

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

United States of America)	
)	
v.)	Case No. 3:23-cr-902-MGL
)	
Jeffrey Alan Benjamin)	
)	
)	

SENTENCING MEMORANDUM

The United States of America, by and through its undersigned Assistant United States Attorneys, recommends that this Court impose on Defendant Jeffrey Alan Benjamin the maximum sentence contemplated in the plea agreement -- incarceration for twelve months and a financial penalty of \$100,000, with supervised release to follow.

In 2008, SCANA and Santee Cooper (the “Owners”) decided to expand South Carolina’s energy capacity by investing in nuclear power. The Owners selected a modular design engineered by the Westinghouse Electric Corporation (“WEC”) – the AP1000 – and opted to construct two reactors in Jenkinsville, South Carolina, at the V.C. Summer site, a location already supporting an existing reactor, Unit 1. WEC would oversee the Project.

The Project was plagued with scheduling issues from the beginning. These reached a crescendo in 2015. A dysfunctional relationship between WEC and its constructor, CB&I, led the parties to seek a different arrangement. WEC would buy out CB&I and hire Fluor Enterprises to take over the build. This would also signal a change in hierarchy – whereas CB&I occupied a lateral position from WEC, Fluor would be WEC’s subordinate.

In anticipation of this move, WEC initiated a due diligence effort known as Project Bluefin. Project Bluefin would, among other things, evaluate work streams to assess the health of the Project, as well as various costs and timelines associated with completion. At its conclusion, Project Bluefin projected a “+13 months” push on both new units.

At the same time, the Owners retained the Bechtel Corporation to evaluate the Project. In October 2015, Bechtel presented its preliminary results. Those results indicated that Unit 2, the “lead” unit, would most likely be completed between December 2020 and August 2021, eighteen to twenty-six months after the reported June 2019 completion date. As for Unit 3, the “lag” unit, Bechtel projected completion between June 2022 and June 2023, twenty-four to thirty-six months beyond the reported June 2020 completion date.

As a result of Project Bluefin and the Bechtel assessment, all parties were on notice that the Project was woefully behind schedule. This prognostication was of particular concern given the unique incentives and financing structure attached to the Project.

First, the federal government had encouraged nuclear expansion through the Energy Policy Act, which established production tax credits. If the Project were completed before January 1, 2021, SCANA could offset its ratepayers’ costs through \$1.4 billion in tax credits. The tax credits were conditional, though, and would expire if the deadline were not met.

Second, the state of South Carolina had adopted the Base Load Review Act in 2007, which permitted the utilities to pass onto their customers the cost of construction rather than wait for completion of the Project. The costs of building Units 2 and 3 were incorporated into the utility bills of South Carolina ratepayers for years, with the only requirement that the utilities act “prudently.” Arguably, an overrun of several years would not have been prudent.

The imagined solution was the onboarding of Fluor as constructor. Fluor's reputation for stepping into disastrous situations and fixing them had been established years before in New Orleans, and the parties talked about a "Katrina response" from Fluor to rescue the Project. Unfortunately, Fluor had to overcome the obstructive conduct of WEC, as embodied and promoted by Benjamin.

Prior to January 2016, when WEC was in a "consortium" relationship with its builder, CB&I, it did not have visibility into or control over the schedule. The schedule it inherited was unworkable and needed to be recalculated. As constructor, Fluor desperately needed to overhaul the schedule from top to bottom, a process known as "rebaselining."

Bafflingly, WEC fought Fluor's effort to rebaseline the schedule and was loathe to share any information that would cede control over the schedule. Basically, it stepped into the dysfunctional shoes of CB&I. Though by this point August 2019 (Unit 2) and August 2020 (Unit 3) were the approved completion dates, Benjamin's mantra was adherence to the June 2019-June 2020 schedule. He would tolerate no dissent.

We can surmise that his motives were twofold. First, the longer the Project took, the higher the cost. Second, the Project -- along with a parallel nuclear construction effort in Georgia (Vogtle) on behalf of the Southern Company -- was WEC's demonstration to the rest of the domestic market that the AP1000 was a viable design. Finishing over-budget and out of time -- particularly if the client forfeited \$1.4 billion in tax credits -- would be bad marketing. One can imagine that few utilities would be interested in a construction project that ran billions of dollars beyond its projected cost with no reasonable time horizon for bringing revenue-generating power online.

