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*Attorneys for Consolidated Pipe & Supply Company, Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
	:	
WESTINGHOUSE ELECTRIC	:	
COMPANY LLC, <i>et al.</i> ,	:	Case No. 17-10751 (MEW)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**LIMITED OBJECTION OF CONSOLIDATED PIPE & SUPPLY COMPANY, INC.  
TO THE OMNIBUS MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 365(a) AND  
105(a) FOR ENTRY OF ORDER AUTHORIZING DEBTORS TO (I) ASSUME AND  
ASSIGN CERTAIN EXECUTORY CONTRACTS TO VOGTLE OWNERS AND  
(II) ASSUME AND AMEND CERTAIN EXECUTORY CONTRACTS**

Consolidated Pipe & Supply Company, Inc. (“CPS”) hereby submits this limited objection (the “Limited Objection”) to the *Omnibus Motion of Debtors pursuant to 11 U.S.C. §§ 365(a) and 105(a) for Entry of Order Authorizing Debtors to (I) Assume and Assign Certain Executory Contracts to Vogtle Owners and (II) Assume and Amend Certain Executory Contracts*

[ECF No. 1021] (the “Omnibus Motion”).<sup>1</sup> In support of this Limited Objection, CPS states as follows:

**BACKGROUND**

1. On March 29, 2017 (the “Petition Date”), Westinghouse Electric Company, LLC (“WEC”) and certain of its affiliates (together, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. Prior to the Petition Date, WEC and WECTEC Global Project Services Inc. (“WECTEC”) entered into that certain Engineering, Procurement and Construction Agreement, dated as of April 8, 2008 (as amended from time to time, the “Vogtle EPC”), with Georgia Power Company (“Georgia Power”), for itself and as agent for the other joint owners of Units 3 & 4 at the Allen W. Vogtle Electric Generating Plant (the “Vogtle Project”).

3. Following the Petition Date, the Debtors and the Vogtle Owners<sup>2</sup> entered into, and the Bankruptcy Court approved, that certain Interim Assessment Agreement dated March 29, 2017 (as amended, the “Interim Agreement”) whereby the Vogtle Owners agreed to pay the expenses associated with continuing work on the Vogtle Project, as more specifically set forth in the Interim Agreement.

4. On June 23, 2017, the Debtors filed a motion [ECF No. 769] (the “Vogtle Motion”) to enter into a Services Agreement with the Vogtle Owners to transfer control of and liability with respect to the Vogtle Project to the Vogtle Owners, to assume and assign certain executory contracts to the Vogtle Owners and to assume and amend certain executory contracts.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning attributed to them in the Omnibus Motion.

<sup>2</sup> The “Vogtle Owners”, as defined in the Omnibus Motion, consist of Georgia Power for itself and as agent for, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, MEAG Power SPVJ, LLC (“MEAG SPVJ”), MEAG Power SPVM, LLC (“MEAG SPVM”), MEAG Power SPVP, LLC (“MEAG SPVP,” together with MEAG SPVJ and MEAG SPVM, the “MEAG Entities”) and the City of Dalton, Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners. [See ECF No. 1021, p. 2.]

CPS filed a limited objection [ECF No. 865] (the “Vogtle Motion Objection”) to the Vogtle Motion on July 11, 2017, objecting to, among other things, the proposed cure amounts and the lack of adequate information related to the Vogtle Owners’ future performance and liability under the contracts assumed and assigned and assumed and amended pursuant to the Vogtle Motion. On July 20, 2017, the Court entered an order [ECF No. 954] approving the Vogtle Motion, subject to CPS’s and various other subcontractors’ pending objections.

5. In the Omnibus Motion, the Debtors seek to assume and assign certain additional contracts (the “Assigned Contracts”), as set out in Exhibit B to the Omnibus Motion [ECF No. 1021, p. 27], to Georgia Power as “designee” of the Vogtle Owners, and to assume and amend certain additional contracts (the “Assumed Contracts,” together with the Assigned Contracts, the “Contracts”) with CPS to add the Vogtle Owners as counterparties as set out in Exhibit C to the Omnibus Motion [ECF No. 1021, p. 29].<sup>3</sup> The Debtors have also set out proposed cure amounts under the Contracts in Exhibits B and C (together, the “Proposed Cure Amounts”).

