STATUS OF WESTINGHOUSE ELECTRIC COMPANY, LLC, *et al.*
CHAPTER 11 BANKRUPTCY CASE

On March 29, 2017, Westinghouse Electric Company, LLC and 29 of its affiliated companies (collectively, "Westinghouse") filed cases under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. § 101, *et seq.*, the "Bankruptcy Code") in the U.S. Bankruptcy Court for the Southern District of New York. The cases have been joined for joint administration under Case No. 17-10751 (MEW). Westinghouse remains in possession and control of its assets and is operating its businesses as a Chapter 11 debtor-in-possession. (Each of the Westinghouse companies in the bankruptcy case is a debtor-in-possession.)

On April 7, 2017, the United States Trustee for the Southern District of New York appointed a committee of unsecured claimholders (the "Creditors Committee") pursuant to a section of the Bankruptcy Code, to represent the interests of unsecured creditors in the case. The members of the Creditors Committee are SSM Industries, Inc., Dastech International, Inc., South Carolina Electric and Gas Company, Georgia Power Company, Jones Lang LaSalle Americas, Inc., and Pension Benefit Guaranty Corporation. The Creditors Committee is represented by Proskauer Rose LLP, as its legal counsel.

With the filing of the bankruptcy petitions on March 29, 2017, Westinghouse also filed twelve motions ("First Day Motions") and two declarations supporting the First Day Motions, relating to matters to be addressed at the beginning of the case. These motions included administrative matters, *e.g.*, joint administration of the cases and Westinghouse's employment of professionals in the bankruptcy case; procedural matters, *e.g.*, the procedure for handling vendor claims for reclamation of goods delivered to Westinghouse shortly prior to the bankruptcy filing; payment of certain prepetition (pre-bankruptcy) unsecured obligations, *e.g.*, amounts owed to the employees at the time of the bankruptcy filing and amounts owed to certain creditors whose continued services or delivery of goods is deemed to be irreplaceable and critical to preserve the value of Westinghouse's businesses or assets ("Critical Vendors"); and certain important substantive matters, most notably the authorization for the post-petition (post-bankruptcy filing) financing proposed by Westinghouse (the "DIP Financing").

The Bankruptcy Court conducted a hearing on most of the First Day Motions on March 30, 2017 (the "First Day Hearings"). Given the very limited notice possible for the First Day Hearings, most of the hearings that day were deemed interim hearings, from which interim orders were entered, with final hearings scheduled for later dates. The Federal Rules of Bankruptcy Procedure specify notice requirements for certain matters, such as post-petition financing. Most if not all of the matters addressed by interim orders at the beginning of the case have since had final orders entered on them. For example, on May 26, 2017, the Bankruptcy Court entered a final order authorizing the DIP Financing.

Some initial matters, however, did not require an additional hearing date and orders were entered as final orders on those matters. The matters treated as not requiring an additional

hearing included approval of two agreements relating to the nuclear power plants under construction in South Carolina (the "V.C. Summer Plant") and Georgia (the "Vogtle Plant").

Immediately prior to filing the bankruptcy, on March 28, 2017, Westinghouse entered into an Interim Assessment Agreement with South Carolina Electric & Gas Company ("SCE&G") and South Carolina Public Service Authority ("Santee Cooper"), as the owners of the V.C. Summer Plant, and an Interim Assessment Agreement with Georgia Power Company ("GPC"), acting for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and The City of Dalton Georgia, as the owners of the Vogtle Plant. The First Day Motions included a motion for approval of the Interim Assessment Agreements by the Bankruptcy Court, and the motion was included in the First Day Hearings. On March 30, 2017, the Bankruptcy Court entered an Order approving the agreements (the "Order Approving Interim Assessment Agreements"). Pursuant to the Interim Assessment Agreements the owners of the V.C. Summer Plant and the Vogtle Plant agreed to pay all costs of the work and supplies incurred post-petition for their respective plants. The Interim Assessment Agreements initially provided that the period for such payment of expenses and claims extended only through April 28, 2017; however, subsequently the Interim Assessment Agreement for the V.C. Summer Plant was extended through June 26, 2017 and the Interim Assessment Agreement for the Vogtle Plant was extended through June 3, 2017. It is possible, though not certain, that the parties may agree on further extensions of the periods of the agreements.

In its First Day Motions and declarations, Westinghouse stated that it has five primary lines of business, which it described as (1) the Nuclear Fuel and Components Manufacturing Business, (2) the Operating Plant Business, (3) the Decommissioning Business, (4) the WETEC Services Business, and (5) the New Nuclear Plants/Major Projects and Construction Business. The WETEC Services Business is the business in which Westinghouse contracted to construct the V.C. Summer Plant and the Vogtle Plant, which are identified as Advance Passive 1000 ("AP1000") plants. In its filings and early presentation to the Bankruptcy Court, Westinghouse characterized its all of its businesses as profitable with the exception of the AP1000 contract business, and it indicated that the need to fund the operating losses resulting from the AP1000 contract business had been a severe drain on the profits of other operations.