Fluor was working day-to-day from a broken schedule. Its frustrations reached a boiling point in August 2016, when John Dempsey, Senior Vice President and Project Director for Fluor, sent two urgent letters to WEC.

The first letter stated:

While many of Fluor’s planners and managers believe, based on their years of professional experience, that the current schedules are *unrealistic*, they also believe it would be *unethical* to produce schedules and drive to schedules they believe are *not realistic* or *impracticable* under the circumstances. Relying on such unrealistic schedules will lead to needless expenditure of funds and an overall increase in the cost of the project.

Fluor wants to do all it can to support WEC’s goals and objectives, but Fluor also believes that it has a responsibility to advise WEC when these goals and objectives seem *highly improbable*, which is the purpose of this letter.

Again, Fluor requests that it be permitted to perform a more objective analysis to provide an analytical response that we believe is likely to support this opinion. However, *Fluor is hindered* in its ability to perform such an analysis so long as *WEC continues to withhold* providing an electronic copy of the schedule.

See Attachment J (emphasis added). The second letter proposed a compromise solution: Fluor would submit two ETC¹ calculations, one based on the artificial WEC deadlines, and the other based on a realistic, data-based assessment of the Project. See Attachment K. In response, Benjamin sent an email to his team:

“Also when do we release Dempsey? Rest of his team? Stop EAC effort? Who has action.??”

See Attachment L.

Instead of addressing Fluor’s concerns, Benjamin used his position to quash dissent and, if his wishes had been followed, fire the author of the letters. Benjamin’s intransigence left Fluor operating without a viable schedule for the duration of the Project.

¹ ETC stands for “Estimate to Complete” and is a cost evaluation. Since this was a construction project, cost is substantially driven by schedule.

In September, WEC and Fluor held a peace conference in Aiken, South Carolina. Fluor saw no viable alternative but to follow the lead of WEC and trust that a reliable schedule would eventually appear.

The Owners also believed that WEC and Fluor were working on a rebaselined schedule. Though they knew that the Project was behind, they believed that the appropriate way forward was to develop an accurate schedule. In part, their misrepresentations to the public were to buy time for the rebaselining effort. They had no idea that Fluor was under duress, and that Benjamin, on behalf of himself and others, was the cause.

Later that fall, though, WEC recognized that the Project and the companion reactors in Georgia were significantly over budget. To address the multi-billion dollar overrun, WEC conducted three separate ETC efforts to try to move the cost overrun below \$2.5 billion from around \$6 billion. All three supported the higher number. Benjamin again exerted influence, this time on the budgetary side, to cut billions of dollars from the projects through imagined savings. The three individuals tasked with conducting the ETC evaluations were summarily disregarded, dismissed, or reassigned.

Ultimately, Toshiba determined that the overrun was indeed in excess of \$6 billion, and a catastrophic chain of events followed, culminating in the bankruptcy of WEC and the abandonment of the Project.

WEC never produced a rebaselined schedule.

Benjamin was relieved of his duties on March 14, 2017.

The Government has attached several documents supporting the above narrative.

Attachment A: CEO Talking Points forwarded by Skip Abney (SCANA) to Steve Byrne, April 2015

- “Consortium has no credibility for developing a realistic schedule.”
- “In March 2015, the consortium communicated that the Unit 2 [substantial completion date] had slipped 52 days to Aug 10, 2019...As of Apr 20, 2015, Unit 2 substantial completion had slipped 70 days past the June 2019 commitment.”
- “Incomplete design and late design changes continue to significantly impact construction execution and schedule.”
- “In the last two years, less than 8% of direct work has been completed...And despite the negative trend in craft productivity, in the next 4-1/2 years, 84% will need to be completed to meet the Jun 2019/Jun 2020 SCDs.”
- “Consortium has no credibility for developing a realistic cost estimate.”
- “Production tax credits are at risk.”

Attachment B: Project Bluefin Schedule Evaluation

- “Impacted schedule, with constraints removed and introduction of impacts, is approximately +13 months.”