6. The Omnibus Motion, together with the Proposed Cure Amounts, as set forth in Exhibit C, do not accurately state the cure amounts that must be paid to CPS in order to obtain the relief requested in the Omnibus Motion.

**LIMITED OBJECTION**

7. CPS does not object to the relief requested in the Omnibus Motion *per se*, but does object to the extent that the Debtors propose to pay less than the full cure amounts owed to CPS and fail to provide additional information regarding adequate assurance of future

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<sup>3</sup> The Vogtle Owners includes the MEAG Entities. It appears that the MEAG Entities are special purpose entities that have ownership interests in the Vogtle Project. CPS is unaware of the specific relationships between and among the MEAG Entities, the Municipal Electric Authority of Georgia and the other Vogtle Owners. This is primarily relevant if the Vogtle Owners and MEAG Entities’ liability may be limited to their respective ownership interests in the Vogtle Project or where the financial health and size of the Municipal Electric Authority of Georgia is being used to demonstrate adequate assurance of future performance under § 365.

performance and clarification regarding the counterparties being added to the Assumed Contracts.

8. In order for the Debtors to assume the Contracts, Section 365 of the Bankruptcy Code requires this Court's approval and imposes certain obligations upon the Debtors, including:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b) (emphasis added).

*The Proposed Cure Amounts*

9. Pursuant to Section 365's requirements, the Debtors propose to cure the defaults in the Contracts by paying CPS the Proposed Cure Amounts. At the time of the filing of this Limited Objection, CPS is owed significant additional amounts not reflected in the Proposed Cure Amounts. The Debtors have listed Proposed Cure Amounts of "zero" with respect to certain Assumed Contracts with CPS when the actual cure amounts owed to CPS, as of the date of this Limited Objection, are set out in **Schedule 1**, attached hereto.

10. Furthermore, the cure amounts owed to CPS under the Contracts will likely increase by the date of assumption – the effective date for determining cure costs under Section 365. Pursuant to the Contracts, CPS is currently performing its continuing obligations under “open orders” under certain Contracts that constitute obligations of the Debtors and the Vogtle Owners under the Services Agreement. To the extent that any such amounts become due and payable prior to assumption date, the Debtors and the Vogtle Owners will be required to cure such amounts. CPS hereby objects to the Omnibus Motion as it fails to provide for the cure of all amounts set out in **Schedule 1** and for any additional amounts existing and owing at the time of the actual assumption of the Contracts as required under 11 U.S.C. § 365(b). *See In re Peaberry’s Ltd.*, 205 B.R. 6 (1st Cir. BAP 1997); *In re F.W. Restaurants Associates, Inc.*, 190 B.R. 143, 147-48 (Bankr. D. Conn. 1995); *see also In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (emphasis added) (quoting another source) (“One of the purposes of Section 365 is to permit the debtor to continue in a beneficial contract, provided, however, that the other party to the contract is made whole at the time of the debtor’s assumption of the contract.”).

11. CPS is in the process of exchanging information with the Debtors in an attempt to reconcile any cure issues, but has been unable to reach an agreement prior to the expedited deadline to object to the Omnibus Motion. CPS intends to continue to negotiate with the Debtors in good faith, but reserves all rights with respect thereto.

*Adequate Assurance and Clarification Regarding Additional Counterparties  
under the Assumed Contracts and their Respective Obligations*

12. In order to obtain the relief requested in the Omnibus Motion, the Debtors and the additional counterparties to the Assumed Contracts must demonstrate adequate assurance of future performance. *See* 11 U.S.C. § 365(b). “Adequate assurance of future performance are not

words of art, but are to be given practical, pragmatic construction.” *Matter of U. L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D. N.Y. 1982). Thus, the question of adequate assurance “is to be determined by factual conditions.” *Id.*

13. Furthermore, pursuant to their terms and the Bankruptcy Code (and as noted by the Debtors in the Omnibus Motion), the Assumed Contracts are not assumable or amendable without CPS’s consent. *See Matter of Village Rathskeller, Inc.*, 147 B.R. 665, 671 (Bankr. S.D.N.Y. 1992); *In re Kopel*, 232 B.R. 57, 63–64 (Bankr. E.D.N.Y. 1999).

