

**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 JULY 22, 2017 THROUGH AUGUST 4, 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 July 12, 2017 through August 4, 2017.

The present status of matters may be summarized as follows:

1. SCE&G and Santee Cooper announced this past week their decision not to complete the two new reactors under construction at the V.C. Summer Plant, and, instead, to abandon the completion of the two new reactors. This decision has been the subject of innumerable articles and reports in the South Carolina press over the last week, particularly with regard to the effect of the decision on contractors, on contractor employees, on SCE&G employees, on the rate payers, and on the community in which the V.C. Summer Plant is located. As discussed below (beginning in paragraph 4), this decision also has implications regarding claims and payment of claims in the Westinghouse bankruptcy.

2. On July 27, 2017, the SC Owners entered into a Settlement Agreement with Toshiba regarding payment under Toshiba’s guaranty to them. As has been widely reported, the settlement with Toshiba provides that Toshiba is to pay the SC Owners \$2.2 billion by September 1, 2022. An initial payment of \$150 million is to be made to the SC Owners on or before October 1, 2017; afterwards, payments are scheduled monthly as set forth in Schedule 2.2 to the Settlement Agreement. Further, pursuant to the Order Regarding Distributions of Claims and Interests of Toshiba Corporation and Affiliates (the “Toshiba Distributions Order”) entered on July 20, 2017, any distributions or payments that Toshiba and/or its affiliates (excluding the Westinghouse affiliates in bankruptcy) are entitled to receive from Westinghouse will be paid to the SC Owners and the owners (the “Vogtle Owners”) of the Alvin W. Vogtle Electric Generating Plant (the “Vogtle Plant”) in Burke County, Georgia. Payments under the Toshiba Distributions Order will be applied to the balance due to the SC Owners under the Settlement Agreement as a reduction and, possibly, an acceleration of the payment due.

3. In addition to the payments the SC Owners are to receive directly from Toshiba and any payments received under the Toshiba Distributions Order, it is possible that the SC Owners could

receive payments from a sale of Westinghouse. Section 5.6 of the Settlement Agreement provides that Toshiba and the SC Owners each agree to support a prompt sale of the Westinghouse assets under a plan of reorganization or a motion under section 363 of the U.S. Bankruptcy Code (11 U.S.C. § 101, *et seq.*), provided that the sale is upon terms acceptable to them. Such a sale should, at the least, generate some payment to the SC Owners, both for their claims against the Westinghouse bankruptcy estates (for breach of contract damages) and for payments on Toshiba creditor claims (*e.g.*, claims for intercompany loans Toshiba states it made to Westinghouse) pursuant to the Toshiba Distributions Order. If the sale price(s) were high enough, a payment for Toshiba's ownership interest would also be made to, and shared by, the SC Owners and the Vogtle Owners, not to exceed the balance due on the Toshiba settlement payment amounts to them.

4. In determining not to proceed with the completion of either of the two new reactors, SCE&G and Santee Cooper will not assume many, if any, of the contracts Westinghouse previously entered with subcontractors and vendors for the work to be performed on the V.C. Summer Plant. There may be some contracts still desirable to the SC Owners for assumption, such as for services, goods and materials, and equipment still needed for the V.C. Summer Plant even as it is closed; however, abandonment of the completion of the reactors eliminates the need for most of the contracts. These contracts will be rejected. Westinghouse will file a motion to reject the contracts under the applicable bankruptcy statute (11 U.S.C. § 365(a)), whereupon the other party to the contract (*e.g.*, the subcontractor) will have a claim for damages against the bankruptcy estate of the Westinghouse entity that entered the contract. This rejection significantly changes the prospects for payment: if contracts are assumed and assigned, the subcontractor must be paid fully under the contract; when the contract is rejected, the subcontractor will hold an unsecured claim against the Westinghouse bankruptcy estate, and the amount and timing of payment are uncertain. Accordingly, the decision not to complete the two new reactors will mean (a) that the claims of subcontractors against the bankruptcy estate will aggregate a larger amount than if the work were to proceed and contracts were assumed, and (b) that those subcontractors will most likely receive less payment than they would have received had their contracts been assumed.

5. Although some subcontractors of Westinghouse have filed mechanic's liens against the V.C. Summer Plant, those claims are unsecured claims against the Westinghouse bankruptcy estate. To be a secured claim, the claimant must have a security interest in or lien on property of the bankruptcy estate. The V.C. Summer Plant is owned by SCE&G and Santee Cooper, and thus the asserted mechanic's liens are not against property of the Westinghouse bankruptcy estate. Therefore, notwithstanding the filed mechanic's liens, the mechanic's lien claimants will be unsecured in the bankruptcy and their prospects for payment in the bankruptcy are uncertain.

6. Westinghouse has not yet filed a motion to reject its engineering, procurement and construction contracts (collectively, the "EPC Contract") with the SC Owners for the V.C. Summer Plant, but it is understood that Westinghouse will reject the EPC Contract. From the outset of the bankruptcy case, Westinghouse has stated that it will not proceed with its obligations under the EPC Contract. In this regard, (a) under the Interim Assessment Contract for the V.C. Summer Plant, the SC Owners are responsible for payment for all work, materials, leased equipment and services provided from the filing of the Westinghouse bankruptcy on March 29, 2017 through the termination of the Interim Assessment Agreement, and (b) the terms of the post-petition financing obtained by Westinghouse in the bankruptcy specifically provide that the loan proceeds are not to

be used for post-petition work, materials or services at the V.C. Summer Plant or the Vogtle Plant. Westinghouse has already rejected its EPC Contract for the Vogtle Plant. The timing of Westinghouse's rejection of the EPC Contract for the V.C. Summer Plant is in part a matter of Westinghouse waiting to learn the SC Owners' decision on whether or not to proceed with completion of the two new reactors. If the SC Owners had decided to proceed with work to complete one or both of the reactors, they likely would have assumed some of the existing contracts Westinghouse had entered with subcontractors, vendors and equipment lessors for the V.C. Summer Plant, and possibly would have entered into a new agreement with Westinghouse for some specific (but not all) of its services for the plant, as occurred in connection with the rejection of the EPC Contract for the Vogtle Plant. Now that the decision has been announced, it is likely that Westinghouse will soon file a motion to reject the EPC Contract for the V.C. Summer Plant.

7. Other matters continue in the Westinghouse bankruptcy case. An Order was entered on July 24, 2017, granting Westinghouse's motion to establish a procedure for settlement of claims against the bankruptcy estates, with provisions for authorization of the settlement of claims of different sizes and types. Also, Westinghouse filed a motion to extend the time during which only Westinghouse, as Chapter 11 debtor-in-possession, can file a plan of reorganization or liquidation, through December 6, 2017 (and to extend the period of the exclusive right to solicit for acceptance of such a plan through February 4, 2018). Other matters relating to the filing and trading of creditor claims occur daily. These matters are part of the process of preparing for a Chapter 11 plan of reorganization.

8. The unsecured creditors committee ("UCC") appointed in the bankruptcy case is to take discovery, including depositions, of Westinghouse, TNEH UK and Toshiba regarding their businesses, their dealings, their financial situations, the conduct of responsible persons for them, and matters culminating in the bankruptcy filing. The information obtained from this discovery should be the subject of a report by the UCC at some point in time prior to hearings on a proposed plan of reorganization.

9. Companies that specialize in purchasing bankruptcy claims of creditors continue to solicit for the purchase of claims in the Westinghouse case. In soliciting for the purchase of claims, some of the companies provide their estimate of pricing for the purchase of the claims. On July 25, 2017, one such company estimated that general unsecured creditors of the V.C. Summer Plant would receive payment of 35 cents on the dollar for their claims. It is not known if this estimate will change in light of the decision not to complete the new reactors at the V.C. Summer Plant.