Attachment C: Preliminary Results of Bechtel Assessment

- Current COD (Commercial Operation Date) Unit 2: June 2019, with an adjustment of 18 to 26 months, with a new COD of December 2020 to August 2021
- Current COD Unit 3: June 2020, with an adjustment of 24 to 36 months, with a new COD of June 2022 to June 2023

Attachment D: Email from Kenneth Browne to Skip Abney and others, November 11, 2015

“The Fluor team members have stressed many times in many meetings that they recommend a new estimate be prepared based on a bottom up determination of quantities from design drawings and usage of Fluor unit rates and labor costs. I’m not sure how or when this is going to happen, but it keeps coming up...That is a WEC and Fluor issue and I don’t know how it is going to be resolved. If a new bottom up estimate is done, I think that is the one we need to push to be involved in. It also is the one that the cash flow and milestone payments should be derived from. Fluor also needs the same information to develop the resource loaded schedule and resource requirements...”

Attachment E: WEC Internal Staff Assessment Summary Report regarding Jeffrey Benjamin, November 2015 (basically, this is a performance evaluation)

“**Trust Erosion with WEC Staff:** Many peers commented that it appears more care is spent within NPP, and not enough on the notion of “One-Westinghouse.” This is further [exacerbated] by rarely being present at WEC Staff meetings. A lack of response time to peer emails, lack of 1-on-1 time, not respecting peers’ time, blaming direct reports of peers, etc., are several issues brought forth by WEC staff members that undermine an already shaky set of relationships. This results in peers feeling that they cannot go to Jeff [Benjamin] with feedback, they are reluctant to provide input or ideas, and generally find it difficult to imagine working for him. If the current trajectory continues, organizations can become more intensely ‘siloes.’”

Culture of Fear: While the stresses and demands of the job are undeniable, there is a tendency of jumping to conclusions about others’ ability or intentions, blaming others for mistakes or missed

deadlines, and sending out overly direct emails that can often intimidate others. This creates a culture where direct reports and even peers are reluctant to raise issues out of fear they will look bad or be blamed. The greater organizational risk is that people become too competitive with each other and ‘siloe’d’ in their thinking, trying to protect reputations and their “turf” rather than working across boundaries to solve deep problems. There is an opportunity to start giving people the benefit of the doubt, and take a pause when things aren’t going well.”

“While clearly brings innovative ideas to Westinghouse, dismissive style and tendency to blame can create a fear in others to bring forth ideas and work in a more collaborative manner. This impacts others’ ability across the organization to experiment with ideas, and instead of inspiring innovation and openness, fosters ‘siloe’d’ thinking and a ‘C.Y.A.’ mindset.”

“Peers interviewed during this process unanimously felt an erosion of trust. It is difficult for peers to forgive and/or trust when encountering behaviors such as: not going directly to a peer in an open collaborative way to dialogue around an issue; hiring someone to monitor a particular issue/person/department; intimidating subordinates and writing off certain peers’ direct reports; and not physically being present with WEC staff members...”

Attachment F: Talking Points, MRC, March 6, 2016 [likely 2015]

- “...when Jeff Benjamin says his engineering is complete on Apr 30...and nearly a year later – it’s still not complete and major impediment to procurement and construction progress.”
- “Schedule – if it’s not well vetted and achievable...Its misleading and quite frankly deceptive.”
- “*As Owners...we are simply holding on...hoping and trusting the Consortium will one day pull it all together.*” (emphasis added)
- “Seven years later...Engineering is not complete...No one on our team can tell us...just how incomplete it is...We simply parrot what they tell us...hope for better times...I was embarrassed for the team on Friday...Clearly a problem effecting construction.”
- “Construction...is off the chart poor...11% over the last 36 months...*That pace says we complete [in the year] 2038...We seem to be indifferent to it.*” (emphasis added)

Attachment G: Garry Flowers email to Jeff Hawkins (Fluor), April 1, 2016

“[I] never said we could make 3% [completion rate] any time soon. I did say, when asked the question by Jeff Archey [SCANA], that at this time we are providing resources within our scope to support WEC as they work towards improving the productivity in the field. I never committed to any percent other than to say we would do everything under our control to eventually get to a 3% goal. *I also said in that meeting Fluor does not control all the components that go into improving monthly progress, like engineering, procurement, modules, etc. obviously Benjamin omitted a lot of the facts.*” (emphasis added)

Attachment H: Kevin Marsh (CEO, SCANA) notes from President’s Meeting, June 30, 2016

“Missing target dates – no agreement on schedule between W[estinghouse] and F[luor] – heated comments between Gary Flowers [Fluor] and Danny [Roderick] on target schedule dates. Gary said these dates are not Fluor’s.