14. With respect to the Assumed Contracts, the Omnibus Motion states that the Vogtle Owners will be “directly liable, jointly and severally with the applicable Debtor contract party.” [See ECF No. 1021, p. 24.] However, the proposed form of amendment to the Assumed Contracts attached to the Omnibus Motion as Exhibit D clearly indicates that the Vogtle Owners will be severally but not jointly liable, and then, only in accordance with their respective ownership interests in the Vogtle Project.

15. As stated above,<sup>4</sup> the relationships between and among the Vogtle Owners and the MEAG Entities, and their respective interest in the Vogtle Project, are not clear from the Omnibus Motion, and this is particularly relevant in light of the potential for several, but not joint, liability of the Vogtle Owners and the MEAG Entities.

16. Without additional information and further clarification regarding the actual proposed, additional counterparties to the Assumed Contracts, as well as a more detailed demonstration of the relationships between and among the Vogtle Owners and the MEAG Entities and their individual demonstration of adequate assurance of performance, it is impossible for CPS to make an informed decision regarding the propriety of consenting to the assumption and amendment of the Assumed Contracts. CPS objects to the proposed relief to the

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<sup>4</sup> See fn. 3, *supra*.

extent that the Debtors, Vogtle Owners and MEAG Entities, as applicable, fail to provide this information to CPS.

17. Again, as with the cure issues, CPS has initiated, and continues to work with, the Debtors and proposed counterparties to resolve these objections in good faith.

**RESERVATION OF RIGHTS**

18. CPS hereby reserves the right to amend, modify or supplement this Limited Objection and to raise any additional arguments and objections to the Omnibus Motion on all grounds available under applicable law. Additionally, CPS reserves its rights to comment upon and object to the form of order presented to the Court in connection with the Omnibus Motion as well as amend or revise the proposed form of amendment in Exhibit D to the Omnibus Motion.

WHEREFORE, CPS requests that the Court enter and order: (i) sustaining this Limited Objection and denying the Omnibus Motion, except to the extent that the Debtors: a) pay the correct cure amounts set out in **Schedule 1** and any and all additional amounts incurred as of the date of assumption as a prerequisite to the Assumed Contracts' assumption, and b) provide specific information clarifying the Vogtle Owners' and/or the MEAG Entities' respective relationships and demonstrate sufficient adequate assurance of future performance under the Assumed Contracts with respect to each additional counterparty; and (ii) providing for such other relief the Court deems just and proper.

*[Signature page to follow.]*

Dated: August 14, 2017.  
Birmingham, Alabama

MAYNARD, COOPER & GALE, P.C.

/s/ J. Leland Murphree

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*Attorneys for Consolidated Pipe and  
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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was filed with the Court, and served upon all parties requesting notice via the Court's CM/ECF electronic filing system, on this the 14th day of August, 2017.

*/s/ J. Leland Murphree* \_\_\_\_\_

OF COUNSEL

**SCHEDULE 1**

<b>Line #</b>	<b>PO#</b>	<b>Date</b>	<b>Invoice #</b>	<b>Pre Petition Amount</b>	<b>Post Petition Amount</b>	<b>Open Orders</b>
3	132175-CE01.03 REL 5**	7/20/2017	6670047-000-000	-	\$360,242.59	-
3	132175-CE01.03 REL 5**		6670047-001-000	-	-	\$669,018.3
4	132176-CE01.03 REL 5***	7/20/2017	6670048-000-000	-	\$360,242.59	
4	132176-CE01.03 REL 5***		6670048-001-000	-	-	\$669,022.8
5	132175-D500.21			-	-	
					<b>\$720,485.18</b>	<b>\$1,338,041.22</b>

\*\* This contract was originally listed as contract #132175-CE01.04 REL 4 in the Vogtle Motion and the incorrect numbering was noted in CPS' Vogtle Motion Objection.

\*\*\* This contract was originally listed as contract #132176-CE01.04 REL 4 in the Vogtle Motion and the incorrect numbering was noted in CPS' Vogtle Motion Objection.