In light of Westinghouse's characterization of the profitability of its other businesses and of the financial drain it asserts resulted from the AP1000 contract business, and by the nature of the Interim Assessment Agreements entered for the V.C. Summer Plant and the Vogtle Plant, it is generally expected that Westinghouse will file a motion seeking to reject its contracts to construct the two plants. Indeed, the provisions of the DIP Financing state that the funding under the new credit facility will not be used for costs to perform Westinghouse's obligations under its contracts with SCE&G and Santee Cooper, and with GPC, for the V.C. Summer Plant and the Vogtle Plant. As stated above, pursuant to the Interim Assessment Agreements, SCE&G and Santee Cooper as owners of the V.C. Summer Plant, and GPC as owner of the Vogtle Plant, are paying all post-petition expenses incurred for work and supplies for their plants.

The timing of Westinghouse's expected rejection of the AP1000 construction contracts is uncertain. The Bankruptcy Code includes a provision that enables a trustee or a Chapter 11 debtor-in-possession to reject certain contracts, subject to court approval, which generally will be

granted if the rejected contract has no value and is burdensome to the bankruptcy estate. However, by rejecting the contract, the debtor-in-possession (Westinghouse) is deemed to be the breaching party to the contract, and the non-breaching party (SCE&G and Santee Cooper, if their contract is rejected) then has a claim against the bankruptcy estate for resulting damages. The timing of a motion to reject the contracts necessarily involves an assessment of the likely damages claim that will result from it. Westinghouse may be assessing how best to mitigate possible damages, or even whether it may assert that no damages are proper. Absent an agreement between the parties, which would require approval by the Bankruptcy Court, the determination of damages from the rejection of the contracts probably would entail litigation by the parties.

In addition to the above matters, various motions and filings have been made, and continue to be made, in the bankruptcy case, including filings by contractors regarding mechanic's lien claims they assert on the V.C. Summer Plant. Also, vendors who delivered goods to Westinghouse during the period immediately preceding the bankruptcy filing have asserted reclamation claims, and the right to an administrative priority claim against the bankruptcy estate for goods delivered within 20 days prior to the bankruptcy filing. On May 26, 2017, each of the Westinghouse companies in bankruptcy filed its bankruptcy schedules listing assets and creditors, and its statement of affairs providing other information on it. The bankruptcy schedules and statements of affairs filed on May 26, 2017 number many thousands of pages of documents.

With regard to when payments will commence to creditors holding unsecured prepetition claims, unless the creditor is deemed a Critical Vendor, payments will not begin until a Chapter 11 plan of reorganization is confirmed by order of the Bankruptcy Court. There is no current deadline date for Westinghouse to file a Chapter 11 plan. Westinghouse, as debtor-in-possession, has the exclusive right to file a plan (*i.e.*, no one else can file a plan during this time) for a period of 120 days from the filing of the case, and a 60-day period to obtain acceptance of that plan, for a total of 180 days. These periods (the period of exclusivity) can be extended up to a maximum of 18 months from the filing of the case for filing a plan, and up to 20 months from the filing of the case for obtaining its acceptance. However, the period of exclusivity is not a deadline date for filing a plan; rather, it is strong incentive for filing a plan within that time, so as to avoid another party filing its own plan.

The plan confirmation process usually requires significant time. When Westinghouse files it Chapter 11 plan, it must also file a disclosure statement which provides sufficient information to enable a hypothetical creditor typical of the creditor body in the case to make a reasonably informed decision on whether to vote for the plan or not. The disclosure statement must be approved by the Bankruptcy Court before Westinghouse can solicit for acceptance of the plan by creditors and other parties in interest. Consequently, once a plan is filed, the process normally takes several months before the plan is confirmed. The process contemplates negotiation among the parties, and amendments to the plan prior to confirmation are common.

It is generally understood that, in a case such as the Westinghouse case, payments to creditors holding prepetition unsecured claims are not likely to commence for an extended period of time after the filing of the bankruptcy case. Westinghouse should be making whatever

business changes or arrangements need to be made, or which are appropriate, for its reorganization, while addressing legal matters. It will likely file a motion to extend the period of exclusivity for filing its plan; however, it likely will not go beyond the 18-month limitation on exclusivity. If agreements are reached with creditors who may be deemed the major constituencies in the case, the process could be shorter than if it is unable to reach agreements with the major constituencies.

No deadline date has yet been set for creditors to file proofs of claim in the bankruptcy case. Westinghouse obtained extensions of time to file the bankruptcy schedules and statements of affairs, and the setting of the deadline date for filing claims was deferred until the schedules were filed. Now that they have been filed, the date should be set soon.