Driving to milestones per Gary Flowers – What does this schedule look like? – Do we have access to this?”

Attachment I: Steven Scott to Sean Ervin, Niall Glover cc'd (Fluor), August 11, 2016

“I am constantly bombarded with VCS schedule questions...It is causing great duress to my PC team and I, due to the fact that *the Production “Live” schedule is a complete farce and I do not trust any dates outside of 3 weeks*, plus, we have been instructed that Fluor does not give out schedule information. The fact that PMO and others are pushing for these systems, when the truth has to be known that we are barely 30% complete and will not be ready for these activities for months, if not over a year. We do not mind planning for these activities, but we can't build the production schedule to show correct time frames when it pushes out some Westinghouse payment milestone or some other fabricated date. We would have to unlink activities to do this...I do not have an answer for these people. I am very uncomfortable with this situation and this is not how I have been trained to conduct business in my 25 years with Fluor. *To me, what we are doing is unethical, borderline public fraud and could very well be criminal...*Someone needs to step up and stop this situation and advise our upper management of my concerns.” (emphasis added)

Niall Glover to David Seaton (Fluor)

“Find below [in this context, above] the discussed email from Steve Scott, whom is not the only person that shares these same concerns...While numerous WEC/WECTEC personnel may privately, ‘off the record’ agree that the current WEC Master Project Schedule is unrealistic, not achievable; almost certainly none would likely commit to any kind of formal acknowledgement or confirmation of the same.”

David Seaton response to Niall Glover

“I think we finally have a compelling case to present that will show *WEC is behind the scenes driving this behavior.*” (emphasis added)

Attachment J: Schedule Management Concerns letter, Dempsey to WEC, August 31, 2016, 00036

“Although many Fluor managers have suggested that the current schedule (Domestic Master) is unrealistic or impractical, such a suggestion may be viewed as very subjective and a way to “take the easy way out”. *Fluor would prefer to perform a schedule risk analysis to provide an objective view with statistical analysis. However, such an effort is being thwarted by WEC* not allowing Fluor to transfer a copy of the schedule to its system so that Fluor SMEs can perform a risk analysis using an industry standard program.

While many of Fluor's planners and managers believe, based on their years of professional experience, that *the current schedules are unrealistic*, they also believe *it would be unethical to produce schedules and drive to schedules they believe are not realistic or impracticable under the circumstances*. Relying on such unrealistic schedules will lead to needless expenditure of funds and an overall increase in the cost of the project.

Fluor wants to do all it can to support WEC's goals and objectives, but Fluor also believes that it has a responsibility to advise WEC when these goals and objectives seem highly improbable, which is the purpose of this letter.

Again, Fluor requests that it be permitted to perform a more objective analysis to provide an analytical response that we believe is likely to support this opinion. However, Fluor is hindered in its ability to perform such an analysis so long as WEC continues to withhold providing an electronic copy of the schedule.

Fluor will continue to follow WEC's directives on methods of managing the schedule and holding key dates by WEC's use of schedule constraints, but the fact that Fluor follows such directives should not be misunderstood to mean that Fluor agrees with this approach. To be clear, Fluor does not agree with this approach." (emphasis added)

Attachment K: Fluor ETC Development Schedule letter, Dempsey to WEC, August 31, 2016, 00035

"The attached schedule shows two completion dates,

- October 21st for the ETC based on a "June/June" project completion.
- November 11th for the ETC based on Fluor recommended schedule."

Attachment L: Benjamin email to Churchman and Crenshaw re 00035 letter, WEC, August 31, 2016

"FYI – comments??

Also when do we release Dempsey? Rest of his team? Stop EAC effort? Who has action??

Jeff"

Attachment M: Benjamin email to Danny Roderick (Toshiba), September 16, 2016

"Danny

I would strongly prefer a prejob brief with you in order to review our ongoing performance issues and some of the Fluor issues we are dealing with. Importantly Fluor still believes they have a mandate to develop an independent schedule and cost estimate. *That was never in the cards and can only spell trouble.* We also are suffering from lack of nuclear experienced people from Fluor. Time to head this off at the pass. Please let me know what works for you – anyplace/anytime. Thx Danny. (emphasis added)

Jeff"

Attachment N: David Weiner email to Fluor team (internal), September 16, 2016, forwarding WEC response

"Here is the reply from WEC to our letter on schedule concerns.

