

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
WESTINGHOUSE ELECTRIC COMPANY	:	Case No. 17-10751 (MEW)
LLC, et al.,	:	
	:	
	:	
Debtors.¹	:	(Jointly Administered)
	:	
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AZZ, INC., a Mississippi corporation, and	:	
THE CALVERT COMPANY, INC., a	:	Adv. No. 18-01016 (MEW)
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.	:	
	:	
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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), Stone & Webster, Inc. d/b/a 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.



**STIPULATION, AGREEMENT AND ORDER BETWEEN DEBTORS
AND VOGTLE OWNERS REGARDING ADVERSARY COMPLAINT**

Westinghouse Electric Company LLC and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), and Georgia Power Company (“**GPC**”), for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and The City of Dalton, Georgia, acting by and through its Board of Water, Light and Sinking Fund Commissioners (collectively, the “**Vogtle Owners**”, and together with the Debtors, the “**Parties**”), by and through their respective counsel, hereby enter into this stipulation, agreement and proposed order (this “**Stipulation**”) and represent and agree as follows:

RECITALS

A. **WHEREAS**, on March 29, 2017 (the “**Petition Date**”), each of the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code in the Bankruptcy Court for the Southern District of New York (the “**Court**”);

B. **WHEREAS**, on the Petition Date, the Parties entered into that certain Interim Assessment Agreement (as amended from time to time, the “**IAA**”) under which the Owners agreed to pay all administrative expenses accrued by the Debtors during the Interim Assessment Period (as defined in the IAA) for services performed and goods provided for Units 3 & 4 at the Allen W. Vogtle Electric Generating Plant in Georgia (the “**Vogtle Project**”);

C. **WHEREAS**, in accordance with the IAA, GPC was required to pay weekly in advance an amount equal to the Debtors’ estimate of costs for services and goods to be incurred for that week for the Vogtle Project, with such payments by GPC to be used by the Debtors solely to pay such costs.

D. **WHEREAS**, the IAA provides that “Following the Interim Assessment Period, there shall be a reconciliation of the payments made by GPC to the Debtors and by the Debtors to the Subcontractors and Vendors. If the actual costs incurred by the Debtors exceed the estimated amounts paid by GPC to the Debtors, GPC shall pay to the Debtors any such additional amount necessary to eliminate the difference. If the amounts paid by GPC to the Debtors exceed the actual cost incurred by the Debtors, the Debtors shall pay such amounts to GPC. To the extent such amounts are not paid by the Debtors, GPC shall have an administrative claim for such amounts.” IAA ¶ 5;

E. **WHEREAS**, the Debtors are currently holding certain amounts paid by GPC under the IAA (the "**Funds**").

F. **WHEREAS**, the Parties entered into that certain *Services Agreement* dated as of June 9, 2017 (as amended, modified, and restated from time to time, the "**Services Agreement**");

G. **WHEREAS**, on July 27, 2017, (i) the IAA expired, (ii) the Services Agreement went into effect, and (iii) the Vogtle Owners and The Calvert Company, Inc. ("**Calvert**") entered into that certain *Subcontractor Bridge Agreement* for Calvert to perform work on the Vogtle Project (the "**Bridge Agreement**");

H. **WHEREAS**, on February 16, 2018, AZZ, Inc. and Calvert (collectively, the "**Plaintiffs**") filed a joint complaint [ECF No. 2583] (the "**Complaint**") against the Vogtle Owners, Southern Nuclear Operating Company, Inc. and Stone & Webster, Inc. (d/b/a WECTEC Global Project Services Inc.) ("**WECTEC**") in the above-captioned adversary proceeding (the "**Adversary Proceeding**"), seeking, among other things, in Counts 1 and 2 of the Complaint (i) damages arising from asserted breaches by WECTEC of a contract between Calvert and

WECTEC related to the Vogtle Project that was entered into prior to the Petition Date (the “**Calvert Contract**”); and (ii) a declaratory judgment that certain amounts alleged to be due and owing by WECTEC to Calvert under the Calvert Contract constitute administrative claims (collectively, the “**Vogtle Claims**”);

I. **WHEREAS**, the Parties (i) dispute that the Plaintiffs are entitled to the relief sought in the Complaint with respect to the Vogtle Claims, and (ii) believe they may have counterclaims against the Plaintiffs arising under the Bridge Agreement and the Calvert Contract;

J. **WHEREAS**, given (i) that the Vogtle Owners are responsible for paying any allowed administrative expenses accrued by the Debtors during the Interim Assessment Period for services performed and goods delivered by the Plaintiffs and (ii) that a successful defense of the Vogtle Claims would increase the amount of the Funds that GPC is entitled to receive from the Debtors under the IAA, the Debtors have determined that it is not in their economic interests to expend their estates’ resources defending against the Vogtle Claims or prosecuting any Counterclaims (as defined below) against the Plaintiffs; and

K. **WHEREAS**, accordingly, the Parties desire that (i) the Vogtle Owners retain and pay counsel to defend WECTEC with respect to the Vogtle Claims, and (ii) WECTEC assign all its (a) claims against the Plaintiffs related to services performed or goods provided for the Vogtle Project on or after the Petition Date (“**Counterclaims**”), and (b) warranties related to services performed or goods provided by the Plaintiffs for the Vogtle Project (“**Warranties**”) to the Vogtle Owners.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES, THROUGH THEIR UNDERSIGNED COUNSEL, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. GPC, as agent for the Vogtle Owners, shall (a) retain and pay counsel on behalf of WECTEC to defend the Vogtle Claims, (b) fully indemnify, hold harmless and defend WECTEC against such claims, and (c) be fully liable and obligated to make any payments required in connection with any settlement of the Vogtle Claims, and the Debtors shall not use any portion of the Funds to pay the Vogtle Claims.

2. GPC, as agent for the Vogtle Owners, shall have the right, on behalf of WECTEC, to direct the defense of the Vogtle Claims, including the right to settle such claims. The Debtors will cooperate with GPC and use reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things that GPC may reasonably consider necessary to the defense of WECTEC against the Vogtle Claims. GPC, as agent for the Vogtle Owners, shall be obligated to compensate the Debtors for all out-of-pocket costs reasonably incurred on or after the date of this Stipulation in connection with providing assistance to GPC pursuant to this paragraph.

3. GPC shall provide the Debtors with updates regarding the Adversary Proceeding upon reasonable requests by the Debtors

4. For the avoidance of doubt, GPC's agreement regarding defense and indemnification shall be limited to the Vogtle Claims. Any claims in the Complaint related to any other project, including but not limited to the construction of Units 2 & 3 of the Virgil C. Summer Project in South Carolina, are expressly excluded from GPC's agreement.

5. The Debtors are hereby deemed to have assigned all Counterclaims and Warranties related to the Vogtle Claims to the Vogtle Owners.

6. Nothing in this Stipulation shall be deemed an admission of liability by the Debtors or the Vogtle Owners with respect to any of the claims asserted in the Complaint.

7. Except as provided in this Stipulation, including paragraphs 2 and 5, the rights of the Debtors with respect to any claims asserted by the Plaintiffs, including, but not limited to, the claims asserted in the Complaint, are preserved in all respects.

8. This Stipulation may only be changed, modified, or otherwise altered in a writing executed by the Parties to this Stipulation.

9. This Stipulation shall be effective immediately upon approval by the Court.

10. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

Dated: April 27, 2018
New York, New York

/s/ Garrett A. Fail

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Attorneys for the Vogtle Owners

SO ORDERED, this
30th day of April, 2018

/s/ Michael E. Wiles

HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE