

Criminal investigations begin into abandoned South Carolina reactor project

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NM852.4682 The plan to build two AP1000 reactors in South Carolina – abandoned on July 31 after at least US\$9 billion was sunk into the partially-built reactors – is now the subject of multiple lawsuits and investigations including criminal probes.

The state of South Carolina (S.C.) has initiated a criminal investigation into the VC Summer project, asking the State Law Enforcement Division (SLED) to probe possible violations of state law.¹ S.C. Deputy Attorney General Jeff Young wrote the to the SLED on September 22, raising concerns “about possible criminal violations of various types”.¹ The SLED responded positively to the request and has opened a criminal investigation.²

A letter from S.C. House speaker Jay Lucas and two other House members to SLED states: “If, as we suspect, criminal activity exists at the root of the V.C. Summer disaster, it is imperative that it be discovered as quickly as possible and that those responsible are held accountable for their actions.”³ The House leaders’ letter further states. “We also believe that criminal fraud through the concealment of material information is also a plausible cause for the project’s disastrous collapse.”³

Questions have been raised about whether SCE&G misled regulators in hearings requiring sworn testimony when seeking rate hikes to pay for the project, raising the possibility of perjury and possibly fraud.¹ SCE&G, a subsidiary of SCANA Corp., was 55% lead partner in the project, with state-owned Santee Cooper the 45% partner.

There could be federal and state securities violations, the *Charlotte Business Journal* reported.¹ Those would largely involve SCANA as a publicly-traded company, but any improper financial transactions or fraudulent rate claims could implicate Santee Cooper as well.

Bechtel report

S.C. Senate and House committees are investigating the VC Summer project’s failure. House committee members criticised SCANA executives for their repeated refusal to answer questions during committee hearings, one saying their cooperation was “very minimal” and another saying the company’s behaviour was “very disturbing”.⁴

SCANA / SCE&G and Santee Cooper have been accused of concealing a highly-critical report about the VC Summer project by consultant Bechtel Corp., provided to the project partners in February 2016.⁵⁻⁹ The utilities resisted releasing the report, and argued that S.C. Governor Henry McMaster had no right to release the report when they provided him with a copy – but the governor rejected their arguments and publicly released it.^{7,10}

Among other “major project management issues that must be resolved for project success”, Bechtel identified the following:^{8,9}

- The project “suffered from flawed construction plans, faulty designs, inadequate management of contractors, low worker morale and high turnover.”
- Contractors’ construction plans were not specific to the V.C. Summer project and, thus, could not serve as a firm basis to calculate the project’s cost or completion date.
- Contractors’ designs needed “significant” changes before construction.
- The detailed engineering design was not completed before construction (and remains uncompleted), which subsequently affected the performance of procurement and construction.
- There was a “significant disconnect between construction need date and procurement delivery dates”.
- Project managers had not planned far enough ahead to adapt to the need for design changes.
- Turnover among non-manual workers was high.
- Productivity dipped because of the bad designs, sustained overtime, complicated work packages and an aging workforce. Employees worked too many hours for extended periods of time.
- The relationship between construction partners Westinghouse Electric Company and Chicago Bridge & Iron was strained, caused to a large extent by commercial issues.

Federal probe

Officers from the U.S. Attorney’s Office, which oversees federal grand juries in S.C., have subpoenaed documents on the VC Summer project from SCANA and Santee Cooper.¹⁰ The investigation involves the Federal Bureau of Investigation, as the subpoena refers any questions that Santee Cooper has to the FBI’s Columbia office.¹⁰

The Bechtel report appears to be focus of the federal investigation, based on details of the grand jury subpoena served on Santee Cooper. A grand jury meeting will be held in Columbia, the capital of South Carolina, on October 17.¹⁰

Lawsuits

SCANA is already facing at least half a dozen lawsuits from customers and stockholders, with more to come.¹¹

On September 22, a group of SCANA customers initiated a lawsuit in a federal US District Court alleging that SCANA misled regulators when it sought to raise electricity rates to fund the VC Summer project.¹² The case, which is seeking class-action status, seeks unspecified damages for what it describes as “fraudulent” statements to the state Public Service Commission, which approved nine rate increases for SCANA over the course of the VC Summer project.

The case argues that spiraling costs were evident as early as 2012. Allegations against SCANA include racketeering, negligence and breach of contract.

The lawsuit is the first filed in the federal courts on behalf of customers, but at least five lawsuits have been filed in state courts by customers and stockholders against SCANA / SCE&G and Santee Cooper.^{13,14}

“Defendants knew for years that the project was doomed to fail,” one of the S.C. lawsuits states, but project owners “failed to resolve the problems and continued to use the project as a cash cow.”¹³

A lawsuit against SCANA by stockholders accuses three company executives of orchestrating a “deliberate misinformation campaign” and violating federal securities laws.¹⁵ After receiving the Bechtel report, the plaintiffs argue, SCANA executives “knew that the public documents and statements issued or disseminated in the name of the company were materially false and misleading”. The lawsuit quotes a letter¹⁶ sent by then Santee Cooper CEO Lonnie Carter accusing Westinghouse of “continuous deceit and non-transparency” since 2008, and an email¹⁷ by SCANA CEO Kevin Marsh accusing Toshiba and Westinghouse of “financial malfeasance”.¹⁵

Another lawsuit against SCANA has been initiated by stockholder John Crangle.^{11,14,18} His lawsuit aims to hold SCANA's board and its top executives “accountable for abandoning their fiduciary obligations to the shareholders.” The lawsuit seeks to force a dozen SCANA executives to return more than US\$21 million in bonuses paid over the past decade, arguing that they demonstrated “a conscious disregard for their obligations as directors and executives of the company” and that the bonuses were “appalling, disturbing and galling”.

At least eight companies have filed foreclosure lawsuits, seeking payment from SCANA / SCE&G, Santee Cooper or Westinghouse for goods and services provided before VC Summer was abandoned.¹⁸

Political donations

Donations to S.C. legislators are also attracting attention in the aftermath of the VC Summer project's failure. *FITS News* reported: “State lawmakers have been scrambling for political cover in the aftermath of the “meltdown,” but their hearings have only further exposed their starring role in this debacle. In fact many of the lawmakers “investigating” the disaster were sponsors of the legislation that created it – and have been lining their pockets with contributions from the utilities.”¹⁹

Another commentary said that S.C. Governor Henry McMaster, the state legislature and congressional delegation “are essentially wholly owned subsidiaries of the utilities.” In particular, SCANA has spent millions on donations and lobbyists.²⁰

Legislators on the Public Utilities Review Committee have also taken at least US\$294,000 in donations from power companies since 2005.^{21,22} The Committee's responsibilities include nominating and reviewing regulators – the Public Service Commission and the

Office of Regulatory Staff – who were partly responsible for the VC Summer fiasco. According to *The State* newspaper, the Committee's defenders say it is getting a bad rap as utilities shower donations on many other public officials as well.²¹

All but one of the 32 state legislators investigating the demise of the VC Summer project in separate House and Senate inquiries have accepted campaign contributions from SCANA within the past two years.²³ Tom Clements, an adviser to Friends of the Earth, said the legislators should return the contributions they received from utilities and agree not to accept them in the future.²³ The idea of a ban on donations to legislators by utilities was floated last month by the ‘Stop the Blank Check’ coalition, a group of eight organizations including the S.C. Small Business Chamber and the League of Women Voters.²⁴

Given that project owners knew much more than the public about the profound problems facing the VC Summer project in recent years, the question of insider trading arises for publicly-traded SCANA Corp. Four current and former SCANA officials have sold stock worth more than US\$3.4 million since the Bechtel report was presented to SCANA in February 2016.²⁵ It is not known whether the officials had knowledge of the confidential report and whether that influenced their decisions to sell SCANA stock.

Unlicensed engineers

The *Post & Courier* reported on September 24 that Westinghouse and other contractors used unlicensed workers to design parts of the two VC Summer reactors.²⁶ The newspaper described that as a “potentially criminal shortcut.” SCANA did not tell junior partner Santee Cooper, or state and federal regulators, about the use of unlicensed designers, the *Post & Courier* reported.

A professional engineer told the *Post & Courier*: “Everything else on this project was incompetence. This was criminal.” Another engineer involved in the VC Summer project said: “You literally can't make up the errors that were propagated in this thing. I've never seen anything like this in my life. It was beyond comprehension. They enshrined incompetence.”²⁶

Professional engineers said the use of unlicensed engineers contributed to thousands of design revisions, construction setbacks, schedule changes and the ultimate demise of the project.²⁶ Bechtel's audit found that by mid-2015, an estimated 600 engineering changes were made per month, and that design drawings were “often not constructible.”²⁶

Early warnings

SCANA / SCE&G and Santee Cooper have known for several years that the VC Summer project was in deep trouble – the February 2016 Bechtel report wasn't the first alarm bell. They repeatedly called for – and were granted – electricity rate increases to cover escalating costs. Yet they never revealed their concerns about the project to legislators, regulators, customers or stockholders. As the *Post & Courier* reported: “SCANA and Santee Cooper officials put on a public face that gave little hint to the

Abandoned VC Summer site
in South Carolina.



behind-the-scenes turmoil. They continually reassured lawmakers, regulators and the public that the project was in the best interest of the state. They increased the overall budget by billions of dollars. And they collected billions more from their customers to cover financing costs for the yet-untested reactors.”²⁷

A confidential internal Westinghouse analysis written in 2011 warned that the company didn’t have the staff, structure or experience needed to manage the engineering and construction work required to build its new AP1000 reactors.²⁸ “There is a general feeling that the AP1000 projects are at risk,” the internal Westinghouse report states. “Understanding that risk is an essential first step to mitigating it.”²⁸

“The AP1000 design is not complete, although it is currently under construction,” the internal Westinghouse report states. “This virtually assures large numbers of changes will occur to both systems and structures.” The report warned that design revisions could result in at least US\$300 million in claims against the company for delays.²⁸

The internal report suggested that Westinghouse should set up a separate company for its new construction business to shield the rest of the corporation from the financial losses and lawsuits that could follow if the AP1000 projects failed.²⁸

“A lot of experienced staff saw the writing on the wall,” a former Westinghouse employee told the *Post & Courier*. “Say what you want, but the red flags were there and they were raised early.”²⁸

Santee Cooper CEO Lonnie Carter (who recently resigned, with a \$16 million payout) raised concerns in 2013 — roughly a year after construction began. In August 2013, he questioned whether Westinghouse and other contractors were putting the “project’s future in danger.”²⁹

Carter later said the project had been hurt by “an incompetent engineering firm” and a “disingenuous contractor”³⁰ — presumably referring to Chicago Bridge & Iron, and Westinghouse.

In 2014, SCANA and Santee Cooper sent a 14-page letter to lead contractor Westinghouse and sub-contractor Chicago Bridge & Iron raising numerous, serious concerns with the VC Summer project.^{27,31,32} “We regret that this letter is necessary and regret its length,” the letter begins. “Your poor performance has made both necessary.”

The SCANA / Santee Cooper letter makes it clear that serious problems were evident in 2011, if not earlier.²⁷ A November 2011 Nuclear Regulatory Commission inspection of one of the sites constructing components for VC Summer resulted in a Notice of Nonconformance, as did a September 2012 NRC inspection.

Westinghouse’s failure to produce usable blueprints on time started in May 2012, less than a month after workers began pouring concrete and erecting steel at VC Summer. The letter is compulsory reading for anyone persuaded by industry claims that standardized, modular construction methods are the solutions to nuclear power’s problems; those methods made a bad situation worse with the VC Summer project.

Information obtained by the *Post & Courier* from Santee Cooper through a Freedom of Information Act request reveals that the VC Summer project would cost US\$13 billion more than the initial 2009 estimate, and it would take 4–6 more years than what SCANA told state regulators last year.¹⁶

Ratepayers

S.C. Attorney General Alan Wilson announced on

September 29 that he wants to participate in a state Public Service Commission inquiry over whether SCE&G can continue to charge customers for the VC Summer project.³³

Releasing a 57-page opinion authored by S.C. solicitor general Bob Cook, Wilson called the 2007 Base Load Review Act “constitutionally suspect.”³⁴ The Act allowed SCANA / SCE&G and Santee Cooper to charge customers for the VC Summer reactors during the construction phase – over US\$2.2 billion has already been collected – and also allows them to charge customers for sunk costs even though the project has been abandoned.

In August, SCE&G asked regulators for permission to recoup its US\$5 billion debt arising from the VC Summer project, with at least \$2.2 billion coming from customers.³⁵ It withdrew that request amid legislative hearings, but the company says it will submit another request at a later date.

