vogtle Defendants deny the Bankruptcy Court has jurisdiction over Counts V and VI of the Complaint. The Vogtle Defendants admit that the Bankruptcy Court has jurisdiction over Counts I and II of the Complaint, but WECTEC has no financial stake with respect to the claims alleged in such Counts because the Vogtle Defendants are responsible for payment of any such claims. The Vogtle Defendants neither admit nor deny that the Bankruptcy Court has jurisdiction over Counts III and IV of the Complaint since the claims therein are not alleged against the Vogtle Owners. The Vogtle Defendants further admit that the United States District Court for the Southern District of New York (the "District Court") would have jurisdiction over Counts I, II, V, and VI, and the Vogtle Defendants intend to move to withdraw the reference with respect to such Counts. Section 157(a) of Title 28 of the United States Code and the Amended Standing Order of Reference 1 speak for themselves, and the Vogtle Defendants deny any allegation related to them that is inconsistent with their text.

2.

The Vogtle Defendants deny that this is a core proceeding.

3.

The Vogtle Defendants deny that the Bankruptcy Court has jurisdiction to hear and determine Counts I, II, V, and VI of the Complaint. The Vogtle Defendants acknowledge that

Plaintiffs consent to the entry of final orders or judgments by the Bankruptcy Court. The Vogtle Defendants do not consent to the entry of final orders or judgments by the Bankruptcy Court.

4.

The Vogtle Defendants deny that the claims contained in Counts V and VI of the Complaint are or could be based on sections 101, 105(a) or 503 of the Bankruptcy Code or any other provision of the Bankruptcy Code. The Vogtle Defendants further deny that the claims in Counts V and VI of the Complaint are or could be based on the general equity powers of the Bankruptcy Court. The Vogtle Defendants admit that some claims in the Complaint are governed by Georgia law. The Vogtle Defendants further admit that the claims contained in Count I of the Complaint are purportedly based on section 503 of the Bankruptcy Code although WECTEC has no financial stake with respect to such claims. The Vogtle Defendants deny all other allegations in paragraph 4 of the Complaint.

5.

The Vogtle Defendants deny that venue of Counts V and VI in the Bankruptcy Court is proper and further deny that the claims in such Counts arise in or are related to the Debtors' bankruptcy case. The Vogtle Defendants admit that venue of Counts I and II in the Bankruptcy Court is proper and the claims in such Counts are related to the Debtors' bankruptcy case, but denies that WECTEC has a financial stake with respect to such claims and further denies all other allegations in paragraph 5 of the Complaint.

6.

The Vogtle Defendants admit the Bankruptcy Court has personal jurisdiction over SNC.

7.

The Vogtle Defendants admit the Bankruptcy Court has personal jurisdiction over the Vogtle Owners.

8.

The Vogtle Defendants admit the Bankruptcy Court has personal jurisdiction over WECTEC.

**ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"PARTIES"**

9.

Upon information and belief, the Vogtle Defendants admit Paragraph 9.

10.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 10.

11.

Upon information and belief, the Vogtle Defendants admit Paragraph 11.

12.

Admitted.

13.

Admitted.

14.

The Vogtle Defendants admit that Defendant Oglethorpe Power Corporation (An Electric Membership Corporation) is an electric membership corporation. The Vogtle Defendants admit the remaining allegations of Paragraph 14.

15.

Admitted.

16.

Admitted.

17.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 17.

18.

Upon information and belief, the Vogtle Defendants admit Paragraph 18.

19.

Upon information and belief, the Vogtle Defendants admit Paragraph 19.

20.

Upon information and belief, the Vogtle Defendants admit Paragraph 20.

21.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 21.

**ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"BACKGROUND"**

Calvert's Pre-Petition Contracts with WECTEC

The Vogtle Subcontract

22.

The Vogtle Defendants admit on December 10, 2015 AZZ and CB&I entered into the Vogtle Subcontract as defined in Paragraph 22.

23.

The Vogtle Defendants admit pursuant to the Vogtle Subcontract, and subject to the terms of the Vogtle Subcontract, AZZ agreed to provide certain services at the Vogtle Project. Further, the Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves.

24.

The Vogtle Defendants admit pursuant to the Vogtle Subcontract, and in exchange for the Work in accordance with the terms and conditions of the Vogtle Subcontract, CB&I agreed to pay AZZ according to the Price and Payment Schedule set forth on Exhibit B to the Vogtle Subcontract. However, the payment to AZZ was, and is, subject to multiple defenses contained in the Vogtle Subcontract and grounded in law. Further, the Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves.

25.

Upon information and belief, the Vogtle Defendants admit Paragraph 25.

26.

Upon information and belief, the Vogtle Defendants admit Paragraph 26.

27.

Upon information and belief, the Vogtle Defendants admit Paragraph 27.

The VC Summer Subcontract

28.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 28.

29.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 29.

30.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 30.

31.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 31.

32.

The Vogtle Defendants are without sufficient information and knowledge to admit or deny Paragraph 32.

The Bankruptcy Filing and Interim Assessment Agreements

33.

The Vogtle Defendants admit Westinghouse, as defined by the Complaint, and affiliates, including WECTEC, filed Chapter 11 bankruptcy on or about March 29, 2017. The filings in the Bankruptcy Case, as described in Paragraph 33, speak for themselves. The Vogtle Defendants are without sufficient information or knowledge to admit or deny any remaining allegations of Paragraph 33.

34.

The Vogtle Defendants admit this Court entered an Order related to the Interim Assessment Agreement ("IAA") and that Order can be found at Docket No. 68. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

35.

The IAA speaks for itself. Vogtle Defendants admit Paragraph 5 of the IAA states, in part, "GPC shall be obligated to pay all costs accrued by the Debtors for Fluor, Subcontracts and/or Vendors for services performed and goods provided for the Vogtle Project during the Interim Assessment Period." The Vogtle Defendants deny any allegation of Paragraph 35 inconsistent with the foregoing or the terms of the IAA. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

36.

The IAA speaks for itself. The Vogtle Defendants admit Paragraph 2 of the IAA contains the allegations of Paragraph 36. The Vogtle Defendants deny any allegation of Paragraph 36 inconsistent with the foregoing or the terms of the IAA. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

37.

The IAA speaks for itself. The Vogtle Defendants admit Paragraph 2 of the IAA contains the allegations of Paragraph 37. The Vogtle Defendants deny any allegation of Paragraph 37 inconsistent with the foregoing or the terms of the IAA. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

38.

The IAA and the Court's Order Approving the IAA speak for themselves. The Vogtle Defendants deny any allegation of Paragraph 38 inconsistent with the foregoing or the terms of the IAA and the Court's Order. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

39.

The Amendment No. 1 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 39 inconsistent with Amendment No. 1. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

40.

The Amendment No. 2 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 40 inconsistent with Amendment No. 2. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

41.

The Amendments Nos. 3 and 4 to the IAA speak for themselves. The Vogtle Defendants deny any allegation of Paragraph 41 inconsistent with Amendment Nos. 3 and 4. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

42.

The Amendment No. 5 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 42 inconsistent with Amendment No. 5. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

43.

The Amendment No. 6 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 43 inconsistent with Amendment No. 3. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

44.

The Amendment No. 7 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 44 inconsistent with Amendment No. 7. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

45.

The Amendment No. 8 to the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 45 inconsistent with Amendment No. 8. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

46.

Amendments Nos. 1-8 and the IAA speak for themselves. The Vogtle Defendants deny any allegation of Paragraph 46 inconsistent with these Amendments and the IAA. The Vogtle Defendants deny Plaintiffs have any rights under the IAA.

47.

The Vogtle Defendants admit a Notice of Effective Date of Services Agreement was filed July 27, 2017 and the IAA was no longer in effect. The Vogtle Defendants deny any allegations of Paragraph 47 inconsistent with the foregoing.

Motion to Reject EPC Contract

48.

The Vogtle Defendants admit the Motion as described in Paragraph 48 was filed on or about June 23, 2017. The cited bankruptcy pleadings speak for themselves. The Vogtle Defendants deny any allegation of Paragraph 48 inconsistent with the foregoing or the cited bankruptcy pleadings.

49.

The Vogtle Defendants admit a Motion to Reject EPC Contract, as defined in the Complaint, was filed in the bankruptcy case. The Motion speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 49 inconsistent with the Motion.

50.

The Vogtle Defendants admit an Order at Docket No. 954 was entered by the Bankruptcy Court. The Order speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 50 inconsistent with the Order.

Rejection of the Vogtle Subcontract

51.

The Vogtle Defendants admit a Motion to Reject the Vogtle Subcontract, as defined in the Complaint, was filed in the bankruptcy case. The Motion speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 51 inconsistent with the Motion.

52.

The Vogtle Defendants admit an Order at Docket No. 1104 was entered by this Court in the bankruptcy case. The Order speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 52 inconsistent with the Order.

The Bridge Agreement

53.

The Vogtle Defendants admit SNC and Calvert entered into the Bridge Agreement, as defined in Paragraph 53, on July 27, 2017.

54.

Admitted.

55.

Admitted.

56.

Admitted.

57.

Admitted.

58.

Admitted.

59.

The Vogtle Defendants admit Paragraph 2 of the Bridge Agreement states, in part, "Subcontractor shall provide all labor, materials, equipment, and/or services for the Project to the same extent and in the same manner contemplated by the Subcontract." Further, the Bridge Agreement and relevant Vogtle Subcontract provisions, amendments, exhibits, and/or terms and conditions speak for themselves.

