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

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**In re** :  
 : **Chapter 11**  
 :  
**WESTINGHOUSE ELECTRIC** :  
**COMPANY LLC, et al.,** : **Case No. 17-\_\_\_\_\_ (\_\_\_\_)**  
 :  
 : **(Joint Administration Pending)**  
**Debtors.**<sup>1</sup> :  
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**MOTION OF DEBTORS PURSUANT TO  
11 U.S.C. § 105 FOR ENTRY OF AN ORDER ENFORCING  
THE PROTECTIONS OF 11 U.S.C. §§ 362, 365, 525, AND 541(c)**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Westinghouse Electric Company LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) respectfully represent as follows in support of this motion (the “**Motion**”):

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.



### **Background**

1. On the date hereof (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Lisa J. Donahue Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to on the date hereof (the “**Donahue Declaration**”), which has been filed with the Court contemporaneously herewith and is incorporated herein by reference.

### **Jurisdiction**

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

5. By this Motion, pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code to aid in the administration of

these chapter 11 cases and to help ensure that the Debtors' global business operations are not disrupted.

6. A proposed form of order granting the relief requested herein on a final basis is annexed hereto as **Exhibit A** (the "**Proposed Order**").

**Relief Requested Should Be Granted**

7. As a result of the commencement of the Debtors' chapter 11 cases, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay enjoins all entities from, among other things: (i) commencing or continuing any judicial, administrative, or other action or proceeding against any of the Debtors that was or could have been initiated before the Commencement Date; (ii) recovering a claim against any of the Debtors that arose before the Commencement Date; (iii) enforcing against any of the Debtors or property of their estates a judgment that was obtained before the Petition Date; or (iv) taking any action to collect, assess, or recover a claim against any of the Debtors that arose before the Petition Date. 11 U.S.C. § 362.

8. The injunction contained in section 362 of the Bankruptcy Code is self-executing. It constitutes a fundamental debtor protection that, together with other provisions of the Bankruptcy Code, provides a debtor with a "breathing spell" that is essential to a successful reorganization. *See, e.g., Variable-Parameter Fixture Dev. Corp. v. Morpheus Lights, Inc.*, 945 F. Supp. 603, 608 (S.D.N.Y. 1996) ("[Section] 362 is meant to give 'the debtor a breathing spell from his creditors [and permit] the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.'" (quoting S. Rep. No. 95-989, at 54-55 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5787, 5840-41).

9. The protections of the automatic stay apply to a debtor's property wherever located and by whomever held. *See* 11 U.S.C. § 541(a); *In re Allen*, 768 F.3d 274,

276, 279 (3d Cir. 2014) (stating that “[b]ankruptcy jurisdiction, at its core, is *in rem*” and holding that actual possession by the debtor is not required for property to be part of the debtor’s estate) (internal citation and quotation marks omitted) (alteration and emphasis in original); *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996) (bankruptcy court’s *in rem* jurisdiction over property of estate permits injunctions against foreign proceedings pursuant to the automatic stay). The automatic stay therefore applies to the Debtors’ assets and operations throughout the world.

10. Section 365(e)(1) of the Bankruptcy Code renders insolvency termination provisions in contracts unenforceable against a chapter 11 debtor. Specifically, section 365(e)(1) provides that:

Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

- (A) the insolvency or financial condition of the debtor at any time before the closing of the case;
- (B) the commencement of a case under this title; or
- (C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

11 U.S.C. § 365(e)(1). Bankruptcy Courts have applied section 365(e)(1) liberally, such that provisions modifying or terminating the relationships of the contracting parties due to the filing of a bankruptcy case are “broadly unenforceable.” *In re AMR Corp.*, 730 F.3d 88, 106 (2d Cir. 2013) (citing *In re Lehman Bros. Holdings Inc.*, 422 B.R. 407, 414 (Bankr. S.D.N.Y. 2010)). Similarly, provisions in agreements, transfer instruments, or applicable nonbankruptcy law are

unenforceable if such provision “restricts or conditions transfer of such interest by the debtor” or if any such provision:

is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor’s interest in property.

11 U.S.C. § 541(c)(1)(B).

11. Pursuant to section 525(a) of the Bankruptcy Code, “governmental units,” including foreign “governmental units,” are prohibited from, among other things, denying, revoking, suspending, or refusing to renew licenses, permits, charters, franchises, or other similar grants held by a chapter 11 debtor (or persons with whom the debtor is associated, including affiliates) on the basis that the debtor has failed to pay a dischargeable debt, commenced a chapter 11 case, or was insolvent prior to the commencement of such case. *See* 11 U.S.C. § 525(a). The Bankruptcy Code defines “governmental unit” as the “United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.” 11 U.S.C. § 101(27). Thus, the protections of section 525(a) apply broadly to local, state, and foreign governmental units.

12. Notwithstanding the self-executing and global nature of sections 362, 365, 525, and 541 of the Bankruptcy Code, not all parties affected, or potentially affected, by the commencement of these chapter 11 cases are aware of these statutory provisions or their significance and impact. Therefore, it is prudent to obtain an order confirming and reinforcing the relevant provisions of the aforementioned sections of the Bankruptcy Code.

13. The requested relief is particularly appropriate because the Debtors, through their various debtor and non-debtor affiliates and subsidiaries, operate in numerous countries with different legal systems, including Belgium, Brazil, China, the Czech Republic, France, Germany, Italy, Japan, the Republic of Korea, South Africa, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom, among others. The Debtors engage with numerous foreign customers, suppliers, and other vendors, as well as foreign regulators and other governmental units. Certain of the Debtors are also incorporated under the laws of other countries, including Belgium, Brazil, China, the Czech Republic, France, Germany, India, South Africa, Sweden, the Republic of Korea, and the United Kingdom, among others. Moreover, many of the Debtors' key contracts are governed by the laws of still more foreign jurisdictions. The Debtors believe that, absent an order from this Court, parties might attempt to take improper actions against the Debtors and/or property of their estates.

14. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Granting the relief requested in this Motion is fully consistent with the terms of the Bankruptcy Code and will facilitate a smooth and orderly transition of the Debtors' operations into chapter 11 and minimize the disruption of their business affairs. The Debtors, therefore, request that this Court grant the requested relief. Granting the requested relief, which the Debtors will be able to transmit to affected parties, will give effect to the protections under sections 362, 365, and 525 of the Bankruptcy Code by proactively confirming and clarifying the applicability and effect of these provisions in the form of an order that bears the imprimatur of a federal court and may be transmitted to third parties as necessary.

15. Similar relief has been granted by courts in the Second Circuit in other chapter 11 cases. *See, e.g., In re Pac. Andes Res. Dev. Ltd.*, Case No. 16-12739 (JLG) (Bankr. S.D.N.Y. Oct. 28, 2016); *In re Int'l Shipholding Corp.*, Case No. 16-2220 (SMB) (Bankr. S.D.N.Y. Aug. 4, 2016) (ECF No. 40); *In re China Fishery Grp. Ltd.*, Case No. 16-11895 (JLG) (Bankr. S.D.N.Y. July 14, 2016); *In re Aéropostale*, Case No. 16-11275 (Bankr. S.D.N.Y. May 10, 2016) (ECF No. 114); *In re Filmed Entm't Inc.*, Case No. 15-12244 (SEC) (Bankr. S.D.N.Y. Aug. 12, 2015).

### Notice

16. Notice of this Motion will be provided to (i) the Office of the U.S. Trustee for Region 2; (ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the Southern District of New York; (vi) proposed counsel to Debtor Toshiba Nuclear Energy Holdings (UK) Limited, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119 (Attn: Albert Togut, Esq.); (vii) counsel to Toshiba Corporation, Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071 (Attn: Van C. Durrer II, Esq. and Annie Z. Li, Esq.); (viii) counsel to the Debtors' prepetition agent under that certain Second Amended and Restated Credit Agreement, dated as of October 7, 2009 (as amended), Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611 (Attn: Zulfiqar Bokhari, Esq.); (ix) counsel to the lenders under the Debtors' proposed DIP Facility, (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6064 (Attn: Jeffrey D. Saferstein, Esq.) and (b) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 2001 K Street, NW, Washington, DC 20006-1047 (Attn: Claudia R. Tobler, Esq.); (x) counsel to the agents and letter of credit issuer under the Debtors' proposed DIP Facility, Shearman & Sterling

LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Fredric Sosnick, Esq. and Ned S. Schodek, Esq.) (collectively, the “**Notice Parties**”). The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

17. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: March 29, 2017  
New York, New York

/s/ Robert J. Lemons

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*Proposed Attorneys for Debtors  
and Debtors in Possession*



**Exhibit A**

**Proposed Order**

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

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**In re** :  
 : **Chapter 11**  
**WESTINGHOUSE ELECTRIC** :  
**COMPANY LLC, et al.,** : **Case No. 17-\_\_\_\_\_ (\_\_\_)**  
 :  
**Debtors.**<sup>1</sup> : **(Joint Administration Pending)**  
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**ORDER ENFORCING THE PROTECTIONS OF  
SECTIONS 362, 365, 525, AND 541(C) OF THE BANKRUPTCY  
CODE PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE**

Upon the motion (the “**Motion**”),<sup>2</sup> dated March 29, 2017, of Westinghouse Electric Company LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to section 105(a) of the Bankruptcy Code, for entry of an order enforcing the protections of sections 362, 365, 525, and 541(c) of the Bankruptcy Code to aid in the administration of these chapter 11 cases and to help ensure that the Debtors’ global business operations are not disrupted, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (N/A), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties as set forth in the affidavits of service filed at Docket Nos. [●] and [●], respectively; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on [●], 2017 to consider the relief requested in the Motion; and upon the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby stayed, restrained, and enjoined from:

- a. commencing or continuing any judicial, administrative, or other action or proceeding against the Debtors, including the issuance or employment of process, that was or could have been initiated before the Debtors' chapter 11 cases commenced;
- b. enforcing against the Debtors or their estates a judgment obtained before the commencement of the Debtors' chapter 11 cases;
- c. collecting, assessing, or recovering a claim against the Debtors that arose before the commencement of these chapter 11 cases;

- d. taking any action to obtain possession of property of or from the estates or to exercise control over property of the Debtors' estates;
- e. taking any action to create, perfect, or enforce any lien against property of the Debtors' estates; or
- f. offsetting any debt owing to the Debtors that arose before the commencement of these chapter 11 cases against any claim against the Debtors; and it is further

ORDERED that pursuant to section 365 of the Bankruptcy Code, and notwithstanding any contract or lease provision or applicable law, each non-Debtor counterparty to an executory contract or unexpired lease (and all those acting on such counterparty's behalf) is stayed, restrained, and enjoined from terminating or modifying such contract or lease or any right or obligation thereunder because of a provision in such contract or lease that is conditioned on (i) the insolvency or financial condition of any or all Debtors or (ii) the commencement of the Debtors' chapter 11 cases; and it is further

ORDERED that pursuant to section 525 of the Bankruptcy Code, all foreign or domestic governmental units and all those acting on their behalf are stayed, restrained, and enjoined from any act to:

- a. deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to the Debtors or the Debtors' affiliates on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases;
- b. condition a license, permit, charter, franchise, or other similar grant to the Debtors or the Debtors' affiliates on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases;
- c. discriminate against the Debtors or the Debtors' affiliates with respect to a license, permit, charter, franchise, or other similar grant on account of (i) the commencement of the Debtors' chapter 11 cases, (ii) the Debtors'

insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the chapter 11 cases; or

- d. interfere in any way with any and all property of the Debtors' estates, wherever located; and it is further

ORDERED that pursuant to section 541(c) of the Bankruptcy Code, and notwithstanding any agreement, transfer agreement, or applicable law, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) are stayed, restrained, and enjoined from any act to:

- a. restrict or condition transfer of the Debtors' interests in property; or
- b. effect a forfeiture, modification, or termination of any interest of the Debtors in property,

if such act is conditioned on the insolvency or financial condition of any Debtor or on the commencement of a case under chapter 11 of the Bankruptcy Code. Any purported restriction, condition, forfeiture, modification, or termination is void ab initio; and it is further

ORDERED that this Order shall not limit any party's rights with respect to any exceptions in the Bankruptcy Code to the restrictions or limitations described in this Order. Additionally, this Order shall not affect any other substantive rights of any party; and it is further

ORDERED that the Debtors are authorized to take all steps necessary to carry out this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2017  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE