THIS RESEARCH REPORT EXPRESSES SOLELY OUR OPINIONS. We are short sellers. We are biased. So are long investors. So is Fluence. So are the banks that raised money for the Company. If you are invested (either long or short) in Fluence, so are you. Just because we are biased does not mean that we are wrong. Use BOC Texas, LLC's research opinions at your own risk. This report and its contents are not intended to be and do not constitute or contain any financial product advice. Investors should seek their own financial, legal and tax advice in respect of any decision regarding any securities discussed herein. You should do your own research and due diligence before making any investment decisions, including with respect to the securities discussed herein. We have a short interest in Fluence's securities and therefore stand to realize significant gains in the event that the price of such securities declines. Please refer to our full disclaimer located on the last page of this report.

COMPANY: Fluence Energy, Inc. | NASDAQ: FLNC
INDUSTRY: Energy Storage

PRICE (AS OF CLOSE 2/21/2024)
USD 17.01

MARKET CAP
USD 3.0 BN

We are short Fluence Energy, Inc. ("Fluence" or the "Company"), because undisclosed to investors, the U.S. affiliate of its largest shareholder and corporate parent, Siemens, has a filed a lawsuit accusing Fluence of a laundry list of embarrassing and costly engineering and design failures, false representations, and most notably fraud.

Incredibly, Fluence has yet to disclose this ongoing lawsuit to investors. News has not leaked as the claim is not readily available on PACER. We had to send a courier to a court in Arlington, Virginia, to fetch a copy of the counterclaim. But the contents, in our opinion are material and incendiary. We think this lawsuit explains why its largest shareholder, Siemens, has ceased to be major customer, and dramatically cut its once sizable purchases from Fluence to just $11 million in FY23. We also suspect that this lawsuit explains Siemens's decision to start selling down its 33% ownership stake in Fluence in December 2023, which began shortly after the suit was filed. The accusations in the lawsuit, in our view, appear to be setting in motion of tidal wave of stock dilution and selling pressure on Fluence's stock as its major corporate parents sell down their respective stakes and likely withdraw their massive historical support.

To make matters worse, we learned from a former Fluence employee that AES, Fluence's other corporate parent and its largest customer, is frustrated with its current contract with Fluence and is eager to use its size and leverage to obtain better pricing. According to the purchase agreement, AES is free to negotiate better pricing or even take its business elsewhere once it sells just 31% more of its current stake. With AES already selling down its stake and losing its vested interest in propping up Fluence's stock, we think it is only a matter of time before it hammers Fluence on pricing and withdraws financial support.

In addition to its ongoing $250+ million lawsuit with Diablo Energy Storage, news of which sent Fluence shares tumbling as much as 23% in December, we have learned that Fluence is facing potential litigation from Vistra Corp (NYSE:VST) for the September 2021 fire and flooding at Vistra's 300MW Moss Landing facility that caused damages that "at the very least" reached into the tens of millions of dollars. We do not believe that Fluence can weather the financial storm of a major customer exodus and a continued string of multimillion dollar lawsuits.

This is a financially untenable situation for Fluence, which is chronically unprofitable and has historically incinerated cash at a rate that would burn through its current net unrestricted cash position in less than a year. In our opinion, Fluence's purported improvement over recent quarters is the product of accounting games that have materially inflated revenue growth and Adj. Gross Margins, which we think helps to explain why Fluence is on its third CFO in just over two years.

Ultimately, we think that Fluence is on the precipice of being abandoned without the critical subsidies historically bestowed upon it by related parties who have already begun to sell, but who still collectively have another 117.7 million shares to dump onto the market. Fluence recently filed a 135.7 million share shelf, seemingly in anticipation of needing to raise capital in the absence of its parents' financial backing. With just 60.6 million shares currently trading freely, investors could be overwhelmed by a tidal wave of another 253.4 million shares' worth of dilution just as Fluence's financials, lacking parental subsidization, take a major turn for the worse. Ultimately, we think Fluence is facing a perfect storm of crushing lawsuits, angry customers, major shareholders withdrawing generous subsidies, massive insider dumping and a tidal wave of coming dilution.

1. **Biting the Hand that Feeds: Undisclosed to Investors, Siemens Energy Sues Fluence for Project Failure, Material Misrepresentation and Fraud**. State court filings obtained via courier reveal that, undisclosed to investors, Siemens Energy, the US affiliate of Siemens, Fluence's corporate parent and largest shareholder, has filed a lawsuit accusing Fluence

of misrepresentations, breach of contract and fraud. Filed as a counterclaim against Fluence in connection with the Antioch, California project, Siemens Energy alleges a laundry list of embarrassing and costly engineering and design failures as well as knowingly false representations and omissions. The suit is ongoing. In our view, this is the beginning of financial disaster for Fluence, which continues to be hopelessly dependent upon its corporate parents Siemens and AES for sales, financing, and basic corporate functions. We think this lawsuit explains why Siemens has ceased to be major customer, dramatically cutting its once sizable purchases from Fluence to just $11 million in FY23. We also suspect that this lawsuit may explain Siemens's decision to start selling down its 33% ownership stake in Fluence in December 2023, which began only a few days after the allegations were filed in court. This lawsuit, notably the accusations of false representations and fraud, appear to be setting in motion a tidal wave of dilution and selling pressure on Fluence's stock as its major corporate parents sell down their respective stakes. We think that without Siemens, Fluence, will crumble under the weight of its chronic unprofitability and historical cash burn. Ultimately, it is simply stunning that the U.S. energy affiliate of Fluence's largest shareholder has sued the Company, and that Fluence has not disclosed this bombshell to investors.

2. **#1 Customer AES Set to Hammer Fluence on Pricing as it Sells Down Shares**. Siemens and AES have together been Fluence's largest customers, together representing almost 90% of revenue as of Q1 FY22 and over 40% as of Q2 FY23. Siemens has since pulled away. We believe that AES, now Fluence's single largest customer by far, is also poised to hammer Fluence on pricing or take its business elsewhere. According to an interview with a former Fluence employee, AES is increasingly frustrated with its contract, under which it must purchase BESS systems exclusively from Fluence and pay the same prices as other smaller customers. Frustrated with this framework, AES is apparently eager to use its considerable leverage to negotiate better pricing. AES will soon have its chance. We uncovered the AES purchase agreement buried deep within the exhibits to Fluence's filings, which shows that the strict exclusivity and pricing terms set forth in AES's purchase agreement are set to **terminate** once AES's voting power over Fluence drops below a looming threshold. AES started selling Fluence shares in December. Once AES sells down its stake a further 31%, it will be free to demand better pricing commensurate with its size and negotiating leverage, or else take its business elsewhere. If it divests its stake further, the non-compete terminates and AES can even develop competing solutions. With AES already in the process of selling its shares, we believe that **it is only a matter of time before AES has neither a contractual requirement nor a financial incentive to purchase battery storage systems from Fluence at its current generous prices, if at all**. With its largest customer on the precipice of hammering Fluence on pricing, we think this will slash Fluence's revenues and gut its already shaky financials.

3. **String of Litigation and Potential Claims Allege Pattern of Incompetence, Failure and Damages**. On December 20, 2023, Fluence shares fell by as much as 23% on news that Diablo Energy Storage had filed suit against Fluence for a litany of project delays and system failures at its California energy storage facility, demanding over $250 million in damages. This alone would consume most of its net cash position. **But what investors don't know is that this is just the tip of an ugly and expensive iceberg: Fluence is facing a barrage of potential and active claims by customers and contractors for embarrassing engineering mishaps, disputes, and destructive facility catastrophes**.

    a. **Potential New Lawsuit Hangs over Fluence**. Our diligence indicates that Vistra, a large publicly traded energy company, holds Fluence at fault for a major incident at its 300MW Moss Landing facility. Per a former Vistra employee, Fluence failed to test the fire suppression system that Vistra cites as the root cause of the incident, resulting in fire and flood damage that took months and millions of dollars to remediate. Fluence performed so poorly that Vistra reportedly chose another contractor for subsequent phases of the project. Vistra holds Fluence responsible for the damage and is considering a lawsuit, which would add to the storm of litigation claims from Diablo, Siemens Energy and others.

    b. **Diablo Allegations Worse than you Thought**. Our exclusive diligence indicates that the Diablo incident was **far more problematic than Fluence suggests in its disclosures to investors**. Fluence brushes off Diablo's allegations, but we interviewed a Fluence former who described a bevy of missteps so embarrassing that they border on comedic. Diablo's complaint describes Fluence's performance as "woefully deficient," replete with so many defects and systems failures that Diablo submitted over 100 warranty claims.

[Fluence's] reputation was not one of being extremely thorough or taking their time. Or even necessarily being extremely competent either. There were some questionable decisions made…. It was definitely, oh, these aren't, you know, the best people we've ever worked with. And far from it.

- *Former Vistra Employee*

They were struggling to provide enough documentation with enough notice to allow them to keep construction schedules. Once everything was built and containers started being delivered, they discovered all types of field problems that just required constant resolution.

- *Former Fluence Employee*

McMicken Battery Energy Storage System (Surprise, AZ) Explosion Fallout

Figure 9 Interior damage to the energy storage system with the condition after the explosion (left), and condition after debris was removed to gain access to the interior and begin the forensics analysis (right)

Source: McMicken Battery Energy Storage System Event Technical Analysis and Recommendations, DNV GL

Together, these incidents, along with the previously undisclosed Siemens Energy lawsuit, paint a pattern of serial incompetence, project failures and jilted counterparties. Worryingly, our conversations with experts suggest that Fluence has gained a reputation across the industry for doing shoddy work and cutting corners. We believe that this could provoke an exodus of non-related party customers and more rounds of lawsuits which could easily hamstring revenues and drain its balance sheet dry. We are not surprised that Fluence recently missed consensus estimates for its quarterly sales, and we would expect growth to continue to fall as word spreads of these incidents, alleged project failures, and unhappy customers.

4. **Fluence on the Precipice of Financial Collapse if Related Party Shareholders Divest Stakes and Withdraw Subsidies**. Despite masquerading as a fully independent business, Fluence appears hopelessly dependent on Siemens and AES, both financially and operationally. Fluence was spun off as a battery storage system joint venture between AES and Siemens, who each currently own 29% of its shares, respectively. But the party is ending: its corporate parents have begun to divest in earnest, removing all incentive that they have to further subsidize Fluence's sales, operations, and earnings. Such developments portend massive shareholder dilution and the abrupt withdrawal of the financial support upon which we believe Fluence relies to survive.

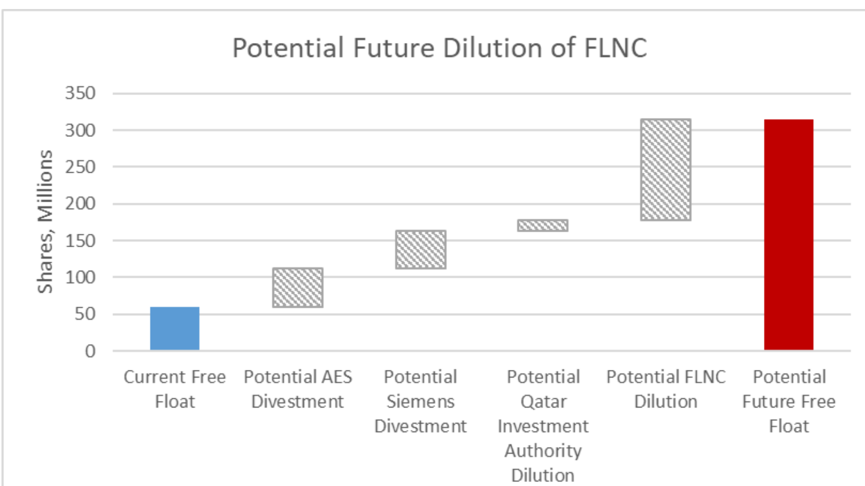
   a. **Fluence reliant on departing parent entities for basic corporate functions, including treasury**. Incredibly, Fluence's parent entities also provide basic corporate functions such as sales, IT, and, most critically, treasury. This highly unusual arrangement inflates Fluence's financials because it spares the Company from having to bear some essential operating costs. It also creates a minefield of conflicts of interest because **its top shareholders, who provide treasury functions for their orphaned former division, still wield enormous influence over Fluence's financial reporting**.

b. **Fluence's cost of capital artificially depressed by Parent Guarantees**. AES and Siemens have provided bridge financing and financial guarantees to support Fluence's supply chain financing program, artificially depressing Fluence's cost of capital and sparing its balance sheet from relatively costly third-party liabilities. We expect this to end as the parent entities are no longer incentivized to provide financing guarantees on behalf of their orphaned subsidiary.

c. **Inexplicable Consulting Revenue Inflates Margins**. In recent quarters, Fluence inexplicably began booking consulting revenue from AES at 74% gross margins, allegedly for providing "consulting services" to its parent entity. We doubt that this "consulting" relationship between AES and its own battery energy storage subsidiary is new – yet only now does Fluence report mysterious related party consulting revenues at towering margins. We see this as a conveniently timed influx of high-margin revenue that has inflated Fluence's historically single-digit or negative Adj. Gross Margin at the same time that its largest shareholders have begun to sell their respective stakes.

Siemens already appears to have bailed on Fluence, reducing its purchases from the Company to a mere $11 million in FY23 before its U.S. affiliate accused **Fluence of fraud, and selling shares for the first time since the IPO just over a week after the claims were filed in court**. As Siemens and AES continue to sell down their respective stakes, they will have no incentive to continue to backstop Fluence's finances and operations. We believe that this will cripple Fluence, which remains chronically unprofitable and a historically prolific incinerator of cash despite generous subsidies from its corporate parents. Investors are left to imagine what Fluence's already ugly financials will look like without such generous corporate benefactors.

5. **Chronic Unprofitability and Cash Incineration Portend Massive Shareholder Dilution**. We believe that Fluence's related party subsidies and countless accounting gimmicks paper over dire underlying business incinerating precious cash. As of Q3 FY23, Fluence was incinerating operating cash flow at a $382 million trailing annual rate, and it was on pace to burn through its net cash balance (excluding restricted cash) in just over two years' time by year-end FY23. This is likely why, just after its Q3 FY23 earnings call, management issued a shelf filing for a massive 135.7 million shares which, if fully executed, would more than double its current Class A share count of 127.1 million and increase its current float by 224%. With only 60.6 million Class A FLNC shares currently trading freely, the seemingly imminent sale of 117.7 million related party shares alone stands to increase the float by close to 200%. We believe that Fluence's continued burning of cash, absent the support of departing related parties, will call for an even larger tidal wave of dilution, and even the assumption of debt at punitive rates.



Source: Company filings and Blue Orca calculations

6. **Accounting Games Inflating Margins and Revenue Growth Set to Unwind After Parents Divest**. In the past several quarters, Fluence appears to have moved closer to generating positive earnings, sending its stock price soaring. But we believe that much of Fluence's sales and earnings growth can be attributed to aggressive revenue pull-forwards and selectively applied earnings adjustments. We estimate that the Company inflated its LTM sales growth rate from 58% to over 80% in Q1 FY23 simply by rewriting of customer contracts that allowed it to recognize revenue on customers in advance of product installation. We view this as pure gimmickry, an accounting change on paper that juiced reported revenue growth without improving the business in any material way.

   In addition, we believe that an assortment convenient and selective earnings adjustments inflated its incremental Adj. EBITDA by 40% in FY23, and its Adj. Gross Margin from 3.9% to 6.6%. We believe that Fluence, through a series of one-off accounting machinations, has exaggerated its gross margins, revenue growth and earnings growth. These aggressive accounting maneuvers appear to have been undertaken before and during the time that its major shareholders, who appear to wield influence over Fluence's financial reporting by supplying treasury services, began to sell down their respective stakes. But we suspect that these one-time financial gimmicks will come undone as they sell out.

7. **Inherent Conflicts of Interest, Executive Turnover and Long-Standing Material Weakness Erode Any Remaining Credibility and Trust**. Fluence is a veritable minefield of governance problems and absurd conflicts of interest, with related parties propping up the business and wielding influence over its financial reporting. But its governance problems and red flags do not end there:

   - **Fluence has had three CFOs and two Chief Accounting Officers since its October 2021 IPO.**
   - It recently replaced its Chief Accounting Officer of two years with a CAO from another green energy company that was accused of manipulating KPIs to deceive investors and game a government tax credit program.
   - Its C-suite and board of directors is stuffed with related party transplants, representing roughly half of the executive team and board of directors, respectively.
   - It has a long-standing material weakness over its percentage-of-completion revenue recognition practices dating back to before it went public. It remains unremediated despite the Company having apparently spent millions to try to fix the problem.

In summary, we view the Siemens Energy lawsuit against Fluence as a bellwether of pain. The Company has failed to disclose that the U.S. affiliate of its largest shareholder has sued it for project failures, materially false representations, and fraud. At the same time, AES, its largest customer, appears to be getting ready to hammer Fluence on pricing or even withdraw purchases. With both Siemens and AES selling down their shares as they seemingly grow frustrated with their wayward corporate ward, we think that Fluence is set to be left to fend for itself without the critical related party subsidies on which it continues to rely.

Fluence is also facing a barrage of potential and active claims or lawsuits from customers like Siemens Energy, Vistra and Diablo, which together paint a picture of serial incompetence, project failures and jilted counterparties. We are not surprised that Fluence recently missed consensus estimates for its quarterly sales, as we would expect revenues to fall as customers learn of these incidents, alleged project failures, and controversies. If this pattern continues, we think Fluence is set for a financial catastrophe as it is unlikely to survive in the cold harsh realities to a competitive market without the warm embrace of its departing benefactors.

Ultimately, we think Fluence is facing a perfect storm of crushing lawsuits, angry customers, major shareholders withdrawing generous subsidies, massive insider dumping and a tidal wave of coming dilution.

I. Biting the Hand that Feeds: Undisclosed to Investors, Siemens Energy Sues Fluence for Project Failure, Material Misrepresentation and Fraud.

State court filings obtained via courier by Blue Orca reveal that, undisclosed to investors, the U.S. affiliate of Fluence's corporate parent and largest shareholder, Siemens, has filed a lawsuit accusing Fluence of breach of contract, material misrepresentations, and fraud. It is nothing short of stunning that Fluence's conduct has been so egregious that the U.S. affiliate of its own corporate parent has sued the Company for fraudulent inducement, alleging a laundry list of embarrassing and costly engineering and design failures as well as knowingly false representations and omissions.

But it is equally stunning that **Fluence has not disclosed this material and active litigation to investors**, who are unlikely to be aware of this stunning development because Arlington County, Virginia state court records are not readily available on PACER, the court's website, or other commercial online sources. We had to send a courier to the court to obtain the filings. Fluence depends on Siemens, its largest shareholder and historically also one of its largest customers, for all manner of support including supply chain financing and treasury. Yet incredibly, Fluence has failed to disclose that Siemens's U.S. energy affiliate has sued, a critical and dramatic development jeopardizing the future of the Company.

We think that this lawsuit is the start of major financial problems for Fluence. We believe that this long-standing dispute explains why Siemens, once a major customer, has dramatically cut its once sizable purchases from Fluence to just $11 million in FY23. We also suspect that this lawsuit may explain Siemens's decision to start selling down its stake in Fluence in December 2023, just over a week after the allegations were filed. This lawsuit and its incendiary accusations, in our view, appear to be setting in motion of tidal wave of stock dilution and selling pressure on Fluence's stock as its major corporate parents sell down their respective stakes.

Ultimately, it is simply stunning that the U.S. affiliate of Fluence's largest shareholder has sued the Company, and that Fluence has not disclosed this bombshell to investors.

<u>Siemens Energy Accuses Fluence of Stunning Incompetence and Fraud</u>

In 2020, per court documents, Siemens Energy, Inc., a U.S. affiliate of the Siemens conglomerate, won a large contract from a third-party energy company to construct a generator system in Antioch, California. Siemens Energy hired Fluence to design, engineer, and deliver the Battery Energy Storage System ("<u>BESS</u>"). The project appears to have been a disaster.

Initially, Fluence sued Siemens Energy in September 2023 for breach of contract because the related party customer allegedly refused to pay. Siemens Energy fired back in a counterclaim dated November 28, 2023, alleging that it was Fluence who was at fault for botching its work on the project, failing to deliver the system that it initially represented it would, bungling the design and engineering process, and making material false representations and omissions.

In particular, Siemens Energy alleges that Fluence's work was late and deficient, delaying the project and causing millions in damages. Notably, Siemens Energy claims that Fluence made a unilateral decision to change the design of its systems, supposedly because of an **<u>explosion on another Fluence project</u>**. This redesign caused significant problems in redesigning and reengineering critical electrical componentry for the system. A test of the completed system ultimately failed in May 2022, allegedly due to Fluence's neglect of basic problem points in its system design.

Siemens Energy brought claims for breach of contract, fraudulent inducement, fraudulent omissions, and breaches of warranties, alleging that Fluence knowingly made false representations and omissions regarding its BESS design, agreeing to deliver a system that it knew it could and would not deliver in the interest of obtaining the contract with Siemens.

CL23003527-00

FILED by Arlington County Circuit Court
11/28/2023 05:12:56 PM

VIRGINIA:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

FLUENCE ENERGY, LLC)
Plaintiff,) Civil Action No. CL23-3527
v.)
SIEMENS ENERGY, INC.)
Defendant.)

SIEMENS ENERGY, INC.'S ANSWER AND COUNTERCLAIM

Siemens Energy, Inc. ("SEI"), for its Answer to the Complaint of Fluence Energy, LLC ("Fluence"), states and alleges as follows:

4. SEI has requested that Fluence cover the costs of these delays, modifications, and extra work, but Fluence has refused. SEI now brings this Counterclaim against Fluence for breach of contract, for fraud in the inducement, and for fraudulent omission under the special facts doctrine.

Source: Fluence Energy, LLC v. Siemens Energy, Inc. Counterclaim, Filed November 28, 2023

During the planning and procurement process, Siemens Energy discovered that Fluence had unilaterally made changes to its BESS design without consulting Siemens Energy or the third-party customer, allegedly because Fluence feared that its initial design was unsafe after it caused a major explosion at another facility in Surprise, Arizona, in April 2019.

Siemens Energy alleges that this was just the beginning of a comedy of errors, misrepresentations and omissions committed by Fluence throughout the planning, construction, and implementation process. Fluence allegedly submitted erroneous plans for the site configuration and connections between various system componentry, forcing Siemens Energy to amend its electrical design and undertake extensive additional work on the plant.

Once installed, the project ultimately failed its performance test on May 14, 2022, allegedly because Fluence failed to account for the possibility of basic risks to the design of its electronic systems – risks of which Siemens Energy had explicitly warned it during the design and engineering process. This forced Siemens Energy to adopt a temporary solution to address the faults in the connections within Fluence's system, which remains in place to this day, per the complaint. According to the lawsuit, Fluence is unwilling or unable to furnish a solution and has now even refused to participate in future performance testing of the system.

35. During performance testing of the Black Start Addition on May 14, 2022, the BESS failed to deliver sufficient energy and power to restart the Station.

36. In the course of conducting and investigating the failed performance test, SEI discovered multiple defects in the BESS, including a design error involving the inverter's ability to handle in-rush current from the Static Frequency Converter ("SFC") transformer (the "SFC In-Rush Issue"). Although SEI provided detailed information to Fluence regarding the in-rush current during design and manufacturing of the BESS, Fluence's design failed to take the in-rush current into account. As a result, the inverter tripped during the black start testing, and SEI was unable to meet the performance test set forth in its EPC contract with the Station's owner.

37. On information and belief, Fluence did not even consider the effect of in-rush current from the SFC transformer in proposing its Gridstack BESS to SEI.

Source: Fluence Energy, LLC v. Siemens Energy, Inc. Counterclaim, Filed November 28, 2023

In a stunning allegation, Siemens Energy claims that Fluence fraudulently hid the truth about its BESS design for at least 7.5 months, waiting to come clean until it was too late for Siemens Energy to replace Fluence with a better subcontractor. Siemens Energy calculates that Fluence's fraudulent inducement caused it damages of over $9 million – a figure that continues to grow by $15,000 per day due to a liquidated damages provision in the parties' contract.

SECOND CAUSE OF ACTION
(Fraud in the Inducement)

56. SEI incorporates by reference each allegation set forth in paragraphs 1 through 44 above.

57. Fluence represented to SEI that it would supply a BESS that would meet the performance requirements of the Black Start Addition.

58. Fluence represented to SEI that it would supply a BESS that would be enclosed within a single container that could be placed on a single 40 foot by 20 foot concrete pad and that could be connected to the Station by overhead electrical wires, obviating the need for underground construction.

59. Fluence knew that these representations were false.

60. Fluence intended that SEI would rely on its false representations in negotiating an EPC contract with the Station's owner and in contracting with Fluence to provide the BESS for the Black Start Addition.

Source: Fluence Energy, LLC v. Siemens Energy, Inc. Counterclaim, Filed November 28, 2023

Siemens Energy goes on to allege, in addition to a litany of project failures, that Fluence made a series of **false representations** that resulted in **millions of dollars in damages and counting**.

62. As a result of its reliance on Fluence's false representations, SEI has incurred $5,459,894.00 in additional, unanticipated costs to install the Gridstack BESS that are not covered by its EPC contract.

63. As a result of its reliance on Fluence's false representations, SEI has incurred $2,100,000.00 in costs to develop and implement the Temporary Solution and the Permanent Solution, and will continue to incur costs to implement the Permanent Solution and to resolve other material deficiencies in the BESS until final completion.

64. As a result of its reliance on Fluence's false representations, the Black Start Addition project has been significantly delayed, entitling SEI to liquidated damages of $1,509,985.00 to date under its contract with Fluence.

65. SEI therefore is entitled to damages in an amount to be proven at trial, but expected to exceed $9.1 million, exclusive of interest.

Source: Fluence Energy, LLC v. Siemens Energy, Inc. Counterclaim, Filed November 28, 2023

In black and white, the U.S. energy affiliate of Fluence's largest shareholder and parent benefactor repeatedly accuses Fluence of false representations, defects, failures, material omissions, and fraud.

But equally as stunning is the fact that Fluence withheld all mention of it from its public filings. Despite being filed on November 28, 2023, the complaint goes undisclosed in Fluence's 10-K filed November 29, 2023, and in its 10-Q filed February 8, 2024. It discloses numerous other legal contingencies in both filings, but it chooses not to inform investors of the fact that it is actively being sued for fraud by the affiliate of one of its foundational related parties.

No mention of lawsuit with Siemens Energy under "Legal Contingencies," nor anywhere else

Legal Contingencies

From time to time, the Company may be involved in litigation relating to claims that arise out of our operations and businesses and that cover a wide range of matters, including, but not limited to, intellectual property matters, contract and employment claims, personal injury claims, product liability claims, and warranty claims. The Company accrues for litigation and claims when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. It is reasonably possible that some matters could have an unfavorable result to the Company and could require the Company to pay damages or make expenditures in amounts that could be material.

2021 Overheating Event at Customer Facility

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. At this time, Fluence cannot comment on or accept the customer's stated findings. The customer's stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer's stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the incident but has not yet demanded a specific amount of compensation nor alleged a particular level of responsibility. Fluence has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact, that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market's adoption of our products.

2022 Overheating Event at Customer Facility

On April 18, 2022, a 10 MW energy storage facility in Chandler, Arizona owned by AES experienced an overheating event. Fluence served as the energy storage technology provider for the facility, which was completed in 2019, and Fluence previously provided maintenance services for the facility. There were no injuries. The facility has been taken offline as teams from Fluence, AES, and the battery manufacturer continue to investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products.

2023 Project-Related Litigation

In October 2023, Fluence filed a complaint in the Superior Court of California, Contra Costa County, against Diablo Energy Storage, LLC, Empire Business Park, LLC, the Bank of New York Mellon and others, seeking approximately $37.0 million in damages arising from the supply and construction of an energy storage facility for the defendants, including for the defendants' nonpayment of contractual amounts owed. On or about November 10, 2023, Defendant Diablo Energy Storage, LLC filed a cross-complaint against Fluence, seeking a minimum of $25.0 million of alleged damages and disgorgement of all compensation received by Fluence for the project, in the amount of approximately $230.0 million. The disgorgement claim was based upon an alleged deficiency in Fluence's contractor license. Fluence denies the allegations in the cross-complaint and intends to vigorously defend against them and to enforce our claims against the defendants. We are currently not able to estimate the impact, if any, that this litigation may have on our reputation or financial results, or on market adoption of our products.

Source: Fluence Q1 FY24 10-Q

We think this is an obviously material omission to investors, who would otherwise find it difficult to discover these filings on their own. The court documents detailing Siemens Energy's complaint are not easily accessible online to investors. **We learned of the details of the counterclaim only after sending a courier to obtain copies from the Arlington County Circuit Court in Virginia, where the suit was filed**. By not disclosing these legal proceedings in its filings, we think that Fluence hides major developments from its investor base, who would otherwise be unaware of the fact that it is being sued by such a critical related party and spared the ugly details of the complaint.

This lawsuit is potentially catastrophic for Fluence. Siemens, one of Fluence's corporate parents, is at once its largest shareholder (~30% of shares), a guarantor of its critical supply chain financing program, and a provider of key corporate functions such as sales, IT, and treasury. Even with this support and subsidization, Fluence has remained chronically unprofitable and has incinerated cash for years. For Siemens to withdraw this support and leave Fluence out in the cold would likely cripple the Company financially.

But Siemens already appears to be actively withdrawing its support. Siemens was once one of Fluence's major customers,[1] along with fellow parent AES. But a disclosure in Fluence's proxy statement filed in January 2024 reveals that, of its $654 million of related party sales in FY23, Siemens purchased just $11 million from Fluence last year. Fluence appears to be deprived of a critical revenue stream that historically helped it to project a patina of financial strength to investors.

To us, the obvious explanation as to why Siemens appears to have suddenly ceased purchasing energy storage systems from Fluence is that Siemens was sick of Fluence's alleged misrepresentations, fraud, and bungling project failures. We think this also explains the share divestitures. In December 2023, just over a week after the filing of the complaint against Fluence, Siemens completed its first divestment since Fluence's IPO, selling 7.1 million shares of its initial 58.6 million share stake.

Siemens has also converted all of its shares from Class B-1 to tradeable Class A shares on June 30, 2022, forfeiting the 5x voting power provided by B-1 shares, and seemingly signaling its intention to dispose of its remaining stake. Per the terms of its purchase agreement, described in Section II of this report, this conversion would have reduced Siemens's voting power to a point at which its power distribution business units would no longer have to source BESS systems exclusively from Fluence. We think this conversion may have been the precursor to Siemens reducing its purchases to such low quantities.[2]

Although Siemens is not explicit about it, we suspect it is no coincidence that Siemens started selling down its stake in Fluence a little over one week after Siemens Energy filed its claims. It makes sense that Siemens, fed up with Fluence's alleged fraudulent misrepresentations and spectacular incompetence, would start dumping shares of its ungrateful and blundering corporate child.

Siemens has started down a path of divestiture that we think spells doom for Fluence, which has shown no evidence that it can persist as an independent concern, despite its representations to the contrary. Fluence continues to be operated as an effective subsidiary, relying on its parents for critical financial and operational support. Once Siemens more completely trims its exposure to Fluence shares, it will have no direct incentive (and seemingly little inclination)

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[1] Fluence's disclosures on the subject are poor, but in our view, it is clear that Siemens has historically been a significant Fluence customer. Throughout its history, Fluence has disclosed the total sales that it generates from related parties (Siemens and AES) as a significant share of revenue, in addition to disclosing heavy customer concentration from its top two to five customers. Although Fluence did not, until as recently as January 2024, provide a breakdown of purchases between AES and Siemens, we think it is clear that both related parties were major purchasers in previous years. Fluence updated its language in its FY22 10-K, when the Company, without explicitly breaking down its related party sales composition, added a caveat that its related party sales were "primarily AES." No such caveat is present in earlier filings, suggesting that Siemens was a major customer through at least FY21 (if not also FY22, as the Company did not quantify its related party sales composition between AES and Siemens beyond the caveat). Siemens departing as a major customer in FY22 (fiscal year begun October 1, 2021) matches the timeline disclosed in its lawsuit against Fluence, as it was in 2021 that Siemens Energy learned of major problems with Fluence's BESS proposal and engineering. It matches Fluence's disclosures that, following these events, AES was the primary related party customer, because Siemens likely cut its purchases after its frustrations with Fluence drove its U.S. affiliate to allege incompetence and fraud. We also find public record of Siemens Energy and Fluence working together on BESS facilities, but the record ceases along the same timeline.

[2] Should AES convert its B-1 shares to A shares, Siemens's voting power would once again rise above the threshold at which the exclusivity terms apply, but it could fall back below this threshold by selling off parts of its stake in Fluence.

to continue to backstop Fluence’s financials, leaving Fluence to fend for itself with a chronically unprofitable business seemingly incapable of subsisting without direct and indirect subsidies from its corporate parents.

This lawsuit also represents just one of a growing mountain of project failures, accidents, and unhappy customers that we have uncovered by locating difficult-to-find court documents and through conversations with industry experts. If Fluence’s corporate benefactor, who has a major interest in Fluence’s share price and would be heavily financially incentivized to keep quiet about its problems, is so unhappy that its U.S. affiliate sues Fluence for breach of contract, material misrepresentations and fraud, how can any investor reasonably believe that Fluence will win enough non-related party customers to survive as a standalone business without fast disappearing parental support?

Ultimately, it is simply stunning that the U.S. affiliate of Fluence’s largest shareholder has sued the Company alleging a litany of defects, project failure, material misrepresentations, and fraud. And it is just as stunning that Fluence has hidden this bombshell from investors.

II. #1 Customer AES Set to Hammer Fluence on Pricing as it Sells Down Shares

Throughout Fluence's history, Siemens and AES have together been its largest customers, together representing almost 90% of revenue as of Q1 FY22 and over 40% as of Q2 FY23. Siemens appears to have pulled away and cut its purchases dramatically following the allegations outlined in the lawsuit discussed above. That leaves AES. As a major customer still responsible for ~30% of Fluence sales in FY23, AES's purchasing volumes and pricing terms alone have major sway over Fluence's sales, earnings, and margins.

Critically, our due diligence reveals that AES has apparently become frustrated with the prices it is required to pay for purchases from Fluence. This could change soon. The strict exclusivity and pricing terms set forth in AES's purchase agreement are set to **terminate** once AES' voting power over Fluence drops below a looming threshold. AES has already started selling.

Once AES sells down its stake a further 31%, it will be free to demand better pricing commensurate with its size and negotiating leverage, or else take its business elsewhere. If it divests its stake further, AES can even develop its own competing solutions. With a lower stake in Fluence after selling down more of its shares, AES will have neither a financial incentive nor a contractual requirement to continue to purchase from Fluence at its historically generous prices, if at all. Because of this, we expect that sales to AES will ultimately decline on lower prices and potentially lower volumes, dramatically slashing Fluence's sales and margins.

Pricing and Exclusivity Clauses Trigger with Incremental AES Stock Sales

Unbeknownst to most investors, the terms according to which AES must purchase from Fluence are disclosed deep within Fluence's filings, under a confusing document heading and in a place few investors care to look. Attached as an exhibit to Fluence's FY21 10-K was an amended and restated "*Storage Core Frame Purchase Agreement*" between AES and Fluence (and an analogous agreement between Siemens and Fluence).[3] Included within this document is an exclusivity agreement stipulating that AES must source energy storage "integrated solutions" only from Fluence,[4] and that it must "prioritize the purchase of any other battery-based anergy storage technology systems/solutions that are offered for sale by [Fluence]…." It also includes a non-compete stipulating that AES cannot develop or sell such systems on its own.

> 4.3. Exclusivity and Certain Related Priorities.
>
> (a) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Buyer shall and shall cause its Affiliates (except certain Affiliates of Buyer that (1) are prohibited from being bound by the exclusivity terms set forth below as a result of rights held by Third Party equity investors in such Affiliates pursuant to the terms of such Affiliate's organizational or governance documents (including charters, bylaws, and shareholder, partnership, limited liability company, joint venture and similar agreements) or (2) that reasonably determine that compliance with such exclusivity requirements would, due to their status as regulated utilities, cause complications with the applicable regulatory bodies having jurisdiction over such Affiliates) to:
>
> (i) purchase exclusively from Supplier any battery-based energy storage technology systems/solutions that are (A) within the Exclusive Activities (provided that for the purposes of this paragraph only, the term "Application" within Exclusive Activities shall also include power quality and microgrid/island applications (in each case as described on Schedule 1.1(a))) and (B) offered for sale by Supplier; provided, however, it is hereby agreed that the exclusive purchase obligations contained in this Section 4.3(a)(i) shall immediately cease to apply with respect to the particular purchase opportunity in the event that (1) either

[3] The purchase agreement is formally written between Fluence and AES Grid Stability, LLC ("the Buyer" in this contract), the wholly owned AES subsidiary that directly owns AES's Fluence shares. However, the key clauses, including the exclusivity, pricing, and non-competition clauses discussed here, are written to apply to AES Grid Stability, LLC and its affiliates. The Siemens purchase agreement is formally between Fluence and Siemens Industry, Inc., but applies to Siemens's grid infrastructure businesses, power distribution businesses, low and medium voltage power grid businesses.

[4] The purchase agreement stipulates that these terms apply to solutions of equal or greater than 500 KW, but, in practice, BESS facilities of the size constructed by Fluence exceed this threshold.

4.4. Non-Competition.

(a) Subject to compliance with Applicable Law or regulatory requirements, Buyer agrees that until the earlier to occur of (i) the seventh (7th) anniversary of the Effective Date and (ii) that date on which Buyer and its Affiliates collectively hold Shares representing less than ten percent (10%) of the then outstanding Voting Power, neither it nor its Affiliates will directly or indirectly engage in any Exclusive Activities; provided, however, that beginning on October 1, 2023, if Supplier has not achieved at least $25,000,000 in average annual gross revenues over a rolling period of three fiscal years (such rolling period commencing on October 1, 2020) for Application No. 4 (as set forth on Schedule 1.1(a)), then Buyer, at its sole discretion, may, upon written notice to the other members of Supplier, remove Application No. 4 as an Exclusive Activity for all purposes hereunder). If Buyer removes Application No. 4 as an Exclusive Activity pursuant to this Section 4.4(a), then Application No. 4 shall simultaneously and automatically also be removed as an "Exclusive Activity" under the Siemens Storage Core Frame Purchase Agreement. In addition, if Siemens Industry, Inc. removes Application No. 9 as an "Exclusive Activity" pursuant to the Siemens Storage Core Frame Purchase Agreement, then Application No. 9 shall simultaneously and automatically also be removed as an Exclusive Activity under this Agreement.

"Exclusive Activities" means the development, marketing and sale of an Integrated Solution for one or more Applications, where the size of such Integrated Solution is equal to or greater than 500 kilowatts, including those Integrated Solutions marketed, sold and delivered through a Buyer sales channel or another Supplier sales channel as contemplated in Supplier's then current business plan.

Source: Storage Core Frame Purchase Agreement between AES and Fluence, October 27, 2021

Critically, under the terms of this arrangement, Fluence agreed to offer AES pricing terms in line with those agreed upon with its other customers.[5]

(c) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Supplier will offer its Equipment and Services to Buyer and its Affiliates at Most Favored Nation Pricing in the Pricing Notice. "Most Favored Nation Pricing" shall be reasonably determined by the Supplier by reference to recent (last six (6) months) sales arrangements with customers, resellers or project developers, as applicable, taking into account purchase volumes, regional market conditions, the geographic location of the projects, and the relative size and technology to be used. Supplier shall not be obligated to provide such pricing if it no longer offers the relevant products or services for sale and Supplier shall have no obligations to offer or continue to offer any such products or services for sale.

Source: Storage Core Frame Purchase Agreement between AES and Fluence, October 27, 2021

The exclusivity and pricing terms mean that AES is bound to buy energy storage systems from Fluence at the same price as smaller players, despite its obvious size and superior negotiating leverage. AES cannot negotiate except by disputing the quoted price and taking the matter to an independent auditor, a costly escalation which it would likely want to avoid.

According to a former Fluence employee, this dynamic is understood within the Company:

> *Many of [Fluence's] projects were from AES, because, I believe – I don't know if it still exists or not, but at least at the time, there was a noncompete where AES couldn't basically do battery projects unless they were buying from Fluence. And then I think it transitioned into some sort of like first right of refusal or something like that. So there was a piece where they were a big customer.*
>
> - *Former Fluence Employee*

[5] The purchase agreement remains an active exhibit to Fluence's filings to this day and is cited in its most recent proxy statement filed January 2024.

However, according to the former Fluence employee, AES has become resentful of these terms, frustrated by the strict pricing into which it was forced with no room for negotiating lower fees.

> *AES was getting a little frustrated because they felt that we weren't giving them as good pricing as we could or as they could get elsewhere, but they were still required to buy from Fluence…. I think it was just that, you know, AES was getting frustrated with their lack of ability to negotiate.*
>
> - *Former Fluence Employee*

As a major player and Fluence's largest customer, we believe that AES would be clearly able to negotiate better-than-market pricing from Fluence were it not bound to this purchase agreement, or else take its business elsewhere. But, because the agreement requires AES to source its battery storage systems from Fluence – and to do so at average market prices – AES effectively inflates Fluence's sales and margins by directing *all* of its battery storage system purchases to Fluence, and at higher than its desired price.

Ironically, this arrangement provides an indirect reward to AES: as the owner of ~30% of all outstanding Class A and Class B-1 Fluence shares, it enjoys the benefit of a higher share price fueled by Fluence's inflated sales, earnings, and margins, which it directly props up through its exclusive sales at non-discounted prices. So long as AES remains a significant shareholder, it may have a vested interest in Fluence's share price remaining elevated.

However, AES has started selling its Fluence shares. Once it sells down its stake, AES loses both its incentive to "overspend" on Fluence solutions *and* its contractual requirement to do so: **its restrictive exclusivity and pricing terms sunset when AES holds less than 20% of all outstanding voting power. Its non-compete is terminated when it holds less than 10% of all voting power, at which point it could even develop its own competing solutions**.

> 4.4. Non-Competition.
>
> (a) Subject to compliance with Applicable Law or regulatory requirements, Buyer agrees that until the earlier to occur of (i) the seventh (7th) anniversary of the Effective Date and (ii) that date on which Buyer and its Affiliates collectively hold Shares representing less than ten percent (10%) of the then outstanding Voting Power, neither it nor its Affiliates will directly or indirectly engage in any Exclusive Activities; provided, however, that beginning on October 1, 2023, if Supplier has

> "Sunset Date" means the earlier to occur of (i) the seventh (7th) anniversary of the Effective Date and (ii) that date on which Buyer and Affiliates collectively hold Shares representing less than twenty percent (20%) of the then outstanding Voting Power.

Source: Storage Core Frame Purchase Agreement between AES and Fluence, October 27, 2021

With AES simultaneously losing the incentive to prop up Fluence through its $643 million revenue stream (as of year-end FY23) and gaining the ability to hammer Fluence on pricing, we think Fluence's sales and margins are set for a major downwards reset once AES trims its Fluence holdings further.

We are not far from this becoming a reality. With 51.5 million B-1 shares carrying five votes each, AES currently holds 67.0% of outstanding voting power. But simply converting these shares into Class A Common Stock – a prerequisite for selling any of its shares – its voting share would fall to 28.8%. From there, it could free itself of its current exclusivity and pricing terms by selling off only 30.6% of its remaining holdings, and it could free itself of the non-compete by selling an additional 34.7%.

AES started selling down its stake in December 2023, meaning that AES is on a clear path to seek a better deal in the near future. We think this portends financial disaster for Fluence. According to the former Fluence employee with whom we spoke, the Company is already competing on price with the rest of the market. It appears that Fluence was able to grow its sales to smaller non-related parties only by offering generous pricing terms to the broader market. Fluence's chronic profitability challenges seem to corroborate this.

> *On large sites, Fluence is pretty cost competitive. You know, it always comes down to certain factors, but I would not sit from the buyer's side right now and say "Fluence is just a premium product."*
>
> - *Former Fluence Employee*

We suspect that Fluence was only able to compete on price for non-related party projects because it could count on a stream of purchases from AES, effectively backstopping Fluence's financials. We doubt this sweetheart deal will persist much longer.

AES – an allegedly frustrated customer responsible for close to 30% of sales in FY23 – will gain the ability to demand better pricing or take some of its business elsewhere if it simply continues selling shares, a process it has already begun in earnest. And, with a smaller stake in Fluence, AES will have neither an incentive nor a contractual requirement to continue to purchase from Fluence at its historically generous rates, if at all. We think it is just a matter of time before AES hammers Fluence on pricing or seeks other BESS partners. In our view, this looming development will single-handedly sink Fluence's sales growth and already abysmally low margins.

III. String of Litigation and Potential Claims Allege Pattern of Incompetence, Failure and Damages

On December 20, 2023, Fluence shares fell by as much as 23% on news that Diablo Energy Storage had filed suit against Fluence for a litany of project delays and system failures within its California storage facility, demanding over $250 million in damages. But we believe that, unknown to most investors, this is the tip of the proverbial iceberg.

Our diligence has identified an incident in September 2021 at Vistra Corp's (NYSE:VST) 300MW Moss Landing facility. According to the Vistra incident report and a former Vistra employee, the failure to pressure test the fire suppression system that was at the heart of the incident was Fluence's responsibility as the contractor, causing major flooding at the facility and other significant damage that required tens of millions of dollars "at the very least" to address. Vistra was so unsatisfied with Fluence's work that it selected a different contractor for subsequent phases of Moss Landing. Although Fluence does not publicly identify the aggrieved party, Vistra reportedly holds Fluence responsible for the incident and is considering litigation for the damage.

Together, these incidents, along with the undisclosed Siemens Energy lawsuit, paint a pattern of serial incompetence, project failures and jilted counterparties. Fluence is potentially on the hook for hundreds of millions in claims for breach of contract, project failures and warranties. Diablo alone is demanding over $250 million from Fluence, enough to erase the majority of Fluence's unrestricted cash.

Worryingly, our conversations with experts suggest that Fluence has gained a reputation across the industry for doing shoddy work and cutting corners. We believe it will struggle to attract non-related party customers and that this conduct could provoke more rounds of lawsuits which could easily hamstring revenues and drain its balance sheet dry. We are not surprised that Fluence recently missed consensus estimates for its quarterly sales, as we would expect revenue growth to continue to fall as potential customers learn of these incidents, alleged project failures, and controversies.

A. Potential New Lawsuit Hangs over Fluence, Unbeknownst to Most Investors

Fluence's share price collapsed 23% when an industry trade magazine published news of a counterclaim by Fluence customer Diablo in which Diablo sued Fluence for breach of contract and failures in connection with a $238 million energy storage project. Mysteriously, Fluence's 10-K cites yet *another* storage facility incident in which an unnamed customer holds Fluence responsible but has not yet brought a formal legal complaint. Once they learn the details of this incident, we think shareholders will – and should be – almost just as worried about this potential new lawsuit as they are about Diablo.

Our diligence reveals that this incident was Vistra Corp's September 2021 outage at its 300MW Moss Landing Phase I facility. A fire at the facility caused a cascade of problems that resulted in the facility being shut down through July 2022.

The incident report issued by Vistra regarding the event lays blame on the contractor, which goes unnamed in the report, as the primary party at fault. This contractor was Fluence.

> With safety as its No. 1 priority, the company is taking a conservative approach and keeping the entire facility offline as it investigates the root cause of the incident in partnership with its engineering contractor, Fluence, and battery manufacturer, LG Energy Solution. Vistra is uncertain on the timing of the return of the facility, pending an investigation and any needed repairs. The company will update the status of Phase I Moss Landing as it learns more.

Source: Vistra Statement Issued September 5, 2021

According to Vistra's incident report, 7% of battery modules at the facility were damaged, a consequence of "water released from the heat suppression system along with the resulting short circuiting and arcing." Per the report, the batteries came into direct contact with water sprayed from the heat suppression system. Critically, the report states that "Vistra has been unable to confirm that the contractor pressure tested the complete heat suppression system after the racks were connected to the header pipes. The majority of failures were experienced at flexible hoses that connected the racks to the header pipes and that apparently were not pressure tested."

VISTRA

FINDINGS AND CORRECTIVE ACTIONS
SEPT. 4, 2021, INCIDENT
MOSS LANDING ENERGY STORAGE FACILITY

During the incident, a small number of couplings on the flexible hoses and pipes that were part of the battery heat suppression system experienced failures that resulted in water spraying on the battery racks. This in turn resulted in short circuiting and arcing, which caused battery damage and more smoke. This additional smoke was detected by other VESDA units, resulting in release of water to other preaction zones, followed by hose/pipe failures, release of more water and more damage and smoke. Vistra is not aware of any fire within the building, and the facility's separate fire suppression system was not activated.

In all, approximately 7% of the modules were damaged to varying degrees, along with damage to other facility systems. This damage was caused by the water released from the heat suppression system along with the resulting short circuiting and arcing. Some of the water was sprayed directly onto the battery racks, and some of it leaked through gaps in the upper floor onto battery racks located on the lower floor.

Before they were connected to each other, the preaction header piping and the piping on each battery rack underwent separate pressure testing. However, Vistra has been unable to confirm that the contractor pressure tested the complete heat suppression system after the racks were connected to the header pipes. The majority of failures were experienced at flexible hoses that connected the racks to the header pipes and that apparently were not pressure tested. As noted below, the connectors will be pressure tested prior to restart to ensure proper performance.

Source: Vistra Corp Press Release (see linked PDF document within the release)

The Vistra incident report lays the blame for the incident and subsequent damage squarely at the feet of the contractor, Fluence, for not pressure testing key elements of the system.

We spoke with a former Vistra employee who recalled the incident as a major event, particularly the fallout from the fire and flooding. He agreed that Fluence bore responsibility for the pressure test of the fire suppression system that Vistra claims were not performed, and that resulted in the flooding of the battery racks and the subsequent outage.

> *I mean, yeah, if the pressure testing wasn't done, then, you know, this could have been stopped there. More at fault? If the design failed twice, and the design wasn't changed, then, you know, that would lead me to think of LG. but if Fluence didn't do their proper due diligence in the installation, then, you know, then it's Fluence. If that makes sense. If I had to try to pick one – yeah, I think that pressure test should have absolutely been done, especially using a dry header like that that's going to get charged when the system activates. Yeah, I would say, if that wasn't done that would be a more, major leading cause to the failure. Or to the incident.*
>
> - *Former Vistra Employee*

The damage was extensive, touching many parts of the facility and requiring major repairs that shut parts of the facility down for almost a full year.

> *I don't know if it was a full foot, but it was many inches of water…. I know there were actual flames coming out of at least one of the [modules]…. And then the smoke that did come out, they had to replace a lot of the air handlers. So that was another major failure…. And then all the electronics that got shorted…. I don't know how many, but enough to where it took, you know, almost a year to get back online.*
>
> - *Former Vistra Employee*

He also said, remarkably, that no drainage system had been installed by the contractor to dissipate water released by the fire suppression system.

> *That flooding at [Moss Landing] 300, right? It's like, how? How did – why did you build a fire suppression system with water without putting drains into the building? That flooding, you know. How did you not think of stuff like that?... Unless you're trying to cut costs and save time.*
>
> - *Former Vistra Employee*

The fallout from the event was significant, requiring months of labor just to replace damaged equipment. Critically, he also estimated that, between repairs, compensating the state for lost energy, and other incidentals, the incident likely would have cost Vistra in the **tens of millions of dollars "at the very least**."

He also told us that, after the outage at the 300MW Moss Landing segment, Vistra chose not to employ Fluence as the contractor for subsequent phases, opting for a different contractor instead.

Notably, although Fluence does not mention Vistra by name, it admits in its filings that its customer continues to hold Fluence responsible for this incident.

2021 Overheating Event at Customer Facility

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. At this time, Fluence cannot comment on or accept the customer's stated findings. The customer's stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer's stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the incident but has not yet demanded a specific amount of compensation nor alleged a particular level of responsibility. Fluence has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact, that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market's adoption of our products.

Source: Fluence FY23 10-K

Should Vistra choose to bring forward legal claims against Fluence requesting damages in line with the purported cost of the incident, we think it would blindside investors, and the repercussions could potentially be very costly for Fluence. Even if Vistra does not file suit, we suspect that a settlement would be material to Fluence's financial results.

It is obvious from the market's reaction to news of the Diablo lawsuit, which sent Fluence's stock down almost 23%, that investors care deeply about customer allegations of project failures which result in lawsuits and potential liability for repair and damage. Vistra holds Fluence responsible for the allegedly eight-figure Moss Landing incident, raising the specter of another hammer to drop.

B. Diablo Allegations Worse than You Thought

While we believe the details of the Vistra incident are almost entirely new to Fluence investors, our exclusive diligence has also revealed new information about the specifics of Fluence's alleged failures with the Diablo project. And they are equally, if not more, embarrassing – and potentially damaging – as those that occurred with Vistra.

In its most recent 10-K, Fluence makes note of "2023 Project-Related Litigation," in which it filed suit against Diablo Energy Storage, LLC for breach of contract, and in which Diablo filed a cross-complaint in November 2023 for over $250 million.

The details of the complaint lodged by Diablo allege a startling level of incompetence on the part of Fluence. Diablo alleges that Fluence did not finish each phase of the project until nearly a year after the scheduled completion date: it finally took control of the project a full 257 days behind schedule, after Phase 1 was completed 318 days late and Phase 2 completed 286 days late. Soon thereafter, the project experienced operating system issues, control system failures leading to overheating, and dangerous arc flash events, which forced Diablo to provide constant oversight and maintenance to the facility. Diablo ultimately submitted "**more than __100 Warranty Claims__ based on defects and deficiencies in Fluence's work and equipment**." Many of these have gone unaddressed for over a year, per Diablo.

> 11. Fluence submitted a Certificate of Substantial Completion of Phase 1 dated April 15, 2022, which is 318 days after the Phase 1 Guaranteed Substantial Completion Date. Fluence submitted a Certificate of Substantial Completion of Phase 2 dated April 27, 2022, which is 286 days after the Phase 2 Guaranteed Substantial Completion Date. Fluence submitted a Certificate of Project Substantial Completion dated April 27, 2022, which is 255 days after the Guaranteed Project Substantial Completion Date.

> 12. Following receipt of Fluence's Certificates of Substantial Completion, Diablo assumed custody and control of the Project at 11:59 pm on April 29, 2022. Shortly thereafter, the Project began to experience a series of failures resulting from Fluence's poor workmanship and other shortcomings, including but not limited to the following:
>
> a. The control system responds slowly and inaccurately to CAISO signals which, among other problems, caused CAISO to remove the Facility from the ancillary market for several weeks;
>
> b. Fluence's proprietary Human-Machine Interface Monitor ("HMI") does not function properly, requiring Diablo to operate the system using a Data Acquisition System that is inefficient and not intended for that purpose;
>
> c. The Auxiliary Control System has experienced frequent failures that caused overheating and the signals and alarms meant to provide notice of such failures do not function properly;
>
> d. Inverter modules fail at a high rate requiring constant maintenance and replacement. For example, in the month between June 13, 2022 and July 14, 2022, the Project experienced 27 inverter failures;
>
> e. As a result of Fluence's poor electrical work, two arc flash events have occurred causing serious safety hazards and equipment damage; and

Source: Fluence Energy, LLC v. Diablo Energy Storage, LLC et al, cross-complaint

The detailed allegations point to failures including various electrical failures stemming from "poor workmanship and other shortcomings." The complaint amounts to a veritable laundry list of ineptness, including 27 inverter failures, inaccurate control systems, and malfunctioning alarms. The complaint goes on to describe Fluence's performance as "**__woefully deficient__**." The complaint even cites Fluence as having caused the basic failure of Battery Supplier Equipment. The allegations strongly imply that this was no simple failed project: this was a massive string of bungling missteps by Fluence.

Nor was this any small project. The Diablo facility was a major 200MW project which had previously been touted, oddly enough, as a "successful sixth generation installation" in its original Q2 FY22 earnings presentation. Management also highlighted the project on the same call, again branding it a "successful installation" of a Gen 6 system at a "mega site."

We think it is laughable for Fluence to characterize Diablo as a "successful project," given that the customer alleges defects, delays and failures so severe that they are suing for hundreds of millions in damages.

Source: Original version of Fluence Q2 FY22 Earnings Presentation

Remarkably, an archiving site shows that Fluence quickly took down this original version of its earnings presentation shortly after posting it in favor of one that scrubbed all mention of Diablo, suggesting that it was aware of problems with Diablo as soon as early 2022 without disclosing any such issues to investors.

Our own exclusive diligence into the Diablo incident brought additional color to many of Diablo's claims, flying in the face of Fluence's public denial.

We spoke with a former Fluence employee who explained that Diablo was one of the first sites at which Fluence launched its Gen 6 product. Unfortunately, it turned out that the product was launched prematurely: according to the expert, it hadn't even been *designed* before it was sold, and was deployed into the market in a rush to sell it to customers.

> *The shortest explanation, and the most distinct thing is they – they basically sold the product before they designed it, and it really wasn't ready to go to market.*
>
> - *Former Fluence Employee*

He went on to explain that the installation process was fraught with problems from the get-go.

> *They were struggling to provide enough documentation with enough notice to allow them to keep construction schedules. Once everything was built and containers started being delivered, they discovered all types of field problems that just required constant resolution.*
>
> - *Former Fluence Employee*

According to the former employee, the Fluence teams tasked with remediating these issues were woefully incapable and underprepared. But this wasn't even often the most challenging problem: due to design failures, repair teams faced situations that wouldn't have been out of place in a Marx Brothers movie. In one instance, they discovered that, while the battery storage cubes were functional, the space between them was simply too narrow for their tools, making it impossible to perform some necessary repairs without a dramatic rearrangement of the entire space.

> *You had an engineering team that was very green, that had never been in the field, designing things that physically worked, and had physical clearances, but you couldn't actually get tools in to be able to tighten lugs, make electrical connections, for example. So, for something like that, they had to do field remediation where, instead of being able to space them at, say, six inches apart, they had to force the customer to move all of the cubes a couple of extra inches, so that literally someone can fit their hand in while they're holding a tool. There were many problems like that.*
>
> - *Former Fluence Employee*

This comedy of errors tied to one of its most critical non-related party projects is enough to make us deeply skeptical of Fluence's capabilities and competence as an energy storage contractor. But this isn't the only problematic project on which it faces potentially costly litigation.

Among the most stunning of Fluence's outstanding disputes is an ongoing matter with corporate parent AES. The "Legal Contingencies" section of Fluence's FY23 10-K discloses that, in April 2022, a 10MW AES-owned facility engineered by Fluence experienced an overheating event.

News reports reveal that there was in fact a fire at the facility, painting a far worse picture than Fluence itself describes. As Siemens appears to be withdrawing its support from Fluence, we believe that AES's own dispute with Fluence over this incident could encourage AES to do the same.

As Vistra readies Moss Landing for relaunch, AES Corp. is just beginning to assess the damage to its 10-MW/40-MWh Dorman Battery Storage Project in Chandler, Ariz. which caught fire in April due to unknown causes. Fluence Energy Inc., a storage integrator launched in 2018 by AES and Siemens AG, supplied the Dorman system.

It was the third failure among roughly 150 Fluence-built energy storage projects. The company also provided the first 300-MW phase of Vistra's Moss Landing project, as well as Arizona Public Service Co.'s 2-MW McMicken battery storage facility, which exploded in Surprise, Ariz., in 2019, injuring eight firefighters and destroying the project.

Source: S&P Global

In addition, as recently as February 5, 2024, subcontractor Dashiell Corporation filed suit against Fluence for failure to pay for work done on the aforementioned Moss Landing Project, representing yet another lawsuit that goes undisclosed as of its most recent 10-Q. We are concerned that Fluence continues to rack up complaints and lawsuits with third parties, raising questions about its ability to continue to operate in the marketplace without the credibility bestowed upon it by the presence of Siemens and AES, both of whom appear to be bailing out.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

DASHIELL CORPORATION Plaintiff, v. FLUENCE ENERGY LLC, and DOES 1 through 10, Defendants.	Case No. **PLAINTIFF'S COMPLAINT FOR DAMAGES** 1. BREACH OF CONTRACT 2. UNJUST ENRICHMENT JURY TRIAL DEMANDED

Source: Dashiell Corporation v. Fluence Energy LLC, filed February 5, 2024

The former Vistra employee with whom we spoke said that, in his experience, the Moss Landing incident was just another in a long line of data points suggesting that Fluence was one of the weaker major players in a competitive space. He recalled peers throughout the industry reflecting poorly on Fluence, believing them to be incompetent and prone to cutting corners.

> *Working side-by-side with a lot of the guys that were involved in the batteries, I don't think any of them had anything good to say about Fluence…. [Fluence's] reputation was not one of being extremely thorough or taking their time. Or even necessarily being extremely competent either. There were some questionable decisions made…. It was definitely, oh, these aren't, you know, the best people we've ever worked with. And far from it.*
>
> - *Former Vistra Employee*

We already know that Fluence was involved in at least one other well-publicized project failure. In April 2019, the McMicken Battery Energy Storage facility in **Surprise, Arizona experienced a major explosion, harming on-site first responders and causing debilitating damage to the facility**. A third-party incident report commissioned by Arizona Public Service, the facility owner, reported that "as designed, the McMicken BESS had no mechanism to prevent these flammable gasses from building inside the container, or otherwise to stop the cascading thermal runway event."

APS planned to massively increase its battery fleet to store solar power for use in the evenings, but it put the build-out on hold after the setback last spring. A lithium-ion battery container near Phoenix caught fire in April 2019, and after first responders opened the door to the enclosure, it exploded, sending several of them to the hospital.

The fire ignited in just one of the 27 racks of batteries in the McMicken facility and did not spread, as GTM has previously reported. That suggests the layout of the racks effectively isolated them from one another. But the aerosol fire suppressant was powerless to stop a buildup of explosive gas, which combusted when the first responders opened the door and let oxygen into the container.

The explosion revealed that lithium-ion batteries can be dangerous, even in the hands of experienced professionals like APS, storage vendor Fluence and battery manufacturer LG Chem. The new report offers an opportunity to identify what went wrong and ensure that future constructions eliminate the failure pathways, said Scott Bordenkircher, director of technology integration and innovation at APS.

Source: Greentech Media, July 27, 2020

Figure 9 Interior damage to the energy storage system with the condition after the explosion (left), and condition after debris was removed to gain access to the interior and begin the forensics analysis (right)

Source: McMicken Battery Energy Storage System Event Technical Analysis and Recommendations, DNV GL

The Surprise, Arizona explosion was in fact cited in Siemens Energy's lawsuit against Fluence. The explosion allegedly caused Fluence significant concern over the safety of its systems, to the point that, according to Siemens Energy, it quietly changed the design of its system on a Siemens Energy project without first telling Siemens Energy. Once Siemens Energy learned of the switch, it was allegedly forced to undertake significant efforts to replan the project, and the implementation process for the alternate system was ultimately fraught with problems.

14. Despite having proposed a SieStorage BESS to SEI for the Black Start Addition, Fluence abandoned its SieStorage BESS design and instead adopted a different design, which it called "Gridstack." On information and belief, Fluence made this change, unbeknownst to SEI, due to concerns with the safety of its SieStorage systems, which had caused a cascading thermal runaway and resulting explosion on April 19, 2019, in a Fluence SieStorage BESS located in Surprise, Arizona. The Gridstack BESS design differed significantly from the SieStorage BESS design. Among other things, all system components were no longer located within a single container.

Source: Fluence Energy, LLC v. Siemens Energy, Inc. Counterclaim, Filed November 28, 2023

When considered together, these incidents and allegations all paint a damning picture. Fluence appears simply to be unable to get its act together and avoid major incidents at customer facilities. We believe that, between its problematic track record and its reputation for cutting corners and performing subpar work, it may be just a matter of time before another Fluence facility experiences a major failure, prompting a customer exodus and even more litigation that could snowball into a major financial challenge for Fluence. We think it could crack under this financial weight without the support of its departing corporate parents.

We already see warranties against Fluence rising significantly in the past year. Its recent 10-K shows that warranties issued in FY23 rose 7.5 times against the prior year. We think that this may be a sign of even more claims being brought against the Company, the economic consequences of which might not yet have hit its financials. We believe that this may be a sign of worse things to come, and we question if the Company has appropriately provisioned for the magnitude future losses related to such claims.

As of September 30, 2023 and September 30, 2022, the Company accrued the below estimated warranty liabilities, respectively.

In thousands	September 30, 2023	September 30, 2022
Warranty balance, beginning	$ 1,625	$ —
Warranties issued and assumed in period	12,168	1,625
Change in estimates	8,288	—
Change in balance sheet presentation	10,307	—
Net changes in liability for warranty expirations, costs incurred, and foreign exchange impact	(5,479)	—
Warranty balance, ending	26,909	1,625
Less: Recoverable warranty costs from suppliers	10,307	—
Warranty balance, net of recoverable warranty costs from suppliers, at end of period	$ 16,602	$ 1,625

Source: Fluence FY23 10-K

These complaints may weigh heavily on Fluence's balance sheet. The Company currently shows $266 million of net cash, excluding restricted cash. Should it be forced to pay Diablo the $250 million demanded in the cross-complaint, it would already be worryingly low on cash, considering its operating cash burn rate of over $100 million annually as of fiscal year-end 2023. Any further operational problems requiring remediation or resulting in litigation against Fluence could completely wipe out its remaining liquidity and require it to pursue dilutive equity raises even sooner than we currently anticipate.

And this does not even account for damages Fluence may have to pay to Siemens Energy over allegations of false representations, breach of contract and fraudulent inducement in connection with the Antioch, California project.

As these complaints mount against Fluence - which, until now, has existed only with the financial and operational support of its two former parents - we doubt that it can sustainably exist as a viable business in the face of sizable workmanship complaints and subsequent threats of litigation, especially given that a myriad of allegations by Fluence's own customers alleging a track record of faulty and defective systems and project failures. Given the competitiveness of the energy storage space, why would energy storage project developers continue to choose a player who has so consistently angered so many customers?

IV. Fluence on the Precipice of Financial Collapse if Related Party Shareholders Divest Stakes and Withdraw Subsidies

Even though Fluence masquerades as an independent business, we believe that it is hopelessly dependent on Siemens and AES. But we think that this critical financial and operational support is about to disappear as both of its corporate parents have begun to sell their stakes, erasing any incentive that they may have had to backstop Fluence's financials.

Not only is Fluence on the precipice of losing its sweetheart deal with its largest customer, but with a diminished stake in the Company, AES and Siemens will have far less incentive to subsidize Fluence's revenue through favorable terms merely for the sake of Fluence's stock price. We believe that, as these related party divestitures continue, Fluence faces eventual collapse under the weight of its chronic unprofitability and incessant cash burn without the financial and operational backing of its corporate parents.

A. Fluence Reliant on Departing Parent Entities for Basic Corporate Functions, Including Treasury

Despite having gone public in October 2021 and presenting itself as an independent business, Fluence remains hopelessly entangled with its corporate parents. AES and Siemens, together Fluence's largest shareholders and customers, also provide the Company with critical back-office infrastructure – far more than we would expect from any "independent" company.

In its 10-K, Fluence states that it relies on related parties AES and Siemens for everything ranging from treasury and information technology to sales and R&D.

Service Agreements with Affiliates

Fluence and its affiliates have signed service agreements under which the affiliates provide certain management and administrative services to Fluence. The services include but are not limited to, treasury, information technology services, sales services, and research and development. Cost of services are accrued monthly and included in "Payables and deferred revenue with related parties", and "General and administrative", "Sales and marketing", or "Research and development" on the Company's consolidated balance sheets and statements of operations and comprehensive loss, respectively.

Source: Fluence FY23 10-K

This heavy level of entanglement spares Fluence the full expense and organizational wherewithal needed to supply these functions on its own. Siemens and AES provide so many critical functions of running the Company, we question how any shareholder would believe that Fluence has the ability to function and survive once its parent entities withdraw their financial and operational support.

But at least equally concerning is the mere presence of these related parties within Fluence's treasury department, and the hazardous incentives that this strange arrangement creates. Siemens and AES are, taken together, at once Fluence's largest shareholders and customers. Each owns 51.5 million shares of Fluence, for a combined ownership of just under 60% of the Company's total outstanding Class A and Class B-1 share count. As long as they remain significant owners with an intention to monetize their holdings, it is in their interest that Fluence's reported results look as strong as possible, until they have come closer to fully divesting their shares. Their presence within the treasury department has and continues to create an absurd conflict of interest that amplifies our concerns around the accounting gimmickry and inflated financials that we outline elsewhere in this report.

We question whether their apparent control over elements of Fluence's reporting and financial function gives them undue influence over Fluence's questionable accounting and inflated financial results.

B. Fluence's Cost of Capital Artificially Depressed by Parent Guarantees

Throughout its history and through the present, Siemens and AES have provided Fluence special financing and financial guarantees, some not immediately visible on its balance sheet. This has spared the Company the burden of seeking outside capital from third parties, presumably at far more punitive rates. We believe that, as its parents more completely divest their shares, Fluence will be forced to seek financing elsewhere, increasing its cost of capital and making its balance sheet look far worse than it currently does.

Since going public, the Company has reported that it offers a supply chain financing program to some of its suppliers, through which suppliers can choose to monetize their receivables at a discount before payment is due from Fluence. At the time of the IPO, this supply chain financing program was supported by $60 million worth of guarantees from AES and Siemens ($30 million each) to the partner bank. As Fluence has purportedly grown more "independent," this guarantee has remarkably not shrunk but *grown* to $100 million, with Siemens and AES each putting up $50 million.

> We have provided certain of our suppliers with access to a supply chain financing program through a third-party financing institution (the "SCF Bank"). This program allows us to seek extended payment terms with our suppliers and allows our suppliers to monetize their receivables prior to the payment due date, subject to a discount. Once a supplier elects to participate in the program and reaches an agreement with the SCF Bank, the supplier elects which individual invoices to sell to the SCF Bank. We then pay the SCF Bank on the invoice due date. We have no economic interest in a supplier's decision to sell a receivable to the SCF Bank. The agreements between our suppliers and the SCF Bank are solely at their discretion and are negotiated directly between them. Our suppliers' ability to continue using such agreements is primarily dependent upon the strength of our financial condition and guarantees issued by AES and Siemens. As of September 30, 2023, AES and Siemens issued guarantees of $50.0 million each, for a total of $100.0 million, to SCF Bank on our behalf.

Source: Fluence FY23 10-K

This supply chain financing program is no mere formality: the Company reported that $58.4 million of payables were subject to the program at the end of FY21, and that, since FY22, three suppliers have actively participated in the program. For suppliers to participate so heavily in this supply chain financing program suggests to us that there were genuine concerns around Fluence's ability to pay in a timely manner, if at all.

If Fluence were to lose its supply chain financing program after AES and Siemens, having lost their vested interest in the Company's success, pull their guarantees, we believe that it may have to shoulder the cost of supporting a supply chain financing program entirely on its own to prevent the flight of its seemingly hesitant suppliers.

Working capital financing has been such a source of trouble for Fluence that it had to be infused with $25 million *each* by AES and Siemens for working capital needs in August 2021, immediately preceding the October 2021 IPO. It required this $50 million for working capital purposes after already drawing down on the entirety of its $50 million revolver for the same purpose.

While Fluence spent far more than this on inventory in FY21, it is important to note that, after this $100 million infusion – half of which required the direct support of related parties – the Company reported just $36.8 million of cash as of the filing of its 10-K on September 30, 2021, against $100 million in short-term borrowings. Hence, this $50 million related party bridge was critical to Fluence's ability to present any semblance of financial health just as it was going public in the fall of 2021. The $50 million revolver and $50 million related party loan were repaid on November 1, 2021, barely a week after the IPO.

> The Company entered into an Uncommitted Line of Credit Agreement ("Line of Credit') with Citibank, N.A. ("Citibank") on January 29, 2019, which allowed us to borrow an amount in aggregate not to exceed $2.0 million, from time to time, until January 29, 2021 ("Expiration Date"). The Line of Credit was further amended to increase the aggregate borrowing amount to $10.0 million, $30.0 million, and $50.0 million on May 13, 2020, August 7, 2020, and December 23, 2020, respectively. The Expiration Date for the Line of Credit was extended to March 31, 2023, on June 2, 2021. The Company had $50.0 million outstanding under the Line of Credit as of September 30, 2021. Borrowings under the Line of Credit were repaid on November 1, 2021 using proceeds from the IPO.
>
> Additionally, we funded our liquidity through borrowings from AES Grid Stability and Siemens Industry. On August 11, 2021, Fluence Energy, LLC entered into a promissory note with each of Siemens Industry and AES Grid Stability, under which Fluence Energy, LLC received a bridge financing of an aggregate of $50.0 million. In connection with the bridge financing, Fluence Energy, LLC issued a $25.0 million promissory note to each of Siemens Industry and AES Grid Stability (together, the "Promissory Notes"). The Promissory Notes bear interest at a rate of 2.86%. The Promissory Notes were repaid on November 1, 2021 using proceeds from the IPO.

FLUENCE ENERGY, LLC
CONSOLIDATED BALANCE SHEETS
(U.S. Dollars in Thousands, except per unit amounts)

	September 30, 2021	September 30, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 36,829	$ 93,815

Source: Fluence FY21 10-K

As Fluence loses the direct financial support of its parents, it will inevitably be forced to seek financing elsewhere – and at inevitably higher costs. For example, its $50 million related party bridge financing undertaken just before the IPO came at an interest rate of 2.86%. But drawdowns on its new $400 million revolver will cost Fluence as high as an estimated 7-8%.[6] Fluence is already proving to struggle to put up profits and generate cash even with the support of Siemens and AES. We harbor significant doubts regarding its financial wherewithal as an independent concern, without this financial assistance.

C. Inexplicable Consulting Revenue Inflates Margins

Just as it seemingly prepares to divest of its stake in Fluence, AES appears only now to have taken it upon itself to inject Fluence with an inexplicable high-margin consulting revenue stream. We see this as a suspicious maneuver that has the effect of inflating Fluence's historically single-digit (at best) Adj. Gross Margins with a revenue stream carrying gross margins of 74%. It could not have come at a more convenient time for AES as it moves to monetize its Fluence shares.

For the first time in FY23, Fluence reported sales and earnings tied to "consulting services provided to AES." Company filings state that these services include "support to AES on procurement, logistics, design, safety and commissioning of certain of their projects."

We question why, despite the close ties between Fluence and AES throughout the former's existence – through which Fluence, we believe, would have already been providing its energy storage expertise to AES – the Company only *now* reports receiving consulting revenue from AES. AES formerly had no clear motive to shift its own earnings into Fluence. But now, as it begins to divest itself of its stake in Fluence, it would have every incentive to temporarily juice Fluence's sales, earnings, and margins to keep the stock afloat, until its position has been trimmed.

Accordingly, it comes as no surprise to us that, of the $12.3 million in revenue generated through this mysterious consulting arrangement, $9.1 million was recorded as gross profit, for a gross margin of 74% – towering over and thereby inflating the Company's historically negative to low single-digit Adj. Gross Margin.

D. Related Party Divestitures Portend Economic Collapse for Fluence

The conflicts of interest that we observe between Fluence and its corporate parents become all the more pressing the closer AES and Siemens come to selling their shares. This situation only further incentivizes additional accounting games designed to inflate sales and margins – but this incentive persists only until the parents have trimmed their stakes. And, with Siemens and AES freed of their restrictive purchase agreements, we think they would likely pressure Fluence for better pricing or leave Fluence altogether, only further depressing Fluence sales and margins.

We observe that this process began in earnest in December 2023, when Siemens and AES each sold over 7 million shares each. Neither company appears to be shy about its intentions to sell more. Siemens has already converted the entirety its LLC Interests and special B-1 shares into tradeable Class A common shares, seemingly signaling its readiness to dispose of its position in Fluence stock.

Further, on its Q2 FY23 earnings call, AES management made it clear that it views Fluence as business entirely separate from its own, from which it inevitably intends to remove itself:

> **Analyst:** A couple of specific follow-on questions. **Is your Fluence stayed core to your portfolio?** And I guess secondly, on the financing side, are you still open to considering the convert market to help offset equity issuance?
>
> **AES CFO:** So this is Steve. So yes, Fluence is part of the portfolio we own roughly 1/3, 34% of Fluence. It is not consolidated, but it does come in through equity method. And we do, in our adjusted EBITDA

[6] The terms of the agreement state that Fluence can borrow under the revolver at 1.0-1.5% plus the Canadian Prime Rate, or 2.0-2.5% plus the Adjusted Term SOFR Rate, the Alternate Base Rate, the Adjusted EURIBOR Rate, or the Adjusted Daily Compounded CORRA.

definition include an adjustment to include Fluence EBITDA. So that does show up and it's in our new energy technologies SBU influence margin...

Analyst: The question is, is that core?

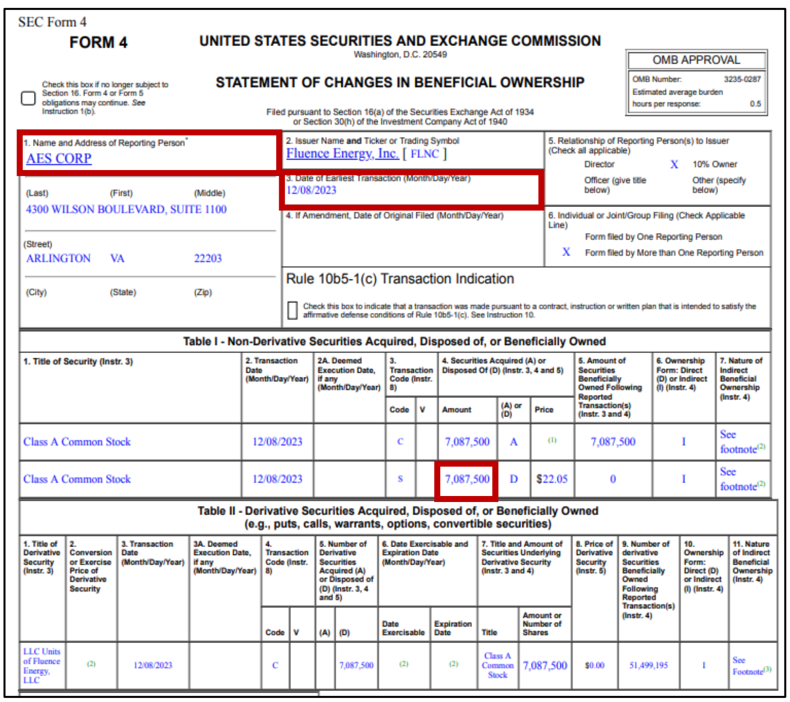
AES CFO: Is it core? Or did you say – is it core to our business?

Analyst: Core.

AES CFO: So look, I mean, I would say core -- so **given that it's an outside business, I don't think I would parse this out as like core or non-core….** We've done a lot of co-innovation, co-development with Fluence around [energy storage]. So that's, I would say, definitely core to our strategy is what we've been able to do with storage. But as Andres said many times, **these are technology businesses of their own right. They're separated. We are not in them indefinitely**, and we continue to grow new opportunities. **And as we do we may look to monetize part of our positions down the road.**

- *AES Q2 FY23 Earnings Call*

AES's CFO went on to say that, as of August 2023, he at "no time soon" foresaw monetizing the Fluence position. But, with AES now actively in the process of divesting of its stake in Fluence, it appears that that time has now come. And the fact that it is doing so in lockstep with Siemens, with each selling an exactly equivalent quantity of shares (7.1 million) on exactly the same date (December 8), suggests that AES may not be treating Fluence as a discretionary investment.[7]



SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL
OMB Number: 3235-0287
Estimated average burden hours per response: 0.5

1. Name and Address of Reporting Person*
AES CORP
(Last) (First) (Middle)
4300 WILSON BOULEVARD, SUITE 1100
(Street)
ARLINGTON VA 22203
(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
Fluence Energy, Inc. [FLNC]

3. Date of Earliest Transaction (Month/Day/Year)
12/08/2023

4. If Amendment, Date of Original Filed (Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
Director X 10% Owner
Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing (Check Applicable Line)
Form filed by One Reporting Person
X Form filed by More than One Reporting Person

Rule 10b5-1(c) Transaction Indication
Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). See Instruction 10.

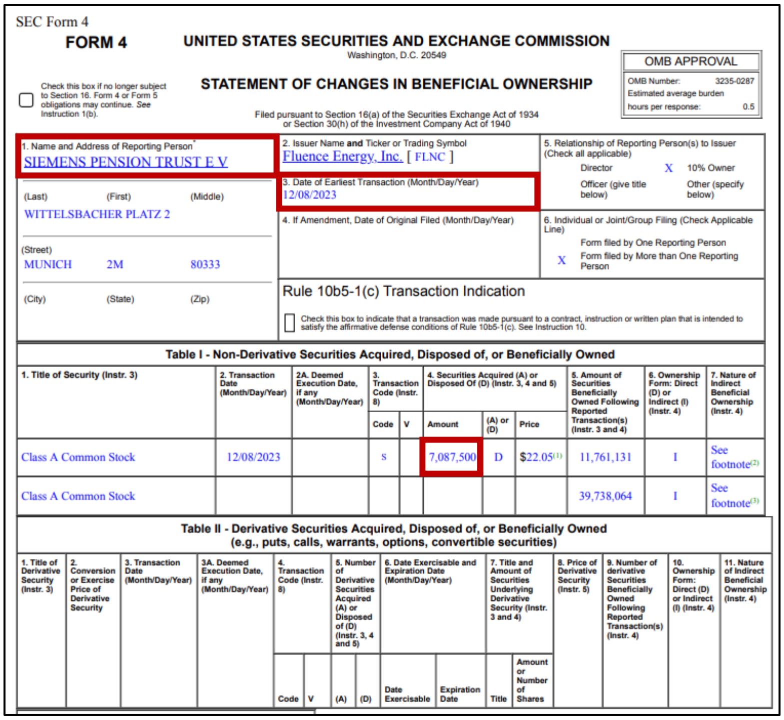
Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Class A Common Stock	12/08/2023		C		7,087,500	A	(1)	7,087,500	I	See footnote(2)
Class A Common Stock	12/08/2023		S		7,087,500	D	$22.05	0	I	See footnote(2)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				
LLC Units of Fluence Energy, LLC	(2)	12/08/2023		C			7,087,500	(2)	(2)	Class A Common Stock	7,087,500	$0.00	51,499,195	I	See Footnote(3)

[7] On exactly the same date, the Qatar Investment Authority – Fluence's other disclosed related party and major shareholder – itself sold 3.8 million of its smaller initial stake of 18.5 million shares. That all three of the major initial investors which took Fluence public in October 2021 are selling their shares in tandem, in similar proportions on exactly the same dates, further suggests to us that AES does not treat Fluence as a discretionary investment, despite its language.


SEC Form 4

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
Estimated average burden hours per response:	0.5

1. Name and Address of Reporting Person*
SIEMENS PENSION TRUST E V
(Last) (First) (Middle)
WITTELSBACHER PLATZ 2
(Street)
MUNICH 2M 80333
(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
Fluence Energy, Inc. [FLNC]

3. Date of Earliest Transaction (Month/Day/Year)
12/08/2023

4. If Amendment, Date of Original Filed (Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer (Check all applicable)
Director; X 10% Owner; Officer (give title below); Other (specify below)

6. Individual or Joint/Group Filing (Check Applicable Line)
Form filed by One Reporting Person
X Form filed by More than One Reporting Person

Rule 10b5-1(c) Transaction Indication

Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). See Instruction 10.

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed Of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Class A Common Stock	12/08/2023		S		7,087,500	D	$22.05[1]	11,761,131	I	See footnote[2]
Class A Common Stock								39,738,064	I	See footnote[3]

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Securities Underlying Derivative Security (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				

Source: [Fluence Form 4 (AES)](), [Fluence Form 4 (Siemens)]()[8]

Once the divestment process is complete, or even only close to complete, we think that Fluence will lose this financial support, and we do not believe that Fluence can survive as a standalone business without it. Fluence is **already chronically unprofitable and incinerates cash at a breakneck pace**. After its parent entities divest more shares, they will have no incentive to continue to subsidize Fluence's business with the purchase orders, treasury services, sales capabilities, and R&D functions they currently provide Fluence. And they will have no requirement to continue to buy from Fluence at market price, or from Fluence at all.

Fluence could not even come close to operating a healthy business despite assistance in sales, treasury functions, and IT – among other support – from its parent entities. Without such heavy subsidies, we believe Fluence's financials will simply crumble under the weight of the Company's unprofitability and its penchant for incinerating cash.

[8] Note: The initial "acquisition" of 7.1 million shares shown on AES's Form 4 represents its conversion of 7.1 million LLC units and Class B-1 Shares into Class A common stock. Siemens had already converted all of its holdings into Class A shares, and therefore did not show an equivalent line item on its Form 4.

V. Cash Incineration and Withdrawal of Related Party Support Portends Massive Shareholder Dilution

As Fluence, we believe, continues to inflate sales and earnings through aggressive pull-forwards and selective adjustments, we think that the Company's financials are deteriorating – a trend that we think will accelerate as Siemens and AES withdraw their support. Fluence remains deeply unprofitable even as it presents a heavily augmented picture of its earnings to investors, and its limited balance sheet gives it little runway to continue to burn cash at its historical pace. Management has already taken measures suggesting that it is prepared to dilute investors and assume significant additional debt, but it has thus far minimized these actions in its communications with the public.

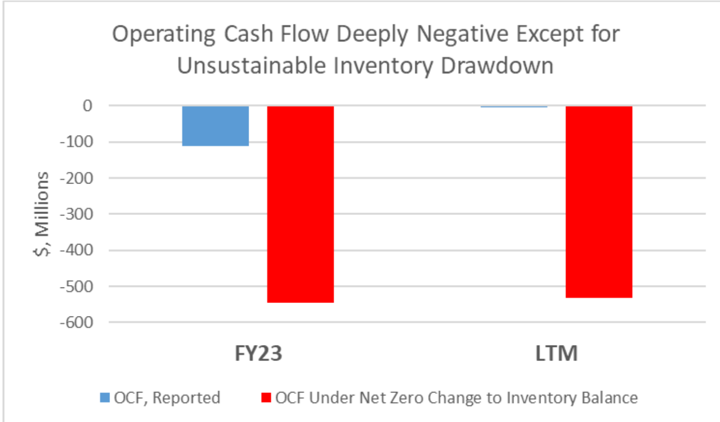
The Company, we think, is simply delaying the inevitable: its historical incineration of cash and nearly nonexistent financial runway will give it no choice but to dilute investors through sizable equity raises, perhaps in addition to taking on even more debt at increasingly punitive rates. This will only put further pressure on the stock as Siemens, AES, and Qatar, which together own 117.7 million shares, continue to offload their respective stakes – a process which is now only in the very early innings.

Prior to Q4 FY23, Fluence had yet to produce a quarter of positive Adj. EBITDA through its entire existence as a publicly traded company, and it went right back to its old ways of posting materially negative Adj. EBITDA in Q1 FY24. Even after a $174 million incremental improvement in Adj. EBITDA between FY22 and FY23 (enhanced by the retrospective removal of prior-year EBITDA adjustments for COVID-related costs, described later in this report), the Company still reported -$61 million in Adj. EBITDA in the most recent fiscal year. As the year-over-year improvement was driven heavily by the reversal of prior year adjustments, we have little confidence that the Company is on a path to sustainable profitability, even on the basis of its inflated non-GAAP figures. On a GAAP basis, we have even less.

Fluence's limited balance sheet and consistent cash burn paint a disturbing picture for the Company. Despite its reported 85% top-line growth through FY23, it still succeeded in burning $112 million in operating cash through the fiscal year due to its chronic unprofitability and aggressive unbilled revenue pull-forwards, which we think revealed that the paper gains shown on its income statement were the product of an accounting gimmick. Indeed, as of Q3 FY23, Fluence had lost a massive $382 million in operating cash and $389 million in free cash flow over the trailing twelve months. This represents an existential threat to its balance sheet: as of Q1 FY24, it showed $318 million in cash (excluding restricted cash[9]) on its balance sheet against $52 million in debt. As of Q3 FY23, it had less than one year's worth of net cash remaining on its balance sheet against its TTM cash burn rate. As of year-end FY23, it was on pace to drain the entirety of its net cash position in just over two years' time.

In recent quarters, Fluence has touted the gradual improvement in its cash flow profile. We believe that this is incredibly disingenuous. Over the last twelve months, the Company has recorded a working capital benefit of $526.9 million on its cash flow statement simply by working through the surplus of battery inventory that it accumulated in late FY22 to early FY23 to mitigate supply chain risk. This gain was highly circumstantial, rendering its recent cash flow performance entirely unrepresentative of what the Company can produce in a steady state. If Fluence had instead shown a net zero change in its inventory balance through the last twelve months, its LTM operating cash flow would have fallen from close to break-even to -$530.6 million, more than enough to sink its entire net cash balance within a single year.

[9] Restricted cash is primarily in the form of collateral for outstanding bank guarantees. We believe that it is appropriate to exclude this from net cash, as it is not accessible as long as these critical financing agreements remain in place.



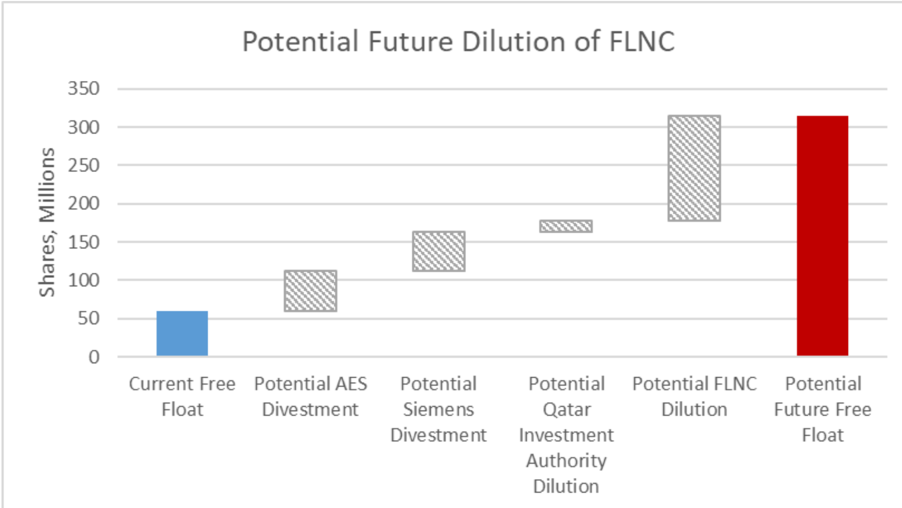
Source: Company filings and Blue Orca calculations

Recent measures taken by management suggest that it is very aware of its dubious liquidity profile. Shortly after its Q3 FY23 earnings call, the Company issued a shelf filing for a massive 135.7 million shares, which, if executed in full, would more than double its current Class A share count of 127.1 million. On the call, management wrote off this decision as mere "good housekeeping," as though its concerning liquidity position was simply irrelevant to its decision to file the shelf. We see this as a sorry excuse for, and an attempt to minimize, an earnest step by management to address an impending cash crunch.

The Company went even further in Q1 FY24 by expanding its revolving credit facility to $400 million. It once again used this moment to tout its purported "ample liquidity" and allegedly comfortable cash position. But we again see this as little more than management confronting an inevitable liquidity crunch as it continues to incinerate cash at unsustainable rates.

Investors who ignore Fluence's Form 4s and the nuances of its ownership structure may still not fully appreciate the tidal wave of dilution that appears to be on the immediate horizon. As of the 10-K filed in November 2023, both Siemens and AES owned 58.6 million shares each, for a combined total of 66% of all shares outstanding. The Qatar Investment Authority, which also participated in the IPO, held another 18.5 million shares. But they are all now in the process of liquidating their shares: Siemens has converted all of its LLC units into tradeable Class A common shares, and, in December, AES, Siemens, and the Qatar Investment Authority together sold 18 million shares in their first sale since the IPO (7.1 million each by AES and Siemens, and 3.8 million by Qatar).

We believe that, between the sale of up to another 117.7 million shares by these three major holders, and future equity raises undertaken by management, investors are set up for a perfect storm of dilution. With AES and Siemens each holding 51.5 million shares, Qatar holding 14.7 million shares, and the shelf adding another 135.7 million shares of potential dilution, **investors could be looking at another 253.4 million shares hitting the market, more than 4 times the current float of 60.6 million shares**. As these three largest holders just sold 18 million shares, this process is still in the very early innings – but it has clearly begun in earnest.



Source: Company filings and Blue Orca calculations

We believe that Fluence's looming cash crunch will back the Company into a corner of massively dilutive share issuances, potentially increasing the free float by 224%. Even absent this, the seemingly inevitable sale of another 117.7 million shares by Siemens, AES, and Qatar would increase the float by close to 200% alone.

Ultimately, we believe that the business is grossly unprofitable and incinerates cash at an unsustainable rate, likely giving management no choice but to dilute investors to keep the business alive. The impending divestitures of its corporate parents, and the inevitable withdrawal of their subsidies and financial support which will likely follow, only weakens the Company's financial foundation, making its chronic unprofitability and cash burn all the more problematic.

VI. Accounting Games Inflate Margins and Revenue Growth Just as Parents Move to Divest

Given the imminent divestitures by the corporate parents, Fluence's valuation is contingent on whether it can exist without parental support as a sustainably profitable enterprise. In Q4 FY23, Fluence appeared to turn a profit, sending its stock price soaring. But we believe that much of Fluence's sales and earnings growth can be attributed to aggressive revenue pull-forwards and selectively applied earnings adjustments.

With the benefit of these accounting games, we believe that Fluence has inflated annual revenue growth rate from 58% to over 80% in Q1 23, its incremental FY23 Adj. EBITDA by close to 40%, and its FY23 Adj. Gross Margins by 275 bps, from 3.9% to 6.6%. We also believe its accounting games allowed it to beat Adj. EBITDA expectations where it otherwise would have fallen short. We believe that investors have been misled by these accounting gimmicks, the cumulative impact of which have been to inflate Fluence's reported growth and profitability just as major shareholders have begun to monetize their shares.

Revenue Pull-Forwards Inflating Sales Growth

We believe that Fluence's reported sales growth relies heavily on accounting shenanigans. When we pull apart Fluence's financials, we find that the Company's recent growth has been materially driven by revenue-pull forwards enabled by management's decision to rewrite the terms of its contracts, artificially inflating revenues and causing unbilled receivables to explode.

On recent earnings calls, management has discussed its recent decision to accelerate its revenue recognition under some customer contracts. On its Q2 FY23 call, Fluence claimed that it has been able to achieve this through better execution and "how we are writing our contracts now," as though it were a sign of financial health that it has been able to "derisk our deliveries in our contract with our customers." We believe the opposite: Fluence's pulling forward of revenue has allowed it to increase sales and earnings simply by fiat, giving the appearance of stronger fundamentals and faster growth without any increase in underlying demand to support it.

When asked about the source of its higher forecasted growth on its Q2 FY23 earnings call, management acknowledged that much of the increase in its sales forecast could be attributed directly to a shift in is revenue recognition schedules:

> *Analyst:* Maybe just the first question here on the $500 million incremental for fiscal '23 and '24. You're talking about attributing that to just better supply chain visibility and obviously the better execution here. Maybe could you just expand a bit on that with some specifics or some examples? Is it just a function of getting more visibility on batteries? Is it being able to pull in projects faster than expected? Just hoping to get a bit more color there on the execution front.
>
> *Fluence CEO:* Yes. Brian, the way I will -- first, clearly is the fact that our machine is working better. We had the right [indiscernible] manufacturing, did a great job this quarter, and we have been able to derisk our deliveries in our contract with our customers. So I think the effort of -- a lot of work from everybody for our supply chain, from our sales team, from our manufacturing team, but also at the end that **we have been able to derisk our deliveries in a way that allows us to recognize revenue, <u>even if some of our customers are not fully ready to install the equipment</u>.** That's the way to think about it.
>
> *Source: Fluence Q2 FY23 Earnings Call*

The CEO was explicit about the fact that Fluence is now recognizing revenue on contracts on which the customer is not even ready to begin the installation process. He speaks of it as though it were an accomplishment, and a reason for investors to be bullish. But, in our opinion, artificially inflated revenue generated by contract rewrites rather than organic demand is nothing for investors to get excited about, and only clouds their understanding of Fluence's true sales growth. This effectively represents a one-time benefit that is not a sustainable source of growth, and which, once all contract terms have been updated, will result in a step-down in reported growth, all else equal.

We think that evidence of Fluence's revenue-boosting accounting games is clearly visible on its balance sheet as well. **Total unbilled receivables,[10] once as low as just $11.0 million in September 2019, exploded to $247.4 million as of Q1 FY24, already more than doubling since Q1 FY22.**

We believe that the growth in unbilled receivables is likely directly attributable to management's accelerated revenue recognition plan, and that the incremental unbilled receivables accrued over this period represent the quantity of sales that management has pulled forward. We can therefore use the change Fluence's unbilled receivables balance as a proxy to quantify the extent to which we think growth has been artificially inflated through revenue pull-forwards.

In Q1 FY23, the quarter in which it appears this practice began in earnest, Fluence's total unbilled receivables (including both related party and non-related party unbilled receivables) ballooned by a staggering $99.0 million over the prior quarter, and $164.9 million over the prior year. We think that, without this benefit, year-over-year sales growth for the quarter would have been negative, as it was just two quarters prior without the benefit of contractual pull-forwards. While reported LTM sales as of that quarter showed growth of 80.4%, we believe that, without the benefit of its aggressive revenue pull-forwards, LTM revenue growth would have been just 58.1%, suggesting that the Company inflated annualized sales growth rate by over 2200 bps through this benefit. We believe that it continued to enjoy this artificial revenue growth tailwind throughout the fiscal year.

$, m, except percentages	Q1 FY22	Q1 FY23
Unbilled Receivables - Non-Related Party	86.9	224.5
Unbilled Receivables - Related Party	5.9	33.2
Unbilled Receivables - Total	92.8	257.7
Incremental Unbilled Receivables		164.9
Revenue, LTM	739.4	1,334.2
YoY Growth		*80.4%*
Revenue Ex-Incremental Unbilled Receivables	739.4	1,169.3
YoY Growth		*58.1%*

Source: Company filings and Blue Orca calculations and estimates.

We think it's clear that Fluence has been extremely aggressive in its revenue recognition practices, presenting inflated sales growth that is out of line with Company fundamentals and, in our opinion, ultimately misleads investors.

But we think the jig is up for this particular accounting game: with over a full year of contract rewrites under its belt, this one-time pull-forward has lapped, and this gimmick has now been fully exhausted. At precisely the same time, Fluence saw its three-quarter streak of revenue beats come to an end, as it missed consensus sales estimates by a massive $28 million, or 7%. We believe that analysts and investors had been fooled by Fluence's prior revenue growth cadence into believing that it was representative of sustainable growth in underlying demand. We believe that it was all a mirage created by management's aggressive revenue recognition practices. Now that this it can no longer pull this particular lever, its revenue growth rate has inevitably reverted downwards.

Aggressive Earnings Adjustments Inflate Gross Margins

We believe that it is not just Fluence's reported revenues that have been inflated by accounting gimmicks. Throughout FY23, Fluence presented surging earnings and rising gross margins, which it attributed to improving fundamentals and increasingly favorable contract terms. In reality, we believe that much of the observed improvement can be attributed to dubious and inconsistent accounting adjustments which the Company appears to selectively apply to its non-GAAP financials only when such gimmicks juice its reported results. Without these questionable maneuvers, we calculate that Fluence's margins have risen far less than the Company reports, and year-over-year earnings growth is far less than it would appear.

[10] Includes both related party and non-related party unbilled receivables.

Though the mechanics of Fluence's tricks are complicated, we believe that the Company's true underlying profitability cannot be understood without disentangling them from its reported results.

- **Selective Change Order Adjustments Inflate Gross Margins**

Included in Fluence's reported gross margin were the impact of price hikes associated with change orders. These change orders represent retrospective price increases applied to items associated with long-term contracts to cover unexpected costs not covered in the initial contracts. Because, per Fluence's financial statements, the benefit related to such change orders applies to performance obligations which have already been satisfied, they flow directly to Fluence's bottom line without bearing any associated costs, thus carrying 100% gross margins. While benefits from change orders is typically not disclosed as a material item for the Company, it booked a $26.3 million gain from change orders during FY23.

What is perhaps most unsettling about this accounting treatment is that, while Fluence recognizes the benefit of these retrospective cost recoveries today, which we believe to be associated with post-COVID price hikes, it in fact adjusted higher COVID-related costs *out* of its Adj. Gross Margins during prior periods. It seems that the Company wants to have its cake and eat it too: when calculating its Adj. Gross Margin, it spared itself the penalty of higher COVID-era costs, but is happy to recognize as a benefit the retrospective price hikes that were applied to cover these costs. While the reversals were prompted by SEC questioning into its decision to make the COVID-era accounting adjustments in the first place, the fact that the Company benefitted from these adjustments in prior years, and then *again* benefitted from their reversal when questioned by the SEC, has nonetheless created a deceptive image of profitability and earnings growth for Fluence. We believe that its selective and convenient treatment of these costs and change orders presents a false view of gross margins which has mislead investors about the Company's true profitability.

The impact of these selective gimmicks is significant. Of the Company's reported FY23 adjusted gross profit of $146.9 million, a full $26.3 million, or 18%, can be attributed to these retrospective price adjustments. We believe that, particularly considering Fluence's prior non-GAAP adjustments which removed the impact of higher COVID-era costs, these change order price benefits have no business being included within its FY23 Adj. Gross Margin.

Also included in Fluence's FY23 Adj. Gross Margin was a $19.5 million settlement with its battery vendor over alleged lost revenues attributable to supplier delays. Management chose to include this within its Adj. Gross Margin calculation in Q1 FY23, whose positive Adj. Gross Margin was more than 100% attributable to this single item. We believe that including this one-time legal windfall as part of normal gross profit without adjusting it out as a special item, as though it were part of normal profit generated by the underlying business, is inappropriate.

Negotiations with our Largest Battery Module Vendor

In December 2021, we entered negotiations with our largest battery module vendor to amend our battery supply agreement. As part of the discussions the vendor sought to renegotiate the price, we were to pay for battery modules purchased in calendar year 2022 as well as those expected to be purchased during the remainder of calendar year 2022 and calendar year 2023. As part of these negotiations, we also discussed settlement of contractual claims by Fluence to the vendor. These negotiations continued throughout calendar year 2022.

On December 15, 2022, we finalized an agreement with the vendor, amending the supply agreement and resolving our claims. The amendments and settlement were consistent with what we had estimated and disclosed in our 2022 consolidated financial statements in our 2022 Annual Report. The approximately $19.5 million settlement for our claims was recognized as a reduction of costs of goods and services for the three months ended December 31, 2022.

Source: Fluence Q1 FY23 10-Q

When we adjust Fluence's Adj. Gross Margin to remove the benefit of each of the above items, an unsustainable benefit from loss contract provisions likely attributable to one-time post-COVID price increases,[11] and the

[11] Loss contracts are long-term contracts on which Fluence expects to realize a net loss, which it must recognize as an expense in the period in which that determination is made. In FY23, however, Fluence's cash flow statement shows a use of cash of $6 million tied to a benefit on loss contracts, indicating that it was a benefit to earnings in FY23. We believe that this can be attributed to the retrospective price increases which it was able to secure on its COVID-era contracts. We see this as an unsustainable one-time benefit to earnings.

aforementioned high-margin consulting revenue stream conveniently introduced in FY23, we estimate that the Company's FY23 reported Adj. Gross Margin was inflated by 275 bps.

$, m, except percentages	Q1 FY23 3 Months	Q2 FY23 6 Months	Q3 FY23 9 Months	Q4 FY23 12 Months
Adj. Gross Profit - Fluence	**14.7**	**46.6**	**69.0**	**146.9**
Benefit of Price Increase on Change Orders	11.5	24.3	26.1	26.3
Gain from Supplier Settlement	19.5	19.5	19.5	19.5
Provision (Benefit) on Loss Contracts	2.7	2.0	8.6	6.1
Consulting	0.0	7.2	8.0	9.1
Blue Orca Adj. Gross Profit	**(19.0)**	**(6.4)**	**6.8**	**85.9**
Adj. Gross Margin - Fluence	***4.7%***	***4.6%***	***4.5%***	***6.6%***
Adj. Gross Margin - Blue Orca	***-6.1%***	***-0.6%***	***0.4%***	***3.9%***

Source: Company filings and Blue Orca calculations.

Fluence's reported Adj. Gross Margins are already unimpressive as it is, but our review of the Company's accounting indicates that much of even this weak non-GAAP profitability metric can be attributed to what we consider accounting shenanigans.

When we back out the impact of these accounting maneuvers, we calculate that Fluence was a negative gross margin business for the first half of FY23, and barely scratched out low single digit Adj. Gross Margins through the end of the year. Our adjustments would reduce the Company's reported adjusted gross profit for the year by over 40%, leaving its Adj. Gross Margin at just 3.9% versus a reported 6.6%.

Retrospective Earnings Adjustment Reversals Inflate Earnings Growth

The impact of Fluence's accounting maneuvers goes beyond inflating revenues and Adj. Gross Margins. We also think that Fluence engages in accounting gymnastics to inflate earnings growth, giving investors a false impression of the Company's purportedly improving bottom line.

The most egregious example of this, in our opinion, came in Q3 FY23, when Fluence conveniently capitalized software expenses for the first time in its reporting history. But the new accounting treatment, while small on its face, were critical to Fluence's reported results for the quarter: by capitalizing $5.5 million in software expenses for the quarter, the Company was able to turn what would have been a $2.3 million Adj. EBITDA miss into a $3.2 million Adj. EBITDA beat against consensus estimates.

Software Development Costs

Our software development costs primarily relate to two categories: 1) internal-use software development costs, and 2) external-use software development costs. We capitalize costs incurred to purchase or develop software for internal use, and software to be sold or leased externally.

Internal-use software development costs are capitalized during the application development stage in accordance with ASC 350-40, Internal-Use Software. These capitalized costs are reflected in "Intangible Assets, Net" on the consolidated balance sheets and are amortized over the estimated useful life of the software. Our internal-use software relates to our SaaS customer offerings and is amortized to cost of goods and services. The useful life of our internal-use software development costs is generally 3 years.

During the three and nine months ended June 30, 2023, the Company capitalized $5.5 million, and in the comparable periods of the prior year $0.0 million, of internal use software.

Source: Fluence Q3 FY23 10-Q

$, m	As Reported	Capitalized Software	Blue Orca Adjusted
Adj. EBITDA, Q3 FY23	(26.2)	5.5	(31.7)
Consensus Estimate	(29.4)	-	(29.4)
Beat / Miss	*3.2*	-	*(2.3)*

Source: Company filings, CapIQ, and Blue Orca calculations.

Interestingly, Fluence capitalized less than $1 million in software development costs in each of Q4 FY23 and Q1 FY24, quarters in which it was able to beat Adj. EBITDA estimates without the benefit of any similar maneuvers. We see Fluence's decision to capitalize $5.5 million of software expenses out of thin air in Q3 FY23 as a convenient way for management to beat estimates and keep the stock afloat.

We think Fluence has also made dubious and convenient adjustments to inflate its reported earnings growth. During the height of the COVID-19 pandemic, Fluence made a number of sizable add-backs to its Adj. EBITDA to address costs and events associated with disruptions during the period. Recently, however, it retrospectively unwound many of those add-backs. At the original time of reporting, the Company was able to reap the benefits of the adjustments as it erased the effects of these supposed one-off costs and reported higher Adj. EBITDA for analysts and investors. But now that those periods are well in the past, management appears to take no issue with allowing those costs back into its Adj. EBITDA calculation and thus give the appearance of enhanced year-over-year earnings growth. We believe that this convenient, ad-hoc treatment of its non-GAAP earnings adjustments has clouded investors' view of Fluence's true earnings growth, much to the benefit of the Company.

Beginning in 2021, Fluence began to make large non-GAAP earnings adjustments associated with COVID-19 pandemic costs and a cargo loss incident, among other adjustments. In Q4 FY21 alone, these adjustments together added up to $70.8 million, helping to reverse the vast majority of the Company's -$87.2 million GAAP net loss to an Adj. EBITDA loss of just -$15.3 million, and allowing it to report positive Adj. Gross Profit. The next quarter saw another $41.4 million worth of such "other" adjustments, which helped to slash its GAAP net loss by more than half.

In Q3 FY23, however, a footnote in the Company's earnings presentation stated that it would no longer exclude these costs from its non-GAAP earnings figures. As this change was made long after the pandemic, these reversals had minimal impact on results for the current and immediately preceding periods. But the retrospective changes had a significant impact on non-GAAP figures from prior periods, reducing COVID-era non-GAAP earnings by a sizable degree. Accordingly, these changes give the false appearance of significant year-over-year non-GAAP earnings growth, which would appear much more muted had the adjustments been maintained.

By making these retrospective changes which significantly decreased all FY22 non-GAAP earnings figures, but which barely touched the same figures in FY23, Fluence was able to show an artificial increase in year-over-year Adj. EBITDA growth of $49.2 million, and a similar increase in year-over-year Adj. Gross Profit growth of $50.8 million. These changes inflated the Company's reported year-over-year incremental Adj. EBITDA gain and incremental Adj. Gross Profit gain by 39.5% and 33.9%, respectively.

$, m, except percentages	Before Restatement		After Restatement	
	FY22	FY23	FY22	FY23
Net Loss	**(289.2)**	**(104.8)**	**(289.2)**	**(104.8)**
Interest Expense	(0.3)	(5.4)	(0.3)	(5.4)
Income Tax Expense	1.4	4.5	1.4	4.5
Depreciation and Amortization	7.1	10.7	7.1	10.7
Stock-Based Compensation	44.1	26.9	44.1	26.9
IPO-Related One-Time Expenses	0.1			
COVID-19 Pandemic Cost Adjustment	39.1			
2021 Cargo Loss Incident	11.9	1.9		
Other	1.6	6.7	1.6	6.7
Other Expenses - Total	52.7	8.6	1.6	6.7
Adj. EBITDA	**(184.2)**	**(59.5)**	**(235.3)**	**(61.4)**
YoY Adj. EBITDA Gain ($)		***124.7***		***173.9***
Change in Adj. EBITDA Gain (%)				***39.5%***

$, m, except percentages	Before Restatement		After Restatement	
	FY22	FY23	FY22	FY23
Gross Profit	**(62.4)**	**141.0**	**(62.4)**	**141.0**
Stock-Based Compensation	8.5	4.2	8.5	4.2
Amortization		0.8		0.8
COVID-19 Pandemic Cost Adjustment	39.1			
2021 Cargo Loss Incident	11.9	0.2		
Other		0.9	0.1	0.9
Other Expenses - Total	51.0	1.1	0.1	0.9
Adj. Gross Profit	**(2.9)**	**147.1**	**(53.9)**	**146.9**
YoY Adj. Gross Profit Gain ($)		*150.0*		*200.8*
Change in Adj. Gross Profit Gain (%)				*33.9%*

Source: Company filings and Blue Orca calculations. Small differences due to rounding.

By making a convenient change to its non-GAAP figures which had nearly zero effect on its FY23 reported earnings, but which significantly decreased its FY22 reported earnings, Fluence was able to give the appearance of far greater year-over-year earnings growth than it would have otherwise.

The Company, of course, did not hesitate to exclude these costs from its FY21 and FY22 non-GAAP earnings figures in 2021 and 2022, when they would be judged by investors on those years' earnings. But when those earnings figures no longer had bearing on investors' judgment of Fluence's results, the Company didn't hold back from reversing non-GAAP adjustments, enhancing its apparent earnings growth in the process. We see this as a naked attempt to flatter apparent earnings growth through the manipulation of non-GAAP metrics over which management has full discretion to define and amend at will. In our opinion, it both undermines the quality of Fluence's reported earnings and undermines our trust in management's treatment of its financials altogether.

Fluence's accounting gimmicks appear, at first, to amount to small, one-off tricks which, on their own, appear far too minor and isolated to move the needle on an investor's valuation of the Company's business. Yet, in the aggregate, we believe that this motley collection of complicated accounting maneuvers has a much more impactful and nefarious cumulative effect. Through a series of dubious accounting machinations, we think Fluence exaggerated its Adj. Gross Margins, revenue growth and Adj. EBITDA growth and presented a misleading picture of alleged financial improvement to investors.

VII. Inherent Conflicts of Interest, Executive Turnover and Long-Standing Material Weakness Erode Any Remaining Credibility and Trust

Companies caught engaging in aggressive accounting or manipulating financial statements generally experience substantial executive turnover, especially in finance functions. Departing executives may not want to be complicit in what they believe to be questionable corporate decisions and see little value in hanging on to a sinking ship.

We suspect that this is precisely what is occurring at Fluence: it has had three CFOs and two CAOs during its short history as a public company of just over two years and has seen almost half of its C-suite turn over through the same period. Those who remain are largely transplants from Fluence related parties, only adding to the minefield of conflicts of interest that exist throughout the Company. Its corporate governance has been so weak that it has had a material weakness over its percentage-of-completion revenue recognition practices dating back since before it went public – a red flag which it has failed to remediate despite spending millions of dollars attempting to do so.

<u>Alarming Turnover Within Fluence's Finance Function</u>

The most glaring example of Fluence's rampant executive turnover can be found in its CFO position. We believe that instability at the top of the finance function is a clear and frequent sign of potential financial calamity among publicly traded companies, and turnover at the top has been particularly egregious at Fluence.

The Company has already had three CFOs since going public in October 2021, with the most recent joining Fluence in January 2024.

Revolving Door at CFO

	Joined	Departed	Tenure	Notes
Dennis Fehr	Jan-18	Sep-22	4 years, 8 months	Previously at Siemens for 14 years, 3 months
Manavendra (Manu) Sial	Sep-22	Dec-23	1 year, 4 months	CFO of SunPower during period for which financials were revised
Ahmed Pasha	Jan-24	-	2 months	Previously at AES for 26 years

Source: Company Filings

Two of the three CFOs were former senior employees at either Siemens or AES, raising concerning conflicts of interest with transplants from major shareholders sitting atop Fluence's finance function. The lone CFO with neither a Siemens nor AES relationship was previously the CFO of SunPower before joining Fluence. In October 2023, SunPower reported a material weakness over internal controls that would force it to restate its FY22 financials due to a major reporting error. The announcement caused the stock to fall by ~20% and triggered securities fraud class-action lawsuits. The same CFO who certified SunPower's misstated financials served as Fluence's CFO from late 2022 through the end of 2023. This only compounds our concerns regarding Fluence's financial reporting, as detailed throughout this report.

Former CFO Biography

As Chief Financial Officer, Manu Sial is responsible for the financial management of Fluence and the development of financial services for Fluence customers, and from a finance perspective the tendering and execution of projects and managing the procurement function.

Prior to joining Fluence, Mr. Sial has served as Executive Vice President and Chief Financial Officer at SunPower Corporation for four years, where he led SunPower's treasury, project finance, investor relations, financial planning, and accounting organizations. Prior to joining SunPower, Mr. Sial served as Executive Vice President and Chief Financial Officer of VECTRA, which was a portfolio company of certain funds managed by affiliates of Apollo Global Management, LLC, from 2015 through 2018. Prior to his employment with VECTRA, Mr. Sial held various global finance and operations leadership roles with SunEdison Inc. from 2011 to 2015, including serving as Senior Vice President, Finance in 2015 and Chief Operating Officer, Asia Pacific and South Africa from 2013 through 2014. Before joining SunEdison Inc., Mr. Sial spent 11 years with General Electric (GE) in a variety of roles. Mr. Sial earned his MBA from Duke University's Fuqua School of Business and his Bachelor of Commerce from Delhi University in India.

Source: Fluence Governance Page, September 23, 2023

SunPower Material Weakness and Restatement

On October 19, 2023, the Audit Committee (the "Audit Committee") of the Board of Directors (the "Board") of SunPower Corporation (the "Company"), based upon the recommendation of management, determined that the Company's (i) audited financial statements included in the Company's Annual Report on Form 10-K for the period ended January 1, 2023, filed with the U.S. Securities and Exchange Commission (the "SEC") on March 10, 2023 (the "Form 10-K"), (ii) unaudited financial statements included in the Company's Quarterly Report on Form 10-Q for the quarterly period ended April 2, 2023, filed with the SEC on May 3, 2023 (the "Q1 2023 Form 10-Q"), and (iii) unaudited financial statements included in the Company's Quarterly Report on Form 10-Q for the quarterly period ended July 2, 2023, filed with the SEC on August 2, 2023 (the "Q2 2023 Form 10-Q," and collectively, the "Affected Periods"), as well as the relevant portions of any communication which describe or are based on such financial statements, should no longer be relied upon. The Company plans to restate, as soon as practicable, the financial statements for the Affected Periods in amendments to the Form 10-K, the Q1 2023 Form 10-Q, and the Q2 2023 Form 10-Q, respectively (collectively, the "Restatement").

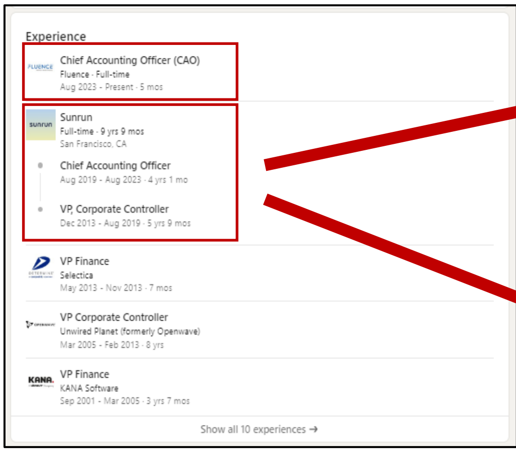
In connection with the preparation of the financial statements, the Company preliminarily determined that the value of consignment inventory of microinverter components at certain third-party locations had been overstated in the Affected Periods in the range of approximately $16 million to $20 million, resulting in the associated cost of revenue being understated. At this time, the Company has not fully completed its review, and the expected financial impact of the errors described above is preliminary and subject to change. Additionally, the Company is correcting other immaterial errors in the Affected Periods.

Upon evaluation of the impact to Affected Periods, the Company's management has concluded that in light of the matters described above, a material weakness exists in the Company's internal control over financial reporting. The Company's remediation plan with respect to such material weakness will be described in more detail in the Company's amended Form 10-K.

Source: SunPower 8-K, October 24, 2023

But it's not just the CFO departures that are cause for concern. In August 2023, Fluence also replaced its Chief Accounting Officer, who served in that role for just two years. Fluence's new CAO was previously the CAO and Corporate Controller at Sunrun, Inc., a solar panel and battery storage company. Notably, activist investment research firm Muddy Waters *twice* issued detailed reports addressing various apparent financial misrepresentations that allegedly occurred under the watch of Fluence's new CAO. Among the accusations are that Sunrun inflated subscriber values and other KPIs to game a renewable energy tax incentive program.

Fluence Chief Accounting Officer



Muddy Waters Research Reports, July 2022 and October 2023

Muddy Waters is short Sunrun Inc. (RUN) because we see it as an uneconomic business built on three shaky pillars: The equity story of exaggerated "Subscriber Values" and "Gross / Net Earning Assets", funding growth through abusing tax incentives, and issuing ABS that could be exposed to a RUN bankruptcy. These pillars, in turn, are built on a foundation of dubious financial models. If one of these three pillars wobbles, RUN would likely face a funding gap and would require equity issuances to continue growing. Insiders have already become ultra-wealthy, having net sold shares since July 2020 for $205.9 million. RUN is on its third CFO since January 2020.

MW is again short Sunrun (RUN). We weren't cynical enough when we first published our initial short thesis on Sunrun in July 2022. We now believe that Sunrun has greatly exaggerated its (non-GAAP) Subscriber numbers for years, with the current overstatement seemingly close to five quarters of reported deployments. It appears that Sunrun has been claiming and selling tax credits on these inflated numbers as well. The amount of possible excess tax credits for 2022 alone could be ~$200 million.

Sources: LinkedIn; Muddy Waters Research; July 28, 2022; Muddy Waters Research – October 25, 2023

Heavy Turnover and Conflicts of Interest Throughout the Management Team and Board of Directors

But it isn't just the finance function over which we have concerns. The entire C-suite at Fluence has been a revolving door since the Company went public in 2021. The Company's last CEO – its first as a public company – was replaced in August 2022 after just two years in the position. Its former Chief Digital Officer departed in June 2022 after just one and a half years on the job. Similarly, during the summer of 2023, Fluence replaced its Chief Supply Chain & Manufacturing Officer and removed its Chief Technology Officer from its leadership team.[12]

Between these four positions, the CFO, and the CAO, **just under one half of Fluence's executive team has turned over in the last year and a half**. And among those executives who remain, we only find more conflicts of interests with AES and Siemens. This includes, most notably, Fluence's CEO and CFO, both of whom are former AES executives.

The presence of an AES former in the CFO position is of particular concern and a source of possible conflicts of interest, particularly given that the Company's treasury infrastructure is itself directly provided by either or both AES and Siemens. Given that AES has begun selling down its Fluence stock, we question the propriety of having such an influential parent company maintain such seemingly powerful influence over Fluence's executives and its finance function.

[12] It is not clear whether the CTO departed Fluence or remains at Fluence in a different role, but the turnover in this leadership position is evident by comparing the leadership team that is currently shown on Fluence's website with the leadership team that is shown in an archived version of the website from June 2023.

Fluence CFO

Source: [LinkedIn]

Fluence CEO

Source: [LinkedIn]

We also note that, among the remainder of Fluence's C-suite, its Chief Strategy and Commercial Officer, Americas President, and EMEA President came to Fluence directly from previous positions at AES, and its General Counsel, Chief Business Operations and Transformation Officer, and APAC President came directly from Siemens.

Since Fluence's new CFO joined on January 1, 2024, eight of the 12 senior leaders listed on the Company's management team website now come to the Company directly from one of its related parties, both of whom remain significant customers.

Fluence's Board of Directors gives us no greater comfort in the Company's level of independence from Siemens and AES. Of the 11 members of Fluence's board excluding the current CEO, six are *current* employees of AES or Siemens, including Siemens Corporation's President and CEO. Between the heavy influence of related parties on Fluence's board and the presence of AES and Siemens-related individuals on its management team, we harbor serious concerns about Fluence's independence and the health of its financials. With related parties so critical to Fluence's sales figures and maintaining heavy influence over its finance function just as they look to divest, we question whether such obvious influence undermines the credibility of Fluence's financials, already ugly as they are.

Unremediated Material Weakness in Revenue Recognition Persists for Years

The heavy turnover in Fluence's finance functions is notable given that the Company has had a material weakness over its percentage-of-completion revenue recognition practices dating back years, a critical weakness which persists despite recent financial disclosures indicating that Fluence has spent millions to fix the problem – seemingly to no avail.

The Company first reported a material weakness in its internal control over revenue recognition in its registration statement issued in June 2021. Amazingly, it appears that this material weakness, dating back to *before* the Company went public in 2021, has *still* yet to be remediated. Fluence continues to report a material weakness over revenue recognition and has done so continuously since it released its first registration statement.

Fluence DRS – June 24, 2021

> During the fiscal year ended September 30, 2020, a material weakness in the internal control over revenue recognition process has been identified. The design and implementation of controls has not been sufficient to adequately interpret ASC 606 in the design of the accounting policy related to in-transit and delivered, but uninstalled equipment. We are in the process of developing a remediation plan which

Source: Fluence DRS, June 24, 2021

Fluence FY23 10-K – November 29, 2023

> **Material Weaknesses and Remediation Measures**
>
> A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.
>
> We previously reported a material weakness in internal control over revenue recognition and related inventory.
>
> As of September 30, 2023, the material weakness in internal control over revenue recognition has not fully been remediated. The Company's controls related to its estimate at completion ("EAC"), which is used in the Company's percentage of completion ("POC") accounting for its battery energy storage solutions were not effective.

Source: Fluence FY23 10-K

As of Q1 FY24, the Company has begun to make excuses in its material weakness disclosure, claiming that process enhancements and increased training will require "additional time" to be implemented, but the material weakness remains unremediated regardless.

The material weakness was also previously expanded to cover "revenue recognition and related inventory and associated processes." The problem has apparently become so significant that, beginning in Q2 FY23, the Company felt the need to adjust the growing costs associated with its ongoing remediation out of its Adj. EBITDA calculation. The adjustment revealed that Fluence spent $1.1 million in Q2 FY23 alone on its remediation plan, which *continues* not to have fully remedied the problem as of today. Fluence's Q3 FY23 reclassification of its financials wiped this line item from its Adj. EBITDA calculation, but if the cost of the remediation plan has been similar in recent quarters, we suspect that **the Company may be spending close to $5 million annually simply to address a material weakness – and even *this* has not been sufficient to address the matter properly**.

($ in millions)	Q2'23	Q2'22	CHANGE	CHANGE %
NET LOSS	(37.4)	(60.7)	23.3	(38)%
ADD (DEDUCT):				
INTEREST EXPENSE (INCOME), NET[(a)]	(1.1)	0.5	(1.6)	(320)%
INCOME TAX EXPENSE (BENEFIT)	(0.1)	0.1	(0.2)	(200)%
DEPRECIATION AND AMORTIZATION	2.7	1.5	1.2	80%
STOCK-BASED COMPENSATION [(b)]	7.3	2.7	4.6	170%
OTHER EXPENSES[(c)]	3.8	2.7	1.1	41%
ADJUSTED EBITDA[1]	(24.8)	(53.2)	28.4	(53)%

($ in millions)	Q2'23	Q2'22
COVID-19 PANDEMIC	–	(1.7)
CARGO LOSS INCIDENT	0.8	4.4
SEVERANCE AND RESTRUCTURING COSTS	1.2	–
OTHER LEGAL MATTERS	0.7	–
MW REMEDIATION AND SOX 404 IMPLEMENTATION	1.1	–
TOTAL ADJ EBITDA OTHER EXPENSES	**3.8**	**2.7**

($ in millions)	Q2'23	Q2'22	CHANGE	CHANGE %
GROSS (LOSS) PROFIT	30.8	(14.8)	45.6	(308)%
ADD (DEDUCT):				
STOCK-BASED COMPENSATION [(b)]	1.3	0.7	0.6	86%
OTHER EXPENSES	(0.2)	2.7	(2.9)	(107)%
ADJUSTED GROSS (LOSS) PROFIT[1]	31.9	(11.4)	43.3	(380)%

($ in millions)	Q2'23	Q2'22
COVID-19 PANDEMIC	–	(1.7)
CARGO LOSS INCIDENT	(0.9)	4.4
SEVERANCE	0.1	–
OTHER LEGAL MATTERS	0.6	–
TOTAL GROSS (LOSS) PROFIT OTHER EXPENSES	**(0.2)**	**2.7**

Note 1: May not reconcile to financial statements due to rounding.
(a) Net interest expense (income) for the three months ended March 31, 2023 consists of $1.1 million of interest expense and $2.2 million of interest income. Net interest expense (income) for the three months ended March 31, 2022 consists of $0.7 million of interest expense and $0.2 million of interest income.
(b) Includes incentive awards that will be settled in shares and incentive awards that will be settled in cash.
(c) Amount for the three months ended March 31, 2023 included $1.2 million in severance costs and consulting fees related to the restructuring plan, $0.8 million related to the 2021 Cargo Loss Incident, $1.1 million for external expenses related to the ongoing remediation of our material weakness disclosed in our FY 2022 Form 10-K, and $0.7 million in legal fees related to the 2021 and 2022 overheating events at customer facilities.
Amount for the three months ended March 31, 2022 included a $(1.7) million reduction related to COVID-19 pandemic costs as a result of release of $(6.4) million prior period project charges net of excess shipping costs of approximately $4.7 million which was mostly related to excess port and demurrage fees as a direct result of pandemic-related port disruptions and work shortages and a $4.4 million loss related to the 2021 Cargo Loss Incident.

Source: Q2 FY23 Earnings Presentation

For most companies of Fluence's size, resolving a material weakness is a relatively straight-forward matter taking little longer than a quarter, if that. For Fluence, it has taken several years and millions of dollars to get seemingly nowhere. Moreover, material weaknesses in controls over percentage of completion accounting often lead to financial restatements and SEC investigations. We have concerns that Fluence may be no exception.

Ultimately, we believe that Fluence's governance is rotten, and we question whether any Company which has had 3 CFOs and 2 CAOs in a little over 2 years is investable.

In summary, we view the Siemens Energy lawsuit against Fluence as a bellwether of pain. The Company has failed to disclose that the U.S. affiliate of its largest shareholder has sued it for project failures, materially false representations, and fraud. At the same time, AES, its largest customer, appears to be getting ready to hammer Fluence on pricing or even withdraw purchases. With both Siemens and AES selling down their shares as they seemingly grow frustrated with their wayward corporate ward, we think that Fluence is set to be left to fend for itself without the critical related party subsidies on which it continues to rely.

Fluence is also facing a barrage of potential and active claims or lawsuits from customers like Siemens Energy, Vistra and Diablo, which together paint a picture of serial incompetence, project failures and jilted counterparties. We are not surprised that Fluence recently missed consensus estimates for its quarterly sales, as we would expect revenues to fall as customers learn of these incidents, alleged project failures, and controversies. If this pattern continues, we think Fluence is set for a financial catastrophe as it is unlikely to survive in the cold harsh realities of a competitive market without the warm embrace of its departing benefactors.

Ultimately, we think Fluence is facing a perfect storm of crushing lawsuits, angry customers, major shareholders withdrawing generous subsidies, massive insider dumping and a tidal wave of coming dilution.

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