

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: * Case Nos: 12-10460-61, 12-10463-64 (MFW)
LSP ENERGY LIMITED * Chapter 11
PARTNERSHIP, et al. * (Jointly Administered Under
Case No. 12 – 10460 (MFW))
Debtors. *
* * * * *

**APPLICATION FOR AUTHORITY TO EMPLOY WHITEFORD TAYLOR &
PRESTON LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-
POSSESSION, NUNC PRO TUNC TO THE PETITION DATE**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”)¹, by and through their undersigned counsel, respectfully submit this application for authority to employ Whiteford Taylor & Preston LLP² (“WTP”) as attorneys for the Debtors, *nunc pro tunc* to the Petition Date (the “Application”), and state as follows:

Jurisdiction

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.
2. The relief sought by this Application is based upon sections 327(a), 327(c), 328, 330 and 1107 of 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) and has been filed in

1 The Debtors include LSP Energy Limited Partnership (“LSP” EIN 2042), LSP Energy, Inc. (“LSP Energy” EIN 1174), LSP Batesville Holding, LLC (“LSP Holding” EIN 5402), and LSP Batesville Funding Corporation (“LSP Funding” EIN 5403).

2 Whiteford Taylor & Preston LLP operates as Whiteford Taylor & Preston LLC in Delaware. Both Whiteford Taylor & Preston LLP and Whiteford Taylor & Preston LLC will be employed by the Debtors in these chapter 11 cases.

accordance with Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Procedural Background

3. On the date the above-captioned cases commenced (the “Petition Date”), the Debtors each filed with this Court, a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of their properties and the management of their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No statutorily authorized creditors’ committee has yet been appointed in these cases by the United States Trustee. The Debtors’ cases have been consolidated and are being jointly administered for procedural purposes only.

Debtors’ Background and Events Leading to Bankruptcy Filings

5. The main debtor in these cases, LSP, is a limited partnership formed under the laws of the State of Delaware. It owns and operates an electric generation facility (the “Facility”) located in Batesville, Mississippi. The Facility consists of three gas-fired combined cycle electric generators (collectively, the “Units”) with a total generating capacity of approximately 837 megawatts and is electrically interconnected into the Entergy and Tennessee Valley Authority transmission systems. LSP’s principal assets are the Facility and the fifty-eight (58) acre parcel of real property on which it is located, as well as its rights under the Tolling Agreements (defined below).

6. All of LSP’s capacity to produce electricity is sold pursuant to two long term tolling agreements (the “Tolling Agreements”) with J. Aron & Company (“J. Aron”) and the South Mississippi Electric Power Association (“SMEPA”). The Tolling Agreement with J. Aron

covers the capacity of Units 1 and 2. The Tolling Agreement with SMEPA covers the capacity of Unit 3.

7. CPV Batesville, LLC (“CPV”) serves as asset manager for the project. CPV provides oversight for the Facility operations and management as well as accounting, tax and insurance administrative services. LSP employs NAES Corporation (“NAES”) to operate the Facility and to oversee all maintenance work. The plant staff of thirty-three (33) workers at the Facility are employees of NAES. As a result, LSP has no employees.

8. Due to an interruption in the operation of the Facility’s Unit 1 combustion turbine, caused by a mechanical failure that began in May 2011, LSP has been faced with a substantial repair bill for the damaged Unit as well as a reduction in revenues that is on-going. As a result of a series of unanticipated events, the interruption has lasted longer, and has had a greater impact on operations, than anyone predicted. During this process, technical field assistance, repair services and necessary parts were provided by Siemens Energy, Inc. (“Siemens”).

9. The initial failure necessitated a complete rebuilding of the affected turbine. Following the repair, however, and through a series of attempted restarts, inspections and part replacements, the Unit 1 outage continued through 2011 and into 2012. Following the most recent attempted restart on December 12, 2011, Siemens concluded (as did the Debtors’ own independent experts) that a replacement rotor installed by Siemens in October 2011 (the second replacement rotor), was faulty.