60.

The Vogtle Defendants admit Paragraph 3 of the Bridge Agreement states, in part, "[f]or the term of this Agreement, SNC shall pay Subcontractor for the Work to the same extent and in the same manner as contemplated by the Subcontract subject to the modifications..." Further, the Bridge Agreement and relevant Vogtle Subcontract provisions, amendments, exhibits, and/or terms and conditions speak for themselves.

61.

The Vogtle Defendants admit Calvert would submit invoices for amounts Calvert claimed were due or for the estimated amounts due. The Vogtle Defendants admit Calvert was only entitled to payment in 45 days for invoices that were properly substantiated and otherwise complied with the terms and conditions of the Vogtle Subcontract. Further, amounts invoiced by Calvert were, and are, subject to multiple defenses contained in the Bridge Agreement, Vogtle Subcontract and grounded in law. In addition, the Bridge Agreement and Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves.

62.

The Bridge Agreement and Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves. The Vogtle Defendants deny Paragraph 62 to the extent inconsistent with the Bridge Agreement and/or the Vogtle Subcontract. Further, any amounts invoiced by Calvert were, and are, subject to multiple defenses contained in the Bridge Agreement, Vogtle Subcontract, and grounded in law.

63.

The Bridge Agreement and Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves. The Vogtle Defendants deny Paragraph 63 to the extent inconsistent with the Bridge Agreement and/or the Vogtle Subcontract. Further, any

amounts invoiced by Calvert were, and are, subject to multiple defenses contained in the Bridge Agreement, Vogtle Subcontract, and grounded in law.

64.

The Vogtle Defendants admit Paragraph 64 contains a portion of Paragraph 6 of the Bridge Agreement.

65.

Denied.

66.

Denied.

67.

Admitted.

68.

The Vogtle Defendants admit Paragraph 68 contains a portion of Paragraph 8 of the Bridge Agreement.

69.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny Paragraph 69 given the phrase "relevant times" is vague and undefined. The Bridge Agreement and Vogtle Subcontract and relevant amendments, exhibits, and/or terms and conditions speak for themselves.

WECTEC's Failure to Pay Multiple Invoices

Invoice 7521

70.

The Vogtle Defendants admit Calvert submitted invoice No. 7521 under the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from WECTEC on this

invoice. The Vogtle Defendants deny invoice No. 7521 is a properly substantiated invoice and deny any remaining allegations of Paragraph 70.

71.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 71.

72.

Denied.

73.

Denied.

74.

The Vogtle Defendants admit the IAA was effective through July 27, 2017. The Vogtle Defendants deny Plaintiffs have any rights under the IAA. The Vogtle Defendants deny any remaining allegations of Paragraph 74.

75.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 75.

76.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 76.

77.

The Vogtle Defendants admit invoice No. 7521 remains unpaid. The Vogtle Defendants deny Plaintiffs are entitled to payment under invoice No. 7521.

78.

Upon information and belief, the Vogtle Defendants admit Paragraph 78.

79.

Denied.

Invoice 7520

80.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 80.

81.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 81.

82.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 82.

83.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 83.

84.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 84.

85.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 85.

Invoice 7468

86.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 86.

87.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 87.

88.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 88.

89.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 89.

90.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 90.

91.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 91.

Invoice 7469

92.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 92.

93.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 93.

94.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 94.

95.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 95.

96.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 96.

97.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 97.

Invoice 7581

98.

The Vogtle Defendants admit Calvert submitted invoice No. 7581 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice No. 7581 is a properly substantiated invoice and deny any remaining allegations of Paragraph 98.

99.

Admitted.

100.

The Vogtle Defendants admit invoice No. 7581 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

101.

Denied.

102.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7581. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7582

103.

The Vogtle Defendants admit Calvert submitted invoice No. 7582 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice, The Vogtle Defendants deny invoice No. 7582 is a properly substantiated invoice and deny any remaining allegations of Paragraph 103.

104.

Admitted.

105.

The Vogtle Defendants admit invoice No. 7582 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

106.

Denied.

107.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7582. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7615

108.

The Vogtle Defendants admit Calvert submitted invoice No. 7651 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice No. 7615 is a properly substantiated invoice and deny any remaining allegations of Paragraph 108.

109.

The Vogtle Defendants admit that invoice No. 7615 purported to cover amounts for Calvert's services to the Vogtle Project for the month of August 2017. The Vogtle Defendants deny the remaining allegations of Paragraph 109.

110.

The Vogtle Defendants admit invoice No. 7615 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

111.

Denied.

112.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7615. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7630

113.

The Vogtle Defendants admit Calvert submitted invoice No. 7630 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice No. 7630 is a properly substantiated invoice and deny any remaining allegations of Paragraph 113.

114.

Admitted.

115.

The Vogtle Defendants admit invoice No. 7630 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

116.

