

Martin J. Bienenstock
Timothy Q. Karcher
Vincent Indelicato

Hearing Date: October 17, 2017 at 10:00 a.m. (ET)
Objection Deadline: October 10, 2017 at 4:00 p.m. (ET)

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*Counsel to the Statutory Unsecured Claimholders’
Committee of Westinghouse Electric Company LLC, et al.*

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

In re

**Westinghouse Electric Company LLC, et al.,
Debtors.¹**

**Statutory Unsecured Claimholders’ Committee,
Movant,**

v.

**Springfields Fuels Ltd., et al.,
Respondents.²**

Chapter 11

Case No. 17-10751 (MEW)

(Jointly Administered)

¹ 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.

² The Respondents, consisting of the Debtors’ non-debtor affiliates, along with the last four digits of each Respondent’s federal tax identification number, if any, are: Springfields Fuels Limited (W481), Springfields Segregated Assets Limited (W563), Uranium Asset Management Limited (M480), Advance Uranium Asset Management Limited (M400), PWR Power Projects Limited, Westinghouse Electric UK Holdings Limited (W514), Westinghouse Electric Company UK Limited (W553), Westinghouse Electric Belgium S.A. (W508), Westinghouse Electric India Private Limited (W562), Westinghouse Operations Belgium (W567), Westinghouse Electric Czech Republic S.R.O. (W187), Westinghouse Electric Do Brasil Servicos E Consultaria Para Centrais Nucleares LTDA (W570), Westinghouse Electric Germany GMBH (W504), Konte Gelsellschaft Fur Technische Kommunikation MBH (W512), HTR GMBH, TSB (Investment Europe) Limited (W515), Westinghouse Electrique France SAS (W533), Astare (W548), Westinghouse Barras Provence (W522), Westinghouse Service Nuclearire (W523), TNEE



**NOTICE OF MOTION OF STATUTORY
UNSECURED CLAIMHOLDERS' COMMITTEE FOR ORDER PURSUANT TO
BANKRUPTCY RULE 2004 AUTHORIZING DISCOVERY FROM
WEC EMEA ENTITIES AND SHORTENING TIME TO PRODUCE DOCUMENTS**

PLEASE TAKE NOTICE that a hearing based upon the annexed motion (the "Motion") of the statutory unsecured claimholders' committee (the "UCC") of Westinghouse Electric Company LLC and each of its affiliated debtors and debtors in possession (collectively, the "Debtors"), by which the UCC seeks an order pursuant to Rule 2004(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): a) authorizing the UCC to issue subpoenas to the WEC EMEA Entities (as defined in the Motion) for the production of documents, electronically stored information, or tangible things responsive to requests relating to the Examination Topics described in the Motion; b) directing the WEC EMEA Entities to produce documents in accordance with this order on or before a date that is twenty (20) days from the service of such subpoenas unless otherwise ordered by the Court; c) authorizing the UCC to issue deposition subpoenas to the WEC EMEA Entities; d) deeming service upon Baker & McKenzie LLP and Weil, Gotshal & Manges LLP ("Weil") as proper and sufficient service of the subpoenas referenced above; e) directing that following a good faith effort to meet and confer, any motions to quash or otherwise modify such subpoenas shall be filed with this Court as the court for the district where compliance is required; and f) retaining jurisdiction with respect to all matters, claims, rights, or disputes arising from or related to implementation of the

Electric Sweden Holdings AB (W528), Westinghouse Electric Sweden AB (W527), Wesdyne Sweden AB (W530), Westinghouse Electric (Asia) SA (W190), Westinghouse Electric Canada, Inc. (W564), Westinghouse Electric South Africa (Pty) LTD. (W546), Magiarotti S.P.A. (M500), Westinghouse Electric Spain, S.A.U. (W510), Westinghouse Technology Services S.A. (W509), Enwesa Operaciones, S.A., ENUSA Enewesa AIE, Tecnatom S.A. Westinghouse Technology Services, S.A. ENUSA, Westinghouse Electric Ukraine AB (W572), Westinghouse Electric Company (China) Co., Ltd. (W565), Par TZ (China/Taiyuan) Nuclear Company, Ltd. (W566), SNPTC-WEC Nuclear Power Technical Services (Beijing) Company, Ltd. (W569), State Nuclear WEC Zirconium Hafnium Co., Ltd. (W555), Westinghouse Electric Japan Limited (W552), Nuclear Fuel Industries, Ltd. (W554), Toho Engineering Co., Ltd., and Nuclear Engineering Ltd.

Order, will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, at the United States Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004 (the “Bankruptcy Court”) on **October 17, 2017 at 10:00 a.m. prevailing Eastern Time** (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Bankruptcy Rules, shall set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, shall be filed with the Bankruptcy Court by (a) attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 on:

- a. the Chambers of the Honorable Michael E. Wiles, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004;
- b. Proskauer Rose LLP, as counsel for the UCC, Eleven Times Square, New York, New York 10036 (Attn: Martin J. Bienenstock, Timothy Q. Karcher, and Vincent Indelicato);
- c. the Debtors c/o Westinghouse Electric Company LLC, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066;
- d. Weil, Gotshal & Manges LLP, as counsel for the Debtors, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Robert J. Lemons, and Garrett A. Fail);
- e. Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to Toshiba Corporation, Four Times Square, New York, New York 10036 (Attn: Paul D. Leake);
- f. Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to Toshiba Corporation,

300 South Grand Avenue, Suite 3400, Los Angeles, California 90071 (Attn: Van C. Durrer II and Annie Z. Li);

- g. Baker & McKenzie LLP, as counsel for the WEC EMEA Entities (as defined in the attached Motion), 452 Fifth Avenue New York, New York 10018 (Attn: Debra A. Dandeneau);
- h. the Office of the U.S. Trustee or Region 2, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Paul K. Schwartzberg); and
- i. all other entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002.

so as to be so filed and received no later than **October 10, 2017 at 4:00 p.m. prevailing Eastern Time** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if an objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that any objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

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Dated: September 27, 2017
New York, New York

Respectfully submitted,

/s/ Martin J. Bienenstock

Martin J. Bienenstock

Timothy Q. Karcher

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**MOTION OF STATUTORY UNSECURED
CLAIMHOLDERS' COMMITTEE FOR ORDER PURSUANT TO
BANKRUPTCY RULE 2004 AUTHORIZING DISCOVERY FROM
WEC EMEA ENTITIES AND SHORTENING TIME TO PRODUCE DOCUMENTS**

To the Honorable Michael E. Wiles, United States Bankruptcy Judge:

The statutory unsecured claimholders' committee (the "UCC") of Westinghouse Electric Company LLC ("WEC"), *et al.* (together with WEC, the "Debtors," and collectively with their non-Debtor affiliates, "Westinghouse") hereby files this motion (the "Motion"), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking an order, substantially in the form annexed hereto as **Exhibit A**, a) authorizing the UCC to issue subpoenas to the (i) Respondents (as defined herein) and (ii) any present and former directors, officers, employees, and professionals of the foregoing involved with or who may have information (collectively, the "WEC EMEA Entities") for the production of documents, electronically stored information, or tangible things responsive to requests relating to the Examination Topics described in the Motion; b) directing the WEC EMEA Entities to produce documents in accordance with this order on or before a date twenty (20) days from the service of such subpoenas unless otherwise ordered by the Court; c) authorizing the UCC to issue deposition subpoenas to the WEC EMEA Entities; d) deeming service upon Baker & McKenzie LLP and Weil, Gotshal & Manges LLP ("Weil") as proper and sufficient service of the subpoenas referenced above; e) directing that following a good faith effort to meet and confer,

Electric Sweden Holdings AB (W528), Westinghouse Electric Sweden AB (W527), Wesdyne Sweden AB (W530), Westinghouse Electric (Asia) SA (W190), Westinghouse Electric Canada, Inc. (W564), Westinghouse Electric South Africa (Pty) LTD. (W546), Magiarotti S.P.A. (M500), Westinghouse Electric Spain, S.A.U. (W510), Westinghouse Technology Services S.A. (W509), Enwesa Operaciones, S.A., ENUSA Enewesa AIE, Tecnatom S.A. Westinghouse Technology Services, S.A. ENUSA, Westinghouse Electric Ukraine AB (W572), Westinghouse Electric Company (China) Co., Ltd. (W565), Par TZ (China/Taiyuan) Nuclear Company, Ltd. (W566), SNPTC-WEC Nuclear Power Technical Services (Beijing) Company, Ltd. (W569), State Nuclear WEC Zirconium Hafnium Co., Ltd. (W555), Westinghouse Electric Japan Limited (W552), Nuclear Fuel Industries, Ltd. (W554), Toho Engineering Co., Ltd., and Nuclear Engineering Ltd. (collectively, the "Respondents")

any motions to quash or otherwise modify such subpoenas shall be filed with this Court as the court for the district where compliance is required; and f) retaining jurisdiction with respect to all matters, claims, rights, or disputes arising from or related to the implementation of the Order. In support of this Motion, the UCC respectfully avers as follows:

Preliminary Statement

1. The Debtors have repeatedly represented³ that they and their non-title 11 debtor affiliates (the WEC EMEA Entities) are all integral and necessary components of one operating business enterprise. Indeed, that is the premise on which the order dated May 26, 2017 allows the Debtors to borrow money secured by the Debtors' estates' assets and to loan much of that money to the WEC EMEA Entities. When the UCC advised the Debtors and their owner, Toshiba Corporation ("Toshiba"), that it intended to exercise its powers and to carry out its duties to investigate, among other things, the mammoth losses that caused the Debtors to require chapter 11 relief, the Debtors and Toshiba ultimately consented to a Rule 2004 order. Proving that no good deed goes unpunished, after the UCC accommodated the Debtors' and Toshiba's request to defer requesting the Rule 2004 order until August 1, 2017, the U.S.-based attorneys for the WEC EMEA Entities (all controlled by Toshiba) not only refused to consent to the same order, their U.S.-based attorneys refused to provide all their names and to accept service on their behalf. To exacerbate matters, the Debtors are requesting that the UCC not object to their lending the WEC EMEA Entities approximately \$500,000 to pay their attorneys for doing conflict work (meaning work in which the Debtors have contrary interests) while such entities

³ Weil, representing both the Debtors and the WEC EMEA Entities, has represented in these chapter 11 cases that "WEC U.S. and WEC EMEA are a synergistic and operationally integrated nuclear power company." *Declaration of Lisa J. Donahue Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, filed on March 29, 2017 [ECF No. 4], the "Donahue Declaration." See also *id.* at ¶15 (stating the WEC EMEA Entities' "operations are integral to the Debtors' Core Businesses"); *Hearing re: First Day Motions* 19:19 – 21:5. (Mar. 30, 2017) (stating that the WEC EMEA Entities and the Debtors are "very tied together and operate on a very integrated basis.")

are being obstructionist and not disclosing the work for which they are seeking compensation.

2. There are three inquiries the UCC needs to pursue for the benefit of unsecured claimholders: (a) the Debtors' purchase of Stone & Webster, Inc. ("S&W"), including potential avoidance actions and claims against directors and officers for at least \$6 billion in cost overruns, (b) certain intercompany transfers between and among the Debtors, Toshiba, and the WEC EMEA Entities, and (c) control over the Debtors and WEC EMEA Entities by Toshiba and/or other Toshiba-affiliated entities.

3. Because there is little public information available (Westinghouse does not file financial statements with the SEC, and its owner's disclosures have been plagued by accounting irregularities), the transactions between and among the Debtors, Toshiba and the WEC EMEA Entities need to be examined and analyzed for the benefit of the Debtors' unsecured claimholders.

4. The UCC believes information obtained in connection with these inquiries (a) will, at a minimum, supply sunlight to why Westinghouse lost billions and its creditors may do likewise, and (b) may well reveal potential claims and causes of action for the benefit of the Debtors' unsecured claimholders. Notably, the acquisition of S&W led to more than \$6 billion of cost overruns. Whether breaches of fiduciary duties or other actionable torts caused those losses needs to be investigated.

5. Prior to the filing of the Motion, in the hopes of avoiding the time and expense of protracted motion practice, the UCC engaged in discussions with the Debtor Toshiba Nuclear Energy Holdings (UK) Limited ("TNEH UK"), the other Debtors (collectively, the "Westinghouse Debtors"), Toshiