

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)
<i>et al.</i> ,	:	
	:	(Jointly Administered)
	:	
Debtor. ¹	x	
-----	:	
AZZ, INC., a Mississippi corporation, and	:	
THE CALVERT COMPANY, INC., a Mississippi	:	ADV. NO. 18-01016 (MEW)
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.	x	

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.



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

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

AFFIRMATIVE DEFENSES

As of the filing of this Answer, Plaintiffs are unaware of all the facts and circumstances giving rise to the claims set forth in the Vogle Defendants’ Counterclaims. 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. Plaintiffs hereby specifically reserve their rights to amend this Answer to modify their affirmative and general defenses, as well as assert additional affirmative and general defenses.

First Defense

The Counterclaims fail to state a claim against the Plaintiffs upon which relief may be granted.

Second Defense

The Vogle Defendants’ claims against Plaintiffs are barred in whole or in part due to the Vogle Defendants’ failure to satisfy conditions precedent or subsequent.

Third Defense

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

Fourth Defense

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

Fifth Defense

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

Sixth Defense

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

Seventh Defense

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

Eighth Defense

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

Ninth Defense

The Vogtle Defendants' claims against Plaintiffs are barred by the economic loss rule.

Tenth Defense

The Vogtle Defendants' claims against Plaintiffs are barred by disclaimer.

Eleventh Defense

The Vogtle Defendants' claims against Plaintiffs are barred by the Vogtle Defendants' failure to provide adequate notice of any allegedly defective work.

Twelfth Defense

The Vogtle Defendants' claims against Plaintiffs are barred by the Vogtle Defendants' failure to provide Plaintiffs an opportunity to cure any allegedly defective work.

ANSWERING THE SPECIFIC ALLEGATIONS IN THE COUNTERCLAIMS

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

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "PARTIES"**

1.

Admitted.

2.

Admitted

3.

Upon information and belief, Plaintiffs admit Paragraph 3.

4.

Upon information and belief, Plaintiffs admit Paragraph 4.

5.

Upon information and belief, Plaintiffs admit Paragraph 5.

6.

Upon information and belief, Plaintiffs admit Paragraph 6.

7.

Upon information and belief, Plaintiffs admit Paragraph 7.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "JURISDICTION AND VENUE"**

8.

Admitted.

9.

Plaintiffs are without sufficient information and knowledge to admit or deny Paragraph 9.

10.

Plaintiffs acknowledge that the Vogtle Defendants do not concede the Bankruptcy Court has jurisdiction over Counts V and VI of the Complaint. Plaintiffs assert that the Bankruptcy Court has jurisdiction over Counts V and VI of the Complaint.

11.

Plaintiffs acknowledge that the Vogtle Defendants do not concede the Bankruptcy Court has jurisdiction over the Vogtle Defendants' counterclaims. Plaintiffs deny the Vogtle Defendants' counterclaims, but otherwise assert that the Bankruptcy Court has jurisdiction over the Vogtle Defendants' counterclaims.

12.

Plaintiffs acknowledge that the Vogtle Defendants do not concede the Bankruptcy Court is the proper venue for Counts V and VI of the Complaint. Plaintiffs assert that the Bankruptcy Court is the proper venue for Counts V and VI of the Complaint.

13.

Plaintiffs acknowledge that the Vogtle Defendants do not concede the Bankruptcy Court is the proper venue for the Vogtle Defendants' counterclaims. Plaintiffs deny the Vogtle Defendants' counterclaims, but otherwise assert that the Bankruptcy Court is the proper venue for the Vogtle Defendants' counterclaims.

14.

Admitted.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "FACTUAL BACKGROUND"**

The Vogtle Subcontract

15.

Admitted.

16.

Upon information and belief, Plaintiffs admit Paragraph 16.

17.

Upon information and belief, Plaintiffs admit Paragraph 17.

18.

Admitted.

19.

Upon information and belief, Plaintiffs admit Paragraph 19.

20.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 20.

21.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 21.

22.

Plaintiffs admit Paragraph 22 contains a portion of the Vogtle Subcontract.

23.

Plaintiffs admit Paragraph 23 contains a portion of the Vogtle Subcontract.

