

**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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**DECLARATION OF LISA J. DONAHUE
IN SUPPORT OF MOTION OF DEBTORS FOR
ENTRY OF ORDER AUTHORIZING DEBTORS TO
(I) ENTER INTO SERVICES AGREEMENT WITH VOGTLE
OWNERS, (II) ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS TO VOGTLE OWNERS, (III) ASSUME AND AMEND CERTAIN
EXECUTORY CONTRACTS, AND (IV) REJECT THE VOGTLE EPC CONTRACT**

I, Lisa J. Donahue, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am a Managing Director and the Leader of the Global Turnaround and Restructuring Group at AlixPartners LLC (“**AlixPartners**”), which has a place of business at 909 Third Avenue, Floor 30, New York, New York, 10022.
2. I submit this declaration (this “**Declaration**”) in support of the *Motion of Debtors Pursuant to 11 U.S.C. §§ 363(b), 365(a) and 105(a) for Authority to (I) Enter into Services*

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.



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*Agreement with Vogtle Owners, (II) Assume and Assign Certain Executory Contracts to Vogtle Owners, (III) Assume and Amend Certain Executory Contracts, and (IV) Reject the Vogtle EPC Contract, dated June 23, 2017 (the “**Motion**”).²*

3. Unless otherwise indicated, the facts set forth in this Declaration are based upon (i) my personal knowledge, (ii) my review of relevant documents, (iii) my discussions with members of the Debtors’ senior management, other members of the AlixPartners team, or the Debtors other professional advisors, including Weil, Gotshal & Manges LLP as legal restructuring counsel and PJT Partners, Inc. as investment banker, or (iv) my opinion based upon my experience and knowledge.

4. If called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

Qualifications

5. As discussed above, I am a Managing Director and the Leader of the Global Turnaround and Restructuring Group at AlixPartners, where I have been working since 2001.

6. I have been working with the Debtors since December 2016, when AlixPartners was engaged to help Westinghouse address liquidity concerns and implement certain cost-saving measures. On March 6, 2017, AP Services, LLC (an affiliate of AlixPartners) (“**APS**”), executed an agreement for APS to provide interim management services, including for me to serve as WEC’s Chief Transition and Development Officer (“**CTDO**”). On March 8, 2017, my appointment as CTDO was approved by WEC’s Board of Directors. On June 6, 2017,

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

the Court entered an order granting the Debtors authority to employ and retain APS and designate me as CTDO. *See* ECF No. 658.

7. I have performed similar roles for other debtors in large, complex chapter 11 cases, including, among others, acting as Chief Restructuring Officer (“**CRO**”) of Puerto Rico Electric Power Authority; acting as Chief Financial Officer (“**CFO**”) at Atlantic Power Corporation; acting as Chief Executive Officer of New World Pasta; acting as Executive Vice President and CFO of Calpine Corporation; CRO of SemGroup, LP; acting as CFO and CRO at Exide Technologies Inc.; and acting as CFO of Umbro International. I have extensive experience in multinational financial and operational transformation, crisis management, complex negotiations, merger integration, interim management, and corporate restructuring.

8. I am generally familiar with the Debtors’ day-to-day operations, business and financial affairs, and books and records. In my role as CTDO, I have been closely involved in the Debtors’ restructuring efforts to date. Furthermore, I was closely involved in Westinghouse’s decision to seek the Court’s authority to (i) enter into the Services Agreement, (ii) assume and assign the Assigned Subcontracts, (iii) assume the Assumed Subcontracts, and (iv) reject the Vogtle EPC.

Background

9. Westinghouse commenced these chapter 11 cases to preserve and reorganize around, its profitable, core businesses and to stem the losses associated with the construction components of engineering, procurements, and construction (“**EPC**”) contracts for nuclear reactors with the owners of the Vogtle Project in Georgia and the VC Summer Project in South Carolina.