One reason the Base Load Review Act may be invalid is that it fails to adhere to the S.C. General Assembly’s obligation to regulate public and private utilities “to the extent required by the public interest.”³⁴ The S.C. solicitor general’s opinion states: “It cannot be considered to be ‘in the public interest’ to charge ratepayers for capital costs of an unfinished and abandoned plant. It is not ‘in the public interest’ to increase the power bills of consumers who receive nothing in return.”³⁴

The Act “further rewards abandonment of nuclear projects such that ratepayers must pay the utility’s costs plus a substantial rate of return for investors without receiving any service from the plants,” the solicitor general’s opinion states.³⁴

The S.C. Office of Regulatory Staff (ORS) has petitioned the Public Service Commission to force SCE&G to stop billing customers for VC Summer.³³ The ORS petition also asks the Commission to order SCE&G to pay back the money that customers have already been charged if a court rules the law unconstitutional or the legislature revokes the act.^{36,37} Regardless of any court or legislative action, the ORS petition notes there are allegations that SCE&G “failed to disclose information that should have been disclosed and that would ... provide a basis for challenging prior (rate) requests.”³⁷ SCE&G wants the ORS petition dismissed, saying that the move would reduce the company’s annual revenues by more than US\$445 million.³³

The Public Service Commission said it will consider the ORS petition, but has not yet done so. Scott Elliot, a lawyer hired by the S.C. House to handle legislative hearings into the VC Summer project, said that once the Public Service Commission has ruled on the petition, the losing side is likely to challenge the ruling in state courts.³⁸

As a state-owned utility, Santee Cooper is not regulated by the Public Service Commission. But as with SCANA / SCE&G, its customers are on the hook. Up to two million Santee Cooper will shoulder the costs – several billion dollars – for the utility’s investment in VC Summer.³⁹

Broader implications

The endless revelations about the VC Summer fiasco raise questions about the two AP1000 reactors under construction in Georgia. Regulators in Georgia are assessing Southern Co.’s proposal to proceed with those two reactors. The most obvious connection is Westinghouse’s role as the lead contractor in both projects until it filed for bankruptcy protection on March 29, and the lesser role that Westinghouse continues to play in Georgia. Presumably Westinghouse’s role in Georgia has been as spectacularly incompetent as it has been in South Carolina. Perhaps public revelation of the internal machinations of the Vogtle project in Georgia would be just as jaw-dropping as the VC Summer revelations. Perhaps a thorough assessment of Vogtle would lead to criminal investigations, as is the case in South Carolina.

Pro-nuclear commentator Dan Yurman discussed the national and international implications of the VC Summer fiasco in a September 11 post:⁴⁰

“It is the failure of one of the largest capital construction projects in the U.S. Every time another newspaper headline appears about what went wrong at the VC Summer project, the dark implications of what it all means for the future of the nuclear energy industry get all the more foreboding.

“What we have learned this week is that it appears that some, if not all, of the principals at both SCE&G and Santee Cooper knew and documented to greater or lesser degrees as long as three years ago that the project was a train wreck in the making that was racing towards a derailment of epic proportions.

“Now instead of looking forward to a triumph for completion of two massive nuclear reactors generating 2300 MW of CO2 emission free electricity, the nation will get endless political fallout, and lawsuits, which will dominate the complex contractual debris, left behind like storm damage from a hurricane, for years to come. ...

“The failure of the V C Summer nuclear reactor effort has global implications for every other country that wants to build nuclear reactors as CO2 emission free source of electrical power. Opponents of these projects at the policy level in government have a ready made boogey man in the tangled mess left behind by the decision to cancel the V C Summer project. ...

The colossal failure has multiple actors who are to blame starting with Westinghouse, but don’t use up all your lambasting on that firm. CB&I as a key supplier comes in for a fair share of blame as do all the state and federal agencies that have regulatory and oversight responsibilities for a project of this magnitude. ...

“It is hard not to draw the conclusion that mind warping mismanagement is the root cause of the failure of the project. It raises again the question of why Westinghouse, with decades of nuclear energy project management under its belt, ignored it and plunged into the construction phase with an incomplete design, and no documented project management or cost baseline information that it was willing to share with its customers.”

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