

**DEVELOPMENTS IN THE CHAPTER 11 BANKRUPTCY CASE OF
WESTINGHOUSE ELECTRIC COMPANY, LLC, *ET AL.*, AND MATTERS
REGARDING THE GUARANTIES OF TOSHIBA CORPORATION
DURING THE PERIOD OF AUGUST 5, 2017 THROUGH SEPTEMBER 7, 2017**

This memorandum summarizes developments and the current status of matters in the Chapter 11 bankruptcy case of Westinghouse Electric Company, LLC and 29 of its affiliated companies (collectively, “Westinghouse”), all of which are in joint administration under Case No. 17-10751 (MEW) in the United States Bankruptcy Court for the Southern District of New York. The focus of this summary is on matters affecting, or potentially affecting, the Virgil C. Summer Nuclear Plant in Fairfield County, South Carolina (the “V.C. Summer Plant”), the owners of that plant, South Carolina Electric & Gas Company (“SCE&G”) and South Carolina Public Service Authority (“Santee Cooper,” and together with SCE&G, the “SC Owners”), contractors and other creditors of the V.C. Summer Plant, and the rate payers served by SCE&G and Santee Cooper. The matters include the guaranty of Toshiba Corporation (“Toshiba”) given to the SC Owners for Westinghouse’s contract obligations in regard to the V.C. Summer Plant. This memorandum covers the period from August 5, 2017 through September 7, 2017.

The present status of matters may be summarized as follows:

1. Westinghouse filed its motion on August 7, 2017 seeking approval for its rejection of the subcontracts to which is was a party for the work on the V.C. Summer Plant. On September 6, 2017, the Bankruptcy Court entered its Order granting the motion with respect to the contracts for which no objections were filed to the rejection, and providing that the contracts for which objections to rejection had been filed would be heard on a date set for them. The rejected contracts comprise the majority of contracts for work at the V.C. Summer Plant. It was necessary for Westinghouse to reject the contracts to which it is a party in order to terminate its obligations under those contracts. By rejecting the contracts, Westinghouse is deemed to be the breaching party to the contract, and subject to a damages claim for rejection.

2. Generally it is difficult for the non-debtor party to the contract (*i.e.*, the party with whom Westinghouse entered the contract) to defeat a motion for approval of the rejection of the contract, where the contract is burdensome to the bankruptcy estate and/or the debtor (Westinghouse) cannot or should not perform the remainder of its obligations under the contract. However, some non-debtor contract parties objected to Westinghouse’s motion on the basis that they non-debtor party had fully performed its part and is due full payment, on the basis that the non-debtor contract party had not yet been allowed to recover its property (*e.g.*, leased equipment), on the basis that the transaction was a sale and not a contract for services, on the basis that the services and/or materials were provided post-petition (after the bankruptcy filing), and on other grounds which would, if correct, remove the contract from the types of contracts for which rejection is allowable or proper. These objections are not yet resolved. However, many will be resolved by agreement on claim amounts.

3. Notably, Westinghouse has not filed a motion to reject its engineering, procurement and construction contracts (collectively, the “EPC Contract”) with the SC Owners. It previously filed a motion, which the Court granted, to reject its EPC Contract with the owners (the “Vogtle Owners”) of the Alvin W. Vogtle Electric Generating Plant (the “Vogtle Plant”) in Burke County, Georgia, pursuant to the terms of settlement Westinghouse and Toshiba reached with the Vogtle Owners. It is possible that Westinghouse has not sought to reject the EPC Contract with the SC Owners because it seeks to avoid being the breaching party to the EPC Contract, which would make it liable for damages suffered by the SC Owners by its (Westinghouse’s) failure to perform under the EPC Contract. Even if Westinghouse were to reject the EPC Contract, the SC Owners would still be required to prove their damages, which could require extensive litigation. However, by not rejecting the EPC Contract, Westinghouse preserves its ability to argue that it did not breach the EPC Contract and/or that the failure of the V.C. Summer Plant project was attributable to the SC Owners or other parties.

4. Other matters in the bankruptcy continue. Creditors seeking priority status for claims resulting from goods delivered shortly before the bankruptcy filing, mechanic’s lien claimants continue to file notices to perfect their mechanic’s lien claims, and claims are being sold to claims traders. The period of exclusivity for filing a Chapter 11 plan and disclosure statement has been extended by ninety (90) days to December 6, 2017.

5. As time proceeds to closer to the December 6, 2017 date for a Chapter 11 plan and disclosure statement, it is likely that the matter of Westinghouse’s position on rejection of the EPC Contract with the SC Owners will be further developed. Its position on claims for damages by the SC Owners is an important aspect of a Chapter 11 plan.