We do not intend to respond further at this time.

The big thing here is they confirmed they will not be providing the schedule file for us to do the schedule risk analysis."

Attachment O: Byrne notes from President’s Meeting, September 26, 2016

[Kevin Marsh, CEO, SCANA]: Do you know of anything today that tells you dates not achievable
[Jeff Benjamin]: No, nothing today, current sked Nov ’19, July ’20 and working mitigation U2
SB...Sked from Fluor end of Oct – internal gov – something EOY

Attachment P: Jose Gutierrez, WEC CEO, to Danny Roderick, Toshiba, “Confidential – WEC Leadership September 27, 2016

“I think it is time to make changes in the leadership team in two areas: Finance and NP&MP.”

“Jeff [Benjamin] has increasingly struggled and made some key missteps in his leadership role. Under Jeff’s leadership, the US sites have struggled to develop the performance and efficiencies needed to bring the projects in line for successful completion...Nuclear safety concerns abound at the US sites, with employee survey data showing that basic NSC culture problems are getting worse, and employee morale is deteriorating.”

“Jeff’s peer relationships in addressing the issues noted above have been extremely poor. He does not engage with his peers, with finance, or with his manager in dialoging about challenges with the project sites, or with New Plant BD work. Only when asked will he volunteer information, but only in fragments, creating confusion across the organization as to the true financial and operational status of the NP&MP business, the project sites, and the BD prospects for New Plant wins at Westinghouse.”

“Jeff’s management style varies wildly from inattentive/absent at times, to complete micromanagement of every detail of every direct report’s responsibility at other times. *Comments from many direct staff and employees reconfirm a fear of addressing concerns with him for fear of being punished. His leadership style is more command and control than participative. Morale in his organization is low.*” (emphasis added)

Attachment Q: SCANA Form 10-Q filed November 4, 2016.

“In a discussion of the project status on September 26, 2016, and in response to SCE&G’s specific questioning regarding work crew efficiency and productivity and schedule mitigation efforts, WEC executive management stated that it had no reason to believe that the August 2019 and August 2020 guaranteed completion dates would not be met. WEC submits monthly schedule updates, however, and it has reported that there are significant risks to achieving the current guaranteed substantial completion dates. WEC has also reported that it is continuing to develop detailed mitigation plans to address those risks.”

Attachment R: WEC/Toshiba – Intelligence from Dec 29, Jan 6 & Jan 11...meetings and calls

“Benjamin also shares a very half-baked plan to bring Bechtel expertise on board to help complete the domestic projects.”

“Benjamin is pummeled by the group.”

“Final project schedule to be completed (by Carl Churchman) and submitted to Toshiba Jan 20...Schedule will likely be long but WEC is doing its best to keep the PTC dates.”

“Per Jeff Benjamin...Schedule will be based on a PF of 1.0...which automatically questions the credibility of plan.” (emphasis added)

“Project Schedule will be released to owners [by February 14, 2017.]”

Attachment S: Kevin Marsh, CEO, SCANA, to Danny Roderick, President and CEO, Toshiba

“Site personnel have shared with [Office of Regulatory Staff] what was communicated to us regarding Fluor’s input to the fully integrated construction schedule. Our understanding was that the input from Fluor was delivered to Westinghouse in the 3rd quarter of 2016. Westinghouse represented to us that the information provided by Fluor would be evaluated and considered in producing a new fully integrated construction schedule by the end of 2016. We were later informed that the updated schedule would not be available until late January.”

“I understand the input from Fluor is a component of the updated revised fully integrated construction schedule to be released by Westinghouse. Please let me know when the revised schedule will be available for review by South Carolina Electric & Gas Company, Santee Cooper and the ORS. The ORS has requested the Fluor portion of the schedule by January 10, 2017. The ORS has been supportive of the new nuclear projects since inception in 2008. Providing them with a supportive schedule for completion of the new plants is very important and deserves immediate attention.”