Denied.

117.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7630. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7631

118.

The Vogtle Defendants admit Calvert submitted invoice No. 7631 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice

No. 7631 is a properly substantiated invoice and deny any remaining allegations of Paragraph 118.

119.

The Vogtle Defendants admit that invoice No. 7631 purported to cover amounts for Calvert's services to the Vogtle Project for the month of September 2017. The Vogtle Defendants deny the remaining allegations of Paragraph 119.

120.

The Vogtle Defendants admit invoice No. 7631 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

121.

Denied.

122.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7631. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7661

123.

The Vogtle Defendants admit Calvert submitted invoice No. 7661 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice No. 7661 is a properly substantiated invoice and deny any remaining allegations of Paragraph 123.

124.

The Vogtle Defendants admit that invoice No. 7661 purported to cover amounts for Calvert's services to the Vogtle Project for the month of October 2017. The Vogtle Defendants deny the remaining allegations of Paragraph 124.

125.

The Vogtle Defendants admit invoice No. 7661 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

126.

Denied.

127.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7661. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Invoice 7713

128.

The Vogtle Defendants admit Calvert submitted invoice No. 7713 under the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice. The Vogtle Defendants deny invoice No. 7713 is a properly substantiated invoice and deny any remaining allegations of Paragraph 128.

129.

The Vogtle Defendants admit that invoice No. 7713 purported to cover amounts for related to demobilizing Calvert's service at the Vogtle Project. The Vogtle Defendants deny the remaining allegations of Paragraph 124.

130.

The Vogtle Defendants admit invoice No. 7713 was submitted under the terms of the Bridge Agreement and, to the extent applicable, the Vogtle Subcontract. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

131.

Denied.

132.

The Vogtle Defendants admit SNC did not pay Calvert for invoice No. 7713. The Vogtle Defendants deny Calvert is entitled to payment from SNC on this invoice.

Additional Allegations

133.

Denied.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT I – ACTION FOR DECLARATORY JUDGMENT"
(As to Defendants WECTEC and Vogtle Subcontract)

134.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-26, 33-52, 70-79, and 133 of this Answer as if fully set forth herein.

135.

The Vogtle Defendants admit Count I is an action for declaratory judgment. The Vogtle Defendants deny Plaintiffs are entitled to the requested relief.

136.

The cited statute speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 136 inconsistent with the cited statute.

137.

The Vogtle Defendants admit invoice No. 7521 purports to cover services performed by Calvert after the Petition Date. The Vogtle Defendants deny Calvert is entitled to payment from WECTEC on this invoice.

138.

Denied.

139.

Denied.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT II – BREACH OF CONTRACT"
(As to Defendants WECTEC and Vogtle Subcontract)

140.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-26, 33-52, 70-79, and 133 of this Answer as if fully set forth herein.

141.

The Vogtle Defendants admit Plaintiffs are asserting a breach of contract claim. The Vogtle Defendants deny Plaintiffs have any valid breach of contract claims and deny Plaintiffs are entitled to any damages.

142.

Paragraph 142 contains a legal conclusion to which no response is required.

143.

Denied.

144.

The Vogtle Subcontract, its amendments, its exhibits, and/or its terms and conditions speak for themselves. The Vogtle Defendants deny any allegation of Paragraph 144 inconsistent

with the Vogtle Subcontract and its amendments, its exhibits, and/or its terms and conditions. The Vogtle Defendants deny WECTEC is required to pay Plaintiffs for defective and/or deficient work. The Vogtle Defendants deny WECTEC is required to pay Plaintiffs for these invoices because of back charges, setoff, recoupment, or any other contractual or legal defense.

145.

Denied.

146.

Denied.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT III – ACTION FOR DECLARATORY JUDGMENT"
(As to Defendants WECTEC and VC Summer Invoices)

147.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-5, 8-11, 18-21, 26-33, 80-97, and 133 of this Answer as if fully set forth herein.

148.

The Vogtle Defendants admit Plaintiffs are requesting declaratory relief. The Vogtle Defendants deny Plaintiffs are entitled to the requested relief.

149.

The cited statute speaks for itself. The Vogtle Defendants deny any allegations of Paragraph 149 inconsistent with the cited statute.

150.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 150.

151.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 151.

152.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 152.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT IV – BREACH OF CONTRACT"
(As to Defendants WECTEC and VC Summer Subcontract)

153.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-5, 8-11, 18-21, 26-33, 80-97, and 133 of this Answer as if fully set forth herein.

154.

The Vogtle Defendants admit Plaintiffs assert a breach of contract claim. The Vogtle Defendants are without sufficient information to admit or deny whether Plaintiffs are entitled to damages from a breach of contract as it relates to the VC Summer Subcontract.

155.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 155.

156.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 156.

157.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 157.

158.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 158.

159.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 159.

160.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 160.

161.

The Vogtle Defendants are without sufficient information or knowledge to admit or deny the allegations of Paragraph 161.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT V – BREACH OF CONTRACT"
(As to Defendants Southern and the Owners)

162.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-26, 33-52, 70-79, and 133 of this Answer as if fully set forth herein.

163.

The Vogtle Defendants admit Plaintiffs assert a breach of contract claim. The Vogtle Defendants deny Plaintiffs have standing to bring a breach of contract claim under the IAA. The Vogtle Owners deny Plaintiffs are third-party beneficiaries under the IAA. The Vogtle Defendants deny Plaintiffs are owed damages for the alleged breach of contract claim under the IAA.

164.

The Vogtle Defendants admit the IAA was a binding contract between the Vogtle Owners and Debtors, as defined in the Complaint. The Vogtle Defendants deny Plaintiffs were ever a party to the IAA. The Vogtle Defendants deny Plaintiffs were ever third-party beneficiaries under the IAA.

165.

Denied.

166.

Denied.

167.

The Vogtle Defendants admit the Vogtle Subcontract requires WECTEC to pay Plaintiffs subject to all the terms and conditions of the Vogtle Subcontract for work satisfactorily performed and not otherwise subject to setoff, recoupment, back charges, or other remedies in contract or law.

168.

Paragraph 5 of the IAA speaks for itself. The Vogtle Defendants deny any allegation of Paragraph 168 inconsistent with Paragraph 5 of the IAA.

169.

Denied.

170.

Denied.

171.

Denied.

ANSWERING THE SECTION OF PLAINTIFFS' COMPLAINT ENTITLED
"COUNT VI – BREACH OF CONTRACT"
(As to Defendants Southern and the Owners)

172.

The Vogtle Defendants incorporate by reference their answers to Paragraphs 1-26, 53-69, and 98-133 of this Answer as if fully set forth herein.

173.

The Vogtle Defendants admit Plaintiffs assert a breach of contract claim. The Vogtle Defendants deny Plaintiffs are entitled to the requested relief.

174.

The Vogtle Defendants admit the Bridge Agreement and, as applicable, the Vogtle Subcontract is a binding contract between Plaintiffs and the Vogtle Defendants.

175.

Denied.

176.

The Vogtle Defendants admit the Bridge Agreement requires payment to Plaintiffs for work satisfactorily performed and not otherwise subject to setoff, recoupment, back charges, or other remedies in contract or law.

177.

Denied.

178.

Denied.

179.

Denied.

180.

Denied.

181.

Denied.

182.

Denied.

183.

Denied.

184.

Denied

**ANSWERING THE UNNUMBERED PARAGRAPH ENTITLED
"RESERVATION OF RIGHTS"**

The Vogtle Defendants admit Plaintiffs seek to reserve certain rights but otherwise deny the allegations in this Paragraph.

ANSWERING THE COMPLAINT AS A WHOLE

The Vogtle Defendants deny all other allegations in the Complaint not heretofore denied. Having fully answered the Complaint, the Vogtle Defendants respectfully request entry of an Order dismissing Plaintiffs' Complaint with prejudice at Plaintiffs' cost, including reasonable attorneys' fees incurred in this action, and granting the Vogtle Defendants such other relief as it deems just, equitable, and proper.

**COUNTERCLAIMS OF DEFENDANTS SOUTHERN NUCLEAR OPERATING
COMPANY, INC., GEORGIA POWER COMPANY, OGLETHORPE POWER
CORPORATION, MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, AND THE
CITY OF DALTON, GEORGIA**

The Vogtle Defendants assert the following Counterclaims against Plaintiffs:

PARTIES

1.

The Calvert Company, Inc. is a corporation organized under the laws of the state of Mississippi, with a principal place of business located in Richland, Mississippi.

2.

AZZ, Inc. is a corporation organized under the laws of the state of Mississippi, with a principal place of business located in Richland, Mississippi.

3.

Southern Nuclear Operating Company, Inc. is a corporation organized under the laws of the state of Delaware, with a principal place of business located in Birmingham, Alabama.

4.

Georgia Power Company is a corporation organized under the laws of the state of Georgia, with a principal place of business in Atlanta, Georgia.

5.

Municipal Electric Authority of Georgia is a nonprofit statewide generation and transmission organization located in Atlanta, Georgia.

6.

Oglethorpe Power Corporation (An Electric Membership Corporation) is an electric membership corporation located in Tucker, Georgia.

7.

The City of Dalton, Georgia is a municipal corporation located in Whitfield County, Georgia, City of Dalton, Georgia.

JURISDICTION AND VENUE

8.

AZZ, Inc. and the Calvert Company, Inc. have brought claims against the Vogtle Defendants and others in the Bankruptcy Court.

9.

The Vogtle Defendants assert their counterclaims as required by Federal Rule of Bankruptcy Procedure 7013.

10.

The Vogtle Defendants do not concede the Bankruptcy Court has jurisdiction over the Counts V and VI of the Complaint.

11.

The Vogtle Defendants do not concede the Bankruptcy Court has jurisdiction over the Vogtle Defendants' counterclaims.

12.

The Vogtle Defendants do not concede the Bankruptcy Court is the proper venue for Counts V and VI of the Complaint.

13.

The Vogtle Defendants do not concede the Bankruptcy Court is the proper venue for the Vogtle Defendants' counterclaims.

14.

The District Court has diversity jurisdiction over Counts V and VI of the Complaint and the Vogtle Defendants' counterclaims.

FACTUAL BACKGROUND

The Vogtle Subcontract

15.

On December 10, 2015, The Calvert Company – AZZ ("AZZ") and CB&I Stone and Webster entered into Subcontract No. 1321752004-1613 ("Vogtle Subcontract").

16.

On or about January 4, 2016, Westinghouse Electric Company, LLC ("Westinghouse") acquired CB&I, including CB&I's rights under the Vogtle Subcontract.

17.

As a result of the acquisition, WECTEC, a subsidiary of Westinghouse, took over CB&I's obligations and rights under the Vogtle Subcontract.

18.

Under the Vogtle Subcontract, AZZ agreed to provide certain goods and services related to Vogtle Electric Generating Plant, Units 3 & 4, located in Waynesboro, Georgia ("Vogtle Project").

19.

Georgia Power Company, Oglethorpe Power Corporation (An Electric Membership Corporation), City of Dalton, and Municipal Electric Authority of Georgia co-own the Vogtle Project and the property on which it is located.

20.

AZZ's work under the Vogtle Subcontract was for the benefit of the Co-Owners.

21.

The Vogtle Subcontract references and defines Owner. *See* Vogtle Subcontract at pg. 6 and Attachment A.

22.

The Vogtle Subcontract defines the Project as:

[T]he total effort being undertaken by the Owner, of which the Work performed under the Subcontract may be the whole or may be a part, and which may include work by other subcontractors to Company or by Company or by Owner's own forces including Persons under separate contracts with Owner.

See Vogtle Subcontract at pg. 6.

23.

The Vogtle Subcontract defines Work, in part, as:

[A]ll the resources including Goods, Labor, Construction Works, Materials and Equipment, Services, supervision, and management required by this Subcontract, whether provided by Subcontractor or provided to Subcontractor by Company, or Owner, or others in order to fulfill Subcontractor's obligations under this Subcontract.

See Vogtle Subcontract at pg. 7.

24.

The Vogtle Subcontract defines Substantial Completion, in part, as the Work being ready for operations and sufficiently complete so that Owner can occupy the Work and utilize it for its intended use. *See* Vogtle Subcontract at pg. 7.

25.

The Vogtle Owners are third-party beneficiaries of the Vogtle Subcontract.

26.

AZZ warranted that its Work, as defined in the Subcontract, would, among other things, "be free from defects," "done in a professional and workmanlike manner in accordance with Prudent Industry Practice," and "conform to the requirements of the Subcontract." *See* Vogtle Subcontract at para. 33.1.

27.

AZZ agreed it would be liable for any costs incurred that are caused by or result from its breach of its warranty obligations. *See* Vogtle Subcontract at para. 33.3.

28.

The Vogtle Subcontract permits WECTEC to assign these warranties to the Vogtle Owners. *See* Vogtle Subcontract at para. 33.4.

29.

WECTEC has assigned all warranties related to services performed or goods provided by AZZ to WECTEC for the Vogtle Project to the Vogtle Owners. *See* [Doc. 8] at ¶¶ K, 5.

30.

The Vogtle Subcontract provides that accepting AZZ's goods, materials, or equipment, including specifications and drawings, does not relieve AZZ of its obligation to complete the Work in accordance with the Subcontract and does not waive any rights under the Subcontract with respect to the nonconforming work. *See* Vogtle Subcontract at para. 16.6.

31.

The Vogtle Subcontract contains a Non-Waiver provision which provides any party's failure to enforce terms, conditions, or provisions of the Subcontract does not waive the ability for a party to enforce or compel strict compliance with the provisions of the Subcontract. *See* Vogtle Subcontract at para. 59.

32.

The Vogtle Subcontract was not terminated. Rather, the Vogtle Subcontract is rejected effective July 27, 2017.

33.

Multiple provisions of the Vogtle Subcontract survive the termination of the Vogtle Subcontract, including, but not limited to, any provision required to ensure the exercise of the rights and obligations under the Subcontract. *See* Vogtle Subcontract at para. 60.

34.

AZZ failed to comply with its obligations under the Vogtle Subcontract, including but not limited to, its obligation to provide Work free from defects and in a workmanlike condition according to industry standards.