10. Just prior to the Petition Date, Westinghouse entered into Interim Agreements with the Project Owners, whereby the Project Owners agreed to cover the costs of continuing construction of the Projects for 30 days while Westinghouse could stabilize its operations and make a determination regarding the future of the Projects. Since approval of the Interim Agreement, the Project Owners have been funding the costs of ongoing construction, and the Debtors have been providing services in connection with the continued construction on a cost-neutral basis.

11. Following the Petition Date, the Debtors and Project Owners entered into a series of amendments and extensions to the Interim Agreements to limit costly disruptions to the Projects while engaging in negotiations regarding the long-term future of the Projects.

12. Following extensive, arms'-length negotiations, Westinghouse and the Vogtle Owners executed a non-binding term sheet in respect of a services agreement on May 12, 2017. Thereafter, Westinghouse and the Vogtle Owners continued marathon negotiating sessions before executing the binding Services Agreement on June 9, 2017.

13. Under the Services Agreement, the Debtors will transfer control of the Vogtle Project by, among other things, assuming and assigning certain subcontracts and purchase orders to the Vogtle Owners (as defined in the Motion, the "**Assigned Subcontracts**"); assuming and amending certain subcontracts and purchase orders to join the Vogtle Owners as primary obligors (as defined in the Motion, the "**Assumed Subcontracts**"); seconding employees to the Vogtle Owners; transferring regulatory permits to the Vogtle Owners; providing engineering, procurement, and construction support services; and maintaining and delivering the intellectual property necessary to complete the Vogtle Project.

Entry into Services Agreement

14. It is in the best interests of the Debtors to enter into the Services Agreement, and ample business justification supports entry into such agreement. The commercial terms of the Services Agreement represent the best terms available to Westinghouse, who engaged in tireless, arms'-length negotiations with the Vogtle Owners to obtain the best resolution possible for the Debtors and their estates with respect to the Vogtle Project.

15. The Services Agreement is a fully cost-reimbursable-plus-fee contract which provides for the Vogtle Owners to pay all direct and indirect costs and expenses of Westinghouse's services and other items provided under the agreement, plus an applicable margin, multiplier, or fixed fee depending on the labor or services being provided. The Debtors are almost certain to profit from the favorable cost structure of the Services Agreement.

16. Accordingly, the Services Agreement represents a low-risk and limited liability proposition that is expected to result in substantial revenue to Westinghouse. The Services Agreement is expected to provide substantial profitable revenue. Furthermore, the Services Agreement provides for capped liability generally and no ongoing liability related to the completion of the Vogtle Project. Unlike the Vogtle EPC, the Services Agreement does not impose upon Westinghouse with any responsibility for the completion of the Project or any liability in the event the construction schedule is delayed.

17. At the same time, the Services Agreement paves the way for the completion of the Vogtle Project, which, if completed, could represent a significant source of future revenue for Westinghouse's core businesses, including its Operating Plants Business ("**OPB**") and Nuclear Fuels business lines. Further, completion of the Vogtle Project increases the potential that

prospective customers around the globe, could seek to build additional AP1000 reactors.³ Accordingly, the Services Agreement provides a further source of revenue and a path for growth in the Debtors' AP1000 technology business line for the future: provision of design and engineering services for future AP1000 projects around the globe.

18. Entry into the Services Agreement also provides certainty with respect to one of the Debtors' business lines in advance of the Debtors' commencing any sale or plan process. Through the Services Agreement, the Debtors will be able to exit the construction business with respect to the Vogtle Plant, but continue with engineering, procurement, and construction support services.

19. If approved by the Court, entry into the Services Agreement, along with rejection of the Vogtle EPC (as described below) will help form a comprehensive resolution to one of the principal issues facing Westinghouse, eliminate uncertainty surrounding the Debtors' operations, and allow Westinghouse to formulate a rationalized business plan to maximize value in a sale or plan of reorganization.

Assumption and Assignment of Subcontracts

20. Over the years, Westinghouse has entered into a large number of subcontracts and purchase orders to support the construction of the Vogtle Project under the Vogtle EPC. In negotiating the Services Agreement, the Vogtle Owners identified approximately 1,750 outstanding subcontracts and purchase order contracts which the Vogtle Owners will require to continue the construction of the Vogtle Project.

³ In addition to the four Project reactors currently being constructed, four AP1000 reactors are currently being constructed in China, and Westinghouse has pursued or is pursuing designing AP1000 reactor projects in United Kingdom, India, and additional reactor project scope in China.

21. Pursuant to the Services Agreement, the Debtors have agreed to assume and assign a number of these contracts to the Vogtle Owners, and the Vogtle Owners have agreed to pay the cure costs associated with the assumption of such Assigned Subcontracts. The Debtors have no use for the Assigned Subcontracts, as they relate to activities related to the Vogtle Project. In addition, certain of the Assigned Subcontracts are postpetition purchase orders, which the Vogtle Owners are obligated to pay pursuant to the Vogtle Interim Agreement.

22. The Debtors have also agreed to assume a number of other subcontracts pursuant to the Services Agreement, provided they are amended to include the Vogtle Owners as an additional party with a direct obligation to pay the counterparty for all liabilities thereunder. These subcontracts represent, among other things, contracts that the Vogtle Owners desire to perform, but due to applicable certification requirements, cannot be assigned to them. For example, many contracts related to the Vogtle Project require that the counterparty be certified by the American Society of Mechanical Engineers, which the Vogtle Owners are not. Other Assumed Subcontracts are required for the Debtors to support their obligations under the Services Agreement. The Vogtle Owners have agreed to pay the cure costs for such Assumed Subcontracts as well.

23. The costs of curing any existing defaults under the Assumed Subcontracts or Assigned Subcontracts will be paid by the Vogtle Owners. Further, assurance of future performance of the Assumed Subcontracts is enhanced by having a Debtor entity as an additional counterparty. All of the Debtors have access to an \$800 million postpetition financing facility, access to which demonstrates assurance of future performance.

24. It is in the best interests of Westinghouse and a sound exercise of its business judgment to assume the Assumed Subcontracts, and assume and assign the Assigned Subcontracts to the Vogtle Owners. Assumption and/or assignment, as applicable, of the contracts

will allow the Debtors to avoid incurring any administrative expenses related to continued performance of such contracts. In addition, it will allow the Debtors to perform their obligations under the profitable Services Agreement and facilitate Westinghouse's transition away from plant construction business, which will positively impact the value of the Debtors' estates, benefiting all parties in interest.

Rejection of the Vogtle EPC

25. In the current circumstances (as more fully described in the First Day Declaration), continued performance or assumption of the Vogtle EPC would be value destructive to the Debtors. Given the estimated cost to complete the Vogtle Project, the milestone and other payments Westinghouse was entitled to receive under the Vogtle EPC would be dwarfed by the cost to complete—making continued performance of the contract an untenable proposition. The Debtors, in their sound business judgment, have determined that it is uneconomical and unfeasible to continue performing under the Vogtle EPC.

26. As a result, rejection of the Vogtle EPC is necessary to avoid the incurrence of any Project-related postpetition claims for goods or services that would not result in a corresponding benefit to the Debtors' estates. Without an agreement with the Vogtle Owners or a third party to assume Westinghouse's obligations under the Vogtle EPC, rejection of such agreement and transition to the Services Agreement is the best course of action for the Debtors' estates. Accordingly, rejection of the Vogtle EPC is in the best interests of the Debtors, their estates, and all parties in interest.

27. As of the date hereof, Westinghouse and the Vogtle Owners are continuing to review executory contracts that will not be assumed pursuant to the Services Agreement to determine whether any additional contracts related to the Vogtle Project should be

rejected. At a later date, the Debtors plan to file a separate motion seeking to reject contracts that will not be assumed pursuant to the Services Agreement or needed by the Debtors.

Conclusion

28. Based on the foregoing, I believe that the relief being requested in the Motion is well justified, in the best interests of Westinghouse, its creditors, and all parties in interest, and should be granted.

29. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 23, 2017
New York, New York

/s/ Lisa J. Donahue
Lisa J. Donahue
Chief Transition and Development Officer
Westinghouse Electric Company LLC