10. Confident that the cause of the problem with Unit 1 has been conclusively identified, Siemens recently replaced the faulty refurbished rotor with a brand new rotor. Unit 1 was successfully restarted on February 14, 2012 and is now available for commercial operation. The Facility is now anticipating availability at or near full capacity.

11. In addition to the issues with Unit 1, the Facility's operations were also negatively impacted by an outage in both the steam turbine generator and the combustion turbine generator in Unit 2, creating an outage that ran from October 10, 2011 through January 21, 2012. These issues were discovered during scheduled preventive maintenance inspections.

12. A portion of LSP's losses resulting from the various outages has been covered by insurance. Such insurance recoveries have been, and will be, insufficient to cover the mounting losses from repair costs and business interruption. LSP estimates that out-of-pocket costs for repairs and lost revenues not covered by insurance will be approximately \$19 million with respect to Unit 1 and Unit 2.

13. As a result of the above series of events, although LSP has sufficient liquidity to fund its operations in the near term, it lacks sufficient liquidity to continue funding its operations and also fully service its secured obligations going forward. In order to address its liquidity problem, LSP was forced to file bankruptcy under chapter 11 of the Bankruptcy Code.

14. LSP has filed bankruptcy in order to complete an orderly sale of its assets or the ownership interests in LSP for the benefit of all stakeholders. The remaining three Debtors filed bankruptcy due to their relationship as affiliates of LSP and their ultimate obligations on a significant portion of LSP's secured bond debt. LSP Energy is the general partner of LSP. LSP Holding is the limited partner of LSP and the 100% equity holder of LSP Energy and LSP Funding. LSP Funding is a co-obligor on the bond debt, and each of LSP Energy and LSP Holding has pledged their equity interests in LSP as collateral for the bond debt.

15. LSP anticipates filing a motion to approve sale procedures necessary to market and sell the Facility, either through a sale of LSP's assets or through a sale of the equity interests

in one or more of the Debtors. Because of the highly regulated nature of LSP's assets and operations, LSP envisions that it will take at least six to eight months to complete the sale.

16. LSP expects the sales process will be constructive and generate positive results. On October 24, 2011, an upstream owner of LSP entered into an agreement to sell 100% of its indirect equity in LSP to an investment fund. The base purchase price for the indirect equity interest in LSP under that sale agreement indicates a value of the Facility substantially in excess of all claims. Among the conditions for closing of the sale was the successful restart of Unit 1. However, as discussed above, Unit 1 failed to restart on December 12, 2011. As a result, the potential buyer exercised its right to terminate the acquisition on December 13, 2011. Despite the termination, LSP believes that the amount of the potential buyer's offer sets the stage for a successful sales process.

The Need for Legal Services

17. The Debtors require the assistance of counsel in order to pursue a successful reorganization of their debts and to assist the Debtors with the performance of their duties as debtors and debtors-in-possession herein. The Debtors also require counsel to, among other things, assist them in fulfilling their duties under State and Federal laws, advise them on the legal aspects of contracts, leases, financings, and other business matters, defend them in litigation and to prosecute litigation on their behalf. In short, the Debtors require the full range of traditional business legal services as well as legal services unique to bankruptcy reorganization proceedings.

The Employment of WTP as Bankruptcy Counsel to the Debtors

18. The Debtors have selected WTP to represent them as debtors and debtors-in-possession in these cases because WTP has considerable experience in insolvency and bankruptcy matters, including the representation of debtors in multi-debtor and complex chapter

11 cases. The Debtors have also selected WTP because the Debtors believe that WTP is well qualified to represent them as debtors and debtors-in-possession. The Debtors submit that the retention of WTP under the terms described herein is appropriate under sections 327, 328 and 1107 of the Bankruptcy Code.

The Services to be Rendered

19. The Debtors have retained WTP to assist them with, among other things, the preparation of their bankruptcy petitions and all related documents and pleadings and, subject to approval from this Court, with the prosecution of their chapter 11 cases.

20. The professional services that the Debtors may request WTP to render include, among other things:

- a. providing the Debtors legal advice with respect to their powers and duties as debtors-in-possession and in the operation of their businesses and the management of their property;
- b. representing the Debtors in defense of any proceedings instituted to reclaim property or to obtain relief from the automatic stay under section 362(a) of the Bankruptcy Code;
- c. representing the Debtors in any proceedings instituted with respect to the Debtors' use of cash collateral and/or debtor-in-possession financing;
- d. assisting the Debtors in preparing any necessary applications, answers, orders, reports and other legal papers, and appearing on the Debtors' behalf in proceedings instituted by or against the Debtors;
- e. assisting the Debtors in the preparation of schedules, statements of financial affairs, and any amendments thereto, which the Debtors may be required to file in these cases;
- f. assisting the Debtors in the preparation of a plan of reorganization and disclosure statement;
- g. assisting the Debtors with all legal matters, including, among others, all securities, corporate, real estate, tax, employee relations, general litigation and bankruptcy legal work;

- h. assisting the Debtors with the sale of their assets pursuant to section 363 of the Bankruptcy Code; and
- i. performing such other legal services for the Debtors as may be necessary or desirable herein.

The Standards for Approving Employment

21. Section 327(a) of the Bankruptcy Code empowers the trustee, with the Court's approval, to employ attorneys "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 327(c) provides that "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c). Section 1107(a) provides that "a debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter. 11 U.S.C. § 1107(a). Section 1107(b) provides that "a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b). WTP satisfies all of these standards, as set forth below.

Connections with Parties in Interest

22. To the best of the Debtors' knowledge, WTP has no connection with the Debtors, their creditors or any other party-in-interest in these cases, their respective attorneys or accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as may be described the Verified Statement of Attorneys to be Employed by

Debtors and Debtors-In-Possession (the “Verified Statement”) which is filed herewith as Exhibit A.

No Adverse Interest

23. The Debtors submit that WTP represents no interest adverse to the Debtors as debtors-in-possession or to the Debtors’ estates in the matters upon which WTP is to be engaged for the Debtors.

Disinterested Person

24. The Debtors further submit that WTP is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

25. As set forth in greater detail in the Verified Statement, WTP completed a conflict check that compared, to the extent then known: (a) the Debtors; (b) the Debtors’ non-debtor affiliates; (c) the Debtors’ equity holders; (d) the Debtors’ prepetition secured lenders; and (e) the Debtors’ unsecured creditors, against a list of WTP’s current and former engagements and clients.

26. To the best of the Debtors’ knowledge, based upon the Verified Statement, WTP (a) does not hold or represent any interest adverse to the Debtors or their chapter 11 estates and (b) is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code.

Professional Compensation

27. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person on any reasonable terms and conditions of employment, including on an hourly basis. *See* 11 U.S.C. § 328(a). WTP intends to apply for compensation for professional services rendered in connection with these cases subject to the approval of this Court and in compliance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”), the Local Rules and orders of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by WTP. WTP has advised the Debtors that the current hourly rates applicable to the principal attorneys and paralegals proposed to represent the Debtors are:

Professional	Rate Per Hour
Paul M. Nussbaum	\$525
Martin T. Fletcher	\$525
John F. Carlton	\$500
Thomas J. Francella, Jr.	\$490
Dennis J. Shaffer	\$460
Alan C. Lazerow	\$290
Jennifer Tittsworth	\$250

Other attorneys and paralegals will render services to the Debtors as needed. Generally, WTP’s hourly rates are in the following ranges:

Professional	Rate Per Hour
Partners and Of Counsel	\$390-\$575
Associates	\$290-\$390
Legal Assistants/Paralegals	\$180-\$250

The Debtors understand that the hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions.

28. The hourly rates set forth above are WTP’s 2011 standard hourly rates for work of this nature. WTP is currently billing the Debtors at WTP’s 2011 rates as an accommodation to the Debtors. Additionally, Mr. Nussbaum and Mr. Fletcher have reduced their rates from \$580 and \$560, respectively, to \$525 for these cases. These rates are set at a level designed to fairly compensate WTP for its work and to cover fixed and routine overhead expenses. It is WTP’s policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client’s case. The expenses charged to clients include, among other things, telephone

and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for “working meals,” computerized research, copying and mailing charges from outside vendors and transcription costs, as well as non-ordinary overhead expenses such as overtime for secretarial personnel and other staff. WTP will charge the Debtors’ estates for these expenses in a manner and at rates consistent with charges made generally to WTP’s clients. WTP believes that these expenses should fairly be charged to the clients incurring them rather than to increase the hourly rates and spread the expenses among all clients. In addition, WTP intends to seek compensation for all time and expenses associated with its retention in accordance with sections 330 and 331 of the Bankruptcy Code and any orders of this Court, including the preparation of this Application, the Verified Statement, and related documents, as well as any monthly fee statements or interim or final fee applications.

29. WTP was retained on or about September 9, 2011, pursuant to the terms of an engagement agreement. On September 23, 2011, WTP received a \$75,000 retainer. On January 24, 2012, WTP received an additional \$75,000 retainer. On February 2, 2012, WTP received \$125,000 as an additional retainer. Prior to the Petition Date, WTP received the amount of \$373,478.47 for services rendered to the Debtors and expenses incurred on behalf of the Debtors related to the preparation and filing of these cases, which amounts were either paid directly or drawn from the retainers. As of the Petition Date, a balance of \$13,730.50 remained on WTP’s retainer and is being held to be applied against WTP’s allowed postpetition fees and expenses, as may be permitted by the Court. WTP is not owed any amounts for services rendered to the Debtors or expenses incurred on behalf of the Debtors prior to the Petition Date.

30. In the normal course of the Debtors' businesses, LSP regularly pays the debts of its general partner, LSP Energy, its limited partner, LSP Holding and its affiliate LSP Funding. LSP pays the nominal obligations of these entities pursuant to intercompany agreements due to the fact that these entities only exist in furtherance of the activities of LSP. LSP, per its normal prepetition course of business, has agreed to pay the Court-approved fees and expenses due WTP for its representation of the Debtors in these cases.

31. Other than as set forth herein, there is no proposed arrangement to compensate WTP. WTP has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the shareholders, counsel and associates of WTP, or (b) any compensation another person or party has received or may receive.

Best Interests of the Estates

32. As set forth above, WTP satisfies all the requirements for employment as attorneys for the Debtors under sections 327(a), 327(c) and 1107 of the Bankruptcy Code.

33. The employment of WTP as attorneys for the Debtors is in the best interests of the Debtors' estates and is appropriate under 11 U.S.C. §§ 327 and 328.

Request for Approval of Retention of WTP, Nunc Pro Tunc to Petition Date

34. The Debtors request that WTP's retention be made effective, *nunc pro tunc*, as of the Petition Date in order to allow WTP to be compensated for the work it has performed for the Debtors since the Petition Date, but prior to the Court's consideration of this Application. With the filing of these cases, WTP immediately had to turn its attention to urgent matters including, but not limited to, finalizing various "first day" motions and addressing a variety of business, employee and creditor related issues which arose as a result of the chapter 11 filings. The Debtors submit that under the circumstances, retroactive approval to the Petition Date is

warranted. See, e.g., F/S Airlease II, Inc. v. Simon (In re F/S Airlease II, Inc.), 844 F.2d 99, 103 (3d Cir. 1988), cert. denied, 488 U.S. 852 (1988); Indian River Homes, Inc. v. Sussex Trust Co., 108 B.R. 46, 51 (D. Del. 1989) (approval of Debtors' employment of attorney and real estate agent as of a prior date was not an abuse of discretion).

Notice

35. Notice of this Motion has been provided to the following parties, or in lieu thereof, to their counsel, if known: (i) the United States Trustee for the District of Delaware; (ii) the largest twenty unsecured creditors of each Debtor; (iii) counsel to any known secured creditors of record; (iv) counsel to the Debtors' post-petition lenders; (v) the Debtors' working capital lenders; (vi) counsel to the Indenture Trustee; (vii) Siemens; and (viii) persons who have filed a request for notice pursuant to Bankruptcy Rule 2002 and such other government agencies to the extent required by the applicable rules. The Debtors submit that no other or further notice need be provided.

No Prior Request

36. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an Order, substantially in the form annexed hereto, (i) granting the relief requested herein and (ii) granting such other and further relief as the Court deems just and proper.