Attachment T: Letter from attorneys for Kenneth Langdon (WEC) to Toshiba and WEC, January 6, 2017

“Kenneth Langdon has retained the law firm of Katz, Marshall & Banks, LLP to represent him with respect to all claims he holds against Toshiba Corporation, Westinghouse Electric Company, and certain officials pertaining to his employment and involuntary separation from Westinghouse Electric Company...in violation of federal and state whistleblower protection laws.”

“On December 3, 2016, Mr. Gutierrez [CEO, WEC] tapped Mr. Langdon to lead a team of 48 professionals...to conduct an independent review of the estimate to complete (“ETC”) for the remaining work on four Westinghouse AP1000 nuclear power plant units currently under construction at the V.C. Summer (South Carolina) and Vogtle (Georgia) power stations.”

“[Mr. Gutierrez] recognized that the ramifications to Toshiba and Westinghouse could well be catastrophic to both Westinghouse’s and Toshiba’s shareholders, if as feared, the ETC Independent Review Team concluded that the revised ETC was in the expected range of a \$7 to \$8 Billion dollar variance from original estimates.”

“On December 22, 2016, Mr. Langdon presented the dire results of the ETC Independent Review Team to Mr. Gutierrez, as well as Jeff Benjamin, Senior Vice President New Plants and Major Projects and others. *In addition to advising you that the ETC required an increase of \$7.08 Billion, he stated that Westinghouse’s current Commercial Operation Dates (“COD”) were not achievable, and that even with significant improvements to productivity and efficiency, it was not possible that any of the projects would be completed on schedule. In a discussion later that day, Mr. Benjamin pressured Mr. Langdon to reduce his calculation from \$7.08 Billion to \$5.8 Billion. Mr. Langdon told Mr. Benjamin that the \$5.8 Billion number was based on the most aggressive*

assumptions possible and that there was no credible evidence or reasonable assumptions available to support any further decrease.” (emphasis added)

“On December 26, 2016, Mr. Langdon attempted to present his team’s conclusions to you along with top executives from Toshiba and Westinghouse, including...Mr. Benjamin...During the course of Mr. Langdon’s presentation, Mr. Roderick, and others cut him off repeatedly, impugned the group’s findings and his competence, and bullied and intimidated him in an effort to pressure him to dramatically slash the ETC Independent Review Team’s estimate.”

“Mr. Langdon experienced his treatment to be abusive and consistent with a chilled work environment that was permeated by hostility, lack of transparency, and retaliation...Others present at the December 26th meeting confirmed that Mr. Langdon had been treated in a retaliatory, “shoot the messenger” manner and acknowledged that they were too fearful about similar treatment to register dissent at the meeting.” (emphasis added)

“On December 30, 2016, Mr. Langdon was called into a meeting with Mr. Churchman and was notified that he was being removed from his position at the direction of Mr. Roderick...Mr. Churchman has candidly advised other Westinghouse officials that Mr. Roderick was angry at Mr. Langdon for the conclusions he delivered at the December 26, 2016 meeting about the deplorable state of the projects and demanded his removal from his position.”

Attachment U: Email from Mark Lewis (WEC) to Elam, Churchman, and other WEC employees, January 27, 2017

“[I]t is very important to characterize the process by which you have arrived at the schedule dates that were agreed a couple of weeks ago...Specifically, as the “high level” assessment has been done to arrive at key new schedule dates, *we need to understand (&describe) the basis for arriving at those dates (given that they are not based on detailed sequencing).*” (emphasis added)

Attachment V: Press Release (February 14, 2017): SCANA Receives Reaffirmation from Westinghouse Regarding Completion of VC Summer Nuclear Project

“WEC and its parent guarantor, Toshiba Corporation...are committed to completing the two new Westinghouse AP1000 nuclear units being constructed in Jenkinsville, SC...In addition to this reaffirmation, WEC provided SCE&G with revised in-service dates of April 2020 and December 2020 for Units 2 and 3, respectively. WEC intends to make the complete integrated project schedule supporting these dates available for SCE&G to review. The completion dates provided in the new schedule are within the 18 month contingency period provided under the construction provisions of the Base Load Review Act administered by the Public Service Commission of South Carolina and would enable both units to qualify, under current law, for the federal production tax credits.”

Attachment W: Email from Kevin Marsh (CEO, SCANA) to Jose Gutierrez (CEO, WEC), March 1, 2017, subsequently forwarded to Jeff Benjamin

“The revised fully integrated construction schedule may be the most critical piece of Information we need at the present time. We were informed by you on February 14, 2017 that Westinghouse had developed a fully integrated, audited and approved construction schedule, and that the schedule would be made available to us for review immediately. This is a top priority of the Public

Service Commission of SC and the Office of Regulatory Staff who together have oversight and regulatory authority over our project. Based on your comments, we informed them that we would have access to the new schedule on February 14th and would make it available to them once we had reviewed it. I am now informed that we do not have a fully integrated schedule for the project and will not receive one until March 17, 2017. *We continue to get conflicting information regarding the revised schedule from leadership at the site.* We are very disappointed that we don't have the fully integrated schedule and desperately need accurate information on the schedule so we can inform our regulators, customers, and the financial community." (emphasis added)

Attachment X: Email from Steve Byrne (COO, SCANA) to Kevin Marsh (CEO, SCANA), March 14, 2017

"I got a call this afternoon from Jose Gutierrez, he wanted to let me know about some organizational changes at Westinghouse; Jeff Benjamin is no longer with WEC."

Attachment Y: Letter from Lonnie Carter (CEO, Santee Cooper) to Jose Gutierrez (CEO, WEC)

"You may recall the meeting you had with SCANA and Santee Cooper's executive teams in New York on March 23, 2017. During that meeting, you informed us for the very first time that *no Project construction schedule existed – a project schedule that had been promised to us by Westinghouse officials multiple times through a series of deadlines over a period of years.*" (emphasis added)

The following analysis of Benjamin's actions and conduct under the factors described in Title 18, United States Code, Section 3553(a), supports the Government's sentencing recommendation.

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

The Project was a multi-billion-dollar effort to build two new nuclear reactors at the V.C. Summer site. The Owners, with limited nuclear experience, relied heavily on the management and skill of Westinghouse and its executive team. That team failed catastrophically. Benjamin, as Senior VP of New Plants and Major Projects, occupied a critical position. He knew the challenges faced, and he controlled the messaging.

In late 2015, the Project was in a death spiral – over-budget and behind schedule. In part, this was due to CB&I's ineptitude and lack of transparency. January 2016 offered the opportunity

for a reset, both in terms of progress and reporting. Fluor would take over construction. WEC would inherit the schedule. In an ideal setting, WEC would have facilitated Fluor's efforts.

Benjamin, as demonstrated by the above Attachments, made the opposite choice. He drove Fluor and his WEC subordinates to adopt a June 2019-June 2020² completion schedule, despite the fact that it was unsupported by viable data or any progress metrics being reported on the ground. He insisted on those dates because to adopt realistic dates would have risked the continued funding provided under the BLRA and sacrificed \$1.4 billion in production tax credits. The domestic marketability of the AP1000 would have cratered.

The Owners knew the Project was in bad shape, but they were willing to buy WEC time to implement the January 2016 reset. Some executives with SCANA misrepresented aspects of the Project, believing that the ultimate schedule rebaseline – whatever it turned out to be -- would give an accurate snapshot of the task ahead.

Behind the scenes, Fluor expected that it would be allowed to develop a viable schedule to guide its progress. But WEC controlled the schedule, and it was unwilling to provide full transparency. Fluor's frustration was palpable, which led to the issuance of two extraordinary letters on August 31, 2016, the first alerting WEC of the ethical concerns of pressing forward with an unworkable, false schedule, and the second requesting authorization to develop its own Estimate to Complete alongside WEC's preferred (artificial) schedule.

Benjamin learned of both letters, and his response was not to vet Fluor's concerns, but to suggest firing the author of the letters, John Dempsey.

This is consistent with Benjamin's dysfunctional management style, described in

² Those dates sometimes fluctuated by a matter of months depending on the meeting, but they always fell within the PTC deadline of January 1, 2021. None were achievable.

Attachments E, Q, and T. Benjamin was not responsive, did not respect his peers' time, blamed direct reports for problems, squelched feedback, fostered a culture of intimidation, dismissed suggestions from the team, and controlled the flow of information.

In short, he was a toxic manager, and his toxicity was deployed in support of his single-minded determination to have everyone adhere to the June 2019-June 2020³ schedule, even when those dates reached the point of absurdity. Not only did he insist on those dates, but most critically, he squelched the rebaselining effort, which would have provided data to undermine those dates once and for all.

Critically, after the exchange of letters in August and September 2016, Benjamin was on notice that Fluor believed June 2019-June 2020 was not possible. But when asked by SCANA CEO Kevin Marsh on September 26, 2016, whether he knew of anything that told him the completion dates were not achievable, he indicated no, and volunteered equally unreliable dates of November 2019 and July 2020, both of which were similarly years off the mark.

This language was echoed by SCANA in its November 4, 2016, Form 10-Q, upon which the charge in the Information is centered:

In a discussion of the project status on September 26, 2016, and in response to [SCANA's] specific questioning regarding work crew efficiency and productivity and schedule mitigation efforts, WEC executive management stated that it had no reason to believe that the August 2019 and August 2020 guaranteed completion dates would not be met. WEC submits monthly schedule updates, however, and it has reported that there are significant risks to achieving the current guaranteed substantial completion dates. WEC has also reported that it is continuing to develop detailed mitigation plans to address those risks.

See Attachment Q. This falsehood enabled the project funds to keep flowing long after they should have stopped and increased the harm that is still felt by the public in South Carolina.

³ See previous footnote regarding schedule fluctuations.

While all this is going on, the Owners believed that the schedule was being rebaselined. They had no idea that, not only was the schedule not being rebaselined, Fluor's requests to rebaseline were being denied by WEC at Benjamin's direction.

The fiction propagated by Benjamin ultimately caught up with WEC at the end of 2016 and early 2017. No viable schedule existed. Efforts to estimate cost repeatedly came up with a figure billions of dollars beyond what WEC and Toshiba could afford. Benjamin and others pressured the various teams to lower their estimates, to no avail. When the truth became known, Benjamin was fired, and WEC declared bankruptcy.

No one else occupied a position comparable to Benjamin's in terms of project visibility and messaging. Had Benjamin encouraged accuracy and transparency while conveying the truth at every opportunity, the catastrophic conclusion to the Project would have been avoided, perhaps not in terms of completion, but certainly in terms of fallout. Instead, he chose expediency, secrecy, deflection, and misdirection – with his subordinates, with his peers, with his chain of command, and with the Owners. His was the most egregious conduct of any of the actors, and his sentence should be the maximum allowed under the plea agreement.

(2) **The need for the sentence imposed –**

A. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

The citizens of this country place extraordinary trust in capitalism and markets, and they rely on the information that they receive from issuers. Corporate executives are held in high regard. Their decisions and actions are often out-of-sight in real time, commensurate with the degree of trust placed in them. Only in the aftermath of their failures, when the same citizens are often left holding the bag, are their actions scrutinized. Unfortunately, with mammoth companies the size of

WEC, executive failures often involve astronomical sums with predictable consequences. Such was the case here. WEC went bankrupt. SCANA no longer exists. Thousands of employees lost their jobs. Billions of dollars of investment now sit rusting in Jenkinsville. And while Benjamin shares responsibility for the failure of this project and the harm it imposed on the residents of South Carolina, he is singularly culpable for a critical misrepresentation that (i) permitted the scheme to continue and (ii) substantially increased the losses that the owners (and South Carolinians) endured.

Corporate prosecutions at this level are rare. If accountability is to be a priority in business decision-making, then misrepresentation and obfuscation must be punished when it is discovered. Benjamin's conduct, and the nature and flavor of his decision-making, are well-documented. The Government urges this Court to levy the maximum sentence agreed to by the parties.

B. To afford adequate deterrence to criminal conduct. The Government believes this prosecution will provide adequate deterrence to Benjamin for future activities. To the extent the sentence is observed by others, the maximum sentence would likewise inform other corporate executives that this kind of dishonesty leads to prison.

C. To protect the public from further crimes of the defendant. The Government believes Benjamin is no longer a viable player within the nuclear industry as a result of this felony conviction and the conduct that contributed to it.

D. To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The Government leaves this to the Court's discretion.

In conclusion, this prosecution has been an arduous, costly, at times painstaking exercise

– but it has been worthwhile. Corporate executives too rarely answer for their crimes, but Benjamin’s conviction here permits the Court to address his conduct with an appropriate remedy. We ask that Benjamin be imprisoned for one year and levied a financial penalty of \$100,000. His actions – among the most egregious of the executive defendants involved in the Project – merit this punishment.

Respectfully submitted,

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