35.

The Vogtle Owners and/or WECTEC have complied with all conditions precedent necessary to bring any breach of contract claims under the Vogtle Subcontract.

The Bridge Agreement

36.

On July 27, 2017, SNC acting for itself and the Vogtle Owners' agent, and AZZ, entered into Subcontractor Bridge Agreement ("Bridge Agreement").

37.

The Bridge Agreement was effective July 27, 2017.

38.

AZZ agreed to provide goods and services for the Vogtle Project in accordance with its obligations under the Vogtle Subcontract.

39.

The Bridge Agreement provides:

For the term of this Agreement, unless this Agreement provides otherwise, each Party's respective rights, responsibilities, and remedies as to the Work and the Project shall be enforceable against the other to same extent and in the same

manner as contemplated by the Subcontract, as between General Contractor and Subcontractor. That is, for purposes of this Agreement and for its term only, SNC agrees to abide by the same terms and conditions as apply to General Contractor under Subcontract; and the Subcontractor agrees to be bound to the same extent and in the same manner as the Subcontract binds Subcontractor.

See Bridge Agreement at para. 5.

40.

AZZ 's goods and services provided to SNC under the Bridge Agreement are subject to the same warranties as outlined in the Vogtle Subcontract.

41.

AZZ failed to comply with its obligations under the Bridge Agreement and the Vogtle Subcontract, as incorporated into the Bridge Agreement.

42.

On or about October 6, 2017, SNC notified AZZ of its termination for convenience under the Bridge Agreement effective November 6, 2017.

43.

Under the termination for convenience provision, AZZ is not entitled to payment for services or goods that are not satisfactorily performed.

AZZ's Defective Design and Construction on the Vogtle Project

44.

On or about April 2017, it was discovered AZZ's work on the Vogtle Project was defective.

45.

Specifically, AZZ was hired, in part, to design and install two phase bus systems as part of the main generation system for Vogtle 3 & 4. After some construction and installation, it was

discovered that some of the phase bus system had delaminated, and AZZ had improperly and defectively designed and installed the system.

46.

AZZ was made aware of this initial defective work by April 27, 2017.

47.

AZZ investigated the defective work and confirmed the defects in an Engineering and Quality Report on or about May 2017.

48.

AZZ attempted to remedy the initial issue by installing replacement non-segregated phase bus ducts.

49.

AZZ's attempts failed and it was determined that the replacement non-segregated phase bus ducts contained similar delamination and cracking issues.

50.

After further investigation, it was determined that AZZ's entire insulation system design was defective and would not be reliable for the life of the Vogtle Plant Units 3 & 4.

51.

AZZ has invoiced and been paid for a large portion of the defective work.

52.

Any payment of invoices by WECTEC and/or Vogtle Owners and/or SNC does not operate as a waiver of the ability to seek reimbursement and/or setoff and/or back charge for the payments made for the defective work.

53.

Moreover, in August or September 2017, it was discovered that additional structural steel work done by AZZ on the Vogtle Project was defective.

54.

Specifically, AZZ's structural steel work included missing structural steel knee braces and incorrect bolting.

55.

AZZ's structural steel work was done on or around July 2017.

56.

AZZ Invoice No. 7521, submitted under the Vogtle Subcontract, is related, in part, to AZZ's defective structural steel work.

COUNTERCLAIMS

COUNT I: BREACH OF VOGTLE SUBCONTRACT AS TO THE VOGTLE OWNERS

57.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 56 above as if fully set forth herein.

58.

AZZ has breached the Vogtle Subcontract by failing to provide WECTEC and/or the Vogtle Owners with Work, as defined in the Vogtle Subcontract, free from defects and in a workmanlike manner.

59.

WECTEC has assigned all warranties related to services performed or goods provided by AZZ to WECTEC for the Vogtle Project to the Vogtle Owners. *See* [Doc. 8] at ¶¶ K, 5.

60.

AZZ has breached multiple provisions of the Vogtle Subcontract, including but not limited to, the Warranty of Work.

61.

As a result of AZZ's breach of the Vogtle Subcontract, the Vogtle Owners have suffered damages in an amount to be determined by a jury at trial.

COUNT II: BREACH OF VOGTLE SUBCONTRACT AS TO WECTEC

62.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 56 above as if fully set forth herein.

63.

AZZ has breached the Vogtle Subcontract by failing to provide WECTEC and/or the Vogtle Owners with Work, as defined in the Vogtle Subcontract, free from defects and in a workmanlike manner.

64.

AZZ has breached multiple provisions of the Vogtle Subcontract.

65.

WECTEC has paid AZZ for Work, as defined by the Vogtle Subcontract, done after the filing of the Bankruptcy Petition. This Work is defective and was not performed in a workmanlike manner.

66.

WECTEC is entitled to reimbursement and/or recoupment of all payments made to AZZ for Work, as defined by the Vogtle Subcontract, done after the filing of the Bankruptcy Petition.

67.

WECTEC has assigned all non-warranty claims related to services performed or goods provided by AZZ to WECTEC for the Vogtle Project on or after the filing of the Bankruptcy Petition to the Vogtle Owners. *See* [Doc. 8] at ¶¶ K, 5.

68.

As a result of AZZ's breach of the Vogtle Subcontract, the Vogtle Owners have suffered damages in an amount to be determined by a jury at trial.

COUNT III: BREACH OF BRIDGE AGREEMENT AS TO THE VOGTLE DEFENDANTS

69.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 66 above as if fully set forth herein.

70.

AZZ has breached the Bridge Agreement by failing to provide the Vogtle Defendants with Work, as defined in the Vogtle Subcontract and described in the Bridge Agreement, free from defects and in a workmanlike manner.

71.

AZZ has breached multiple provisions of the Bridge Agreement, including but not limited to, the Vogtle Subcontract's Warranty of Work, incorporated into the Bridge Agreement.

72.

As a result of AZZ's breach of the Bridge Agreement, the Vogtle Defendants suffered damages in an amount to be determined by a jury at trial.

COUNT IV: NEGLIGENT CONSTRUCTION AS TO THE VOGTLE DEFENDANTS

73.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 70 above as if fully set forth herein.

74.

AZZ had the duty to provide its Work, as defined in the Vogtle Subcontract, in a fit and workmanlike manner, and to exercise that degree of care and skill as is ordinarily employed by other subcontractors under similar conditions and like circumstances.

75.

AZZ breached this duty by providing and installing defective goods, including defective NSPBs and non-compliant structural steel.

76.

AZZ breached this duty by failing to provide and complete its Work, as defined in the Subcontract, in a workmanlike manner.

77.

To the extent AZZ hired independent contractors not named herein to perform all or any part of the Work, as defined in the Subcontract, AZZ is liable for negligent construction performed by their independent contractors.

78.

AZZ's breach has caused the Vogtle Owners to suffer compensable damages in an amount to be determined by a jury at trial.

COUNT V: NEGLIGENT DESIGN AS TO THE VOGTLE DEFENDANTS

79.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 76 above as if fully set forth herein.

80.

AZZ had the duty to provide its Work, as defined in the Subcontract, in a fit and workmanlike manner, and to exercise that degree of care and skill as is ordinarily employed by other subcontractors under similar conditions and like circumstances.

81.

AZZ breached this duty by defectively designing its Work, including the insulation system. As designed by AZZ the insulation system would not be a reliable system for the Vogtle Project.

82.

AZZ breached this duty by failing to provide and complete its Work, as defined in the Subcontract, in a workmanlike manner.

83.

To the extent AZZ hired independent contractors not named herein to perform all or any part of the Work, as defined in the Subcontract, AZZ is liable for negligent design performed by their independent contractors.

84.

AZZ's breach has caused the Vogtle Owners to suffer compensable damages in an amount to be determined by a jury at trial.

**COUNT VI: ATTORNEYS' FEES FOR COUNTS III AND IV UNDER
O.C.G.A. § 13-6-11**

85.

The Vogtle Defendants incorporate by reference Counterclaim Paragraphs 1 through 82 above as if fully set forth herein.

86.

AZZ has acted in bad faith, been stubbornly litigious, and has caused the Vogtle Defendants unnecessary trouble and expense.

87.

Under O.C.G.A. § 13-6-11, the Vogtle Defendants are entitled to recover from AZZ their reasonable attorneys' fees and the expenses of this litigation as it relates to Counts VI and V.

WHEREFORE, the Vogtle Defendants demand (1) judgment against AZZ, Inc. and Calvert Company, Inc. in an amount to be determined by a jury; (2) and such further relief as may be just, proper, and appropriate.

Dated: April 29, 2018
New York, New York

/s/ Anna Kordas
JONES DAY
Anna Kordas, Esq.
250 Vesey Street
New York, New York 10281
Telephone: (212) 326-3939
Facsimile: (212) 755-7306
E-mail: akordas@jonesday.com

Joseph E. Finley, Esq.
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309
Telephone: (404) 581-8409
Facsimile: (404) 581-8330

Gregory M. Gordon, Esq.
Dan B. Prieto, Esq.
2727 North Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

-and-

T. Joshua R. Archer (pro hac vice to be filed)
Georgia Bar No. 021208
Brooke W. Gram (pro hac vice to be filed)
Georgia Bar No. 810901
BALCH & BINGHAM LLP
30 Ivan Allen Jr. Blvd. N.W., Suite 700
Atlanta, GA 30308
Telephone: (404) 261-6020
Facsimile: (404) 261-3656

Attorneys for the Vogtle Defendants