24.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 24.

25.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 25.

26.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 26.

27.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 27.

28.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 28

29.

[Doc. 8] speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 29.

30.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 30.

31.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 31

32.

Plaintiffs admit the Vogtle Subcontract was rejected effective July 27, 2017. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 32.

33.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 33.

34.

Denied.

35.

Denied.

The Bridge Agreement

36.

The Bridge Agreement speaks for itself and is the best evidence of its contents. Plaintiffs state that the Bridge Agreement was entered into by SNC acting for itself and the Vogtle

Owners' agent, and Calvert. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 36.

37.

Admitted.

38.

Plaintiffs admit that pursuant to Paragraph 2 of the Bridge Agreement, Calvert agreed to provide all labor, materials, and equipment, and/or services for the Vogtle Project to the same extent and in the same manner as contemplated by the Vogtle Subcontract. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 38.

39.

Plaintiffs admit Paragraph 39 contains a portion of Paragraph 5 of the Bridge Agreement.

40.

The Bridge Agreement and the Vogtle Subcontract speak for themselves and are the best evidence of their contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 40.

41.

Denied.

42.

Plaintiffs admit that on or about October 6, 2017, SNC notified Calvert of its termination for convenience under the Bridge Agreement effective November 6, 2017.

43.

The Bridge Agreement speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 43.

44.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 44.

45.

Denied.

46.

Denied.

47.

Denied.

48.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 48.

49.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 49.

50.

Denied.

51.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 51.

52.

Denied.

53.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 53.

54.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 54.

55.

Plaintiffs admit that Calvert performed some work on steel structures on or around July, 2017 in connection with Invoice 7521.

56.

Plaintiffs deny that their work on the Vogtle Project was defective. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 56.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT I: BREACH OF VOGTLE SUBCONTRACT AS TO THE
VOGTLE OWNERS"**

57.

Plaintiffs incorporate by reference their answers to Paragraphs 1-56 of this Answer as if fully set forth herein.

58.

Denied.

59.

[Doc. 8] speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 59.

60.

Denied.

61.

Denied.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT II: BREACH OF VOGTLE SUBCONTRACT AS TO WECTEC"**

62.

Plaintiffs incorporate by reference their answers to Paragraphs 1-61 of this Answer as if fully set forth herein.

63.

Denied.

64.

Denied.

65.

Denied.

66.

Denied

67.

[Doc. 8] speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 67.

68.

Denied.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT III: BREACH OF BRIDGE AGREEMENT AS TO THE VOGTLE
DEFENDANTS"**

69.

Plaintiffs incorporate by reference their answers to Paragraphs 1-68 of this Answer as if fully set forth herein.

70.

Denied.

71.

Denied.

72.

Denied.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT IV: NEGLIGENT CONSTRUCTION AS TO THE VOGTLE
DEFENDANTS"**

73.

Plaintiffs incorporate by reference their answers to Paragraphs 1-72 of this Answer as if fully set forth herein.

74.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 74.

75.

Denied.

76.

Denied.

77.

Denied.

78.

Denied.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT V: NEGLIGENT DESIGN AS TO THE VOGTLE
DEFENDANTS"**

79.

Plaintiffs incorporate by reference their answers to Paragraphs 1-78 of this Answer as if fully set forth herein.

80.

The Vogtle Subcontract speaks for itself and is the best evidence of its contents. To the extent a further response is required, Plaintiffs deny the remaining allegations in Paragraph 80.

81.

Denied.

82.

Denied.

83.

Denied.

84.

Denied.

**ANSWERING THE SECTION OF THE VOGTLE DEFENDANTS' COUNTERCLAIMS
ENTITLED "COUNT VI: ATTORNEYS' FEES FOR COUNT III AND IV UNDER
O.C.G.A. § 13-6-11"**

85.

Plaintiffs incorporate by reference their answers to Paragraphs 1-78 of this Answer as if fully set forth herein.

86.

Denied.

87.

Denied.

ANSWERING THE COUNTERCLAIMS AS A WHOLE

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

[SIGNATURE PAGE TO FOLLOW]

Dated: New York, New York
May 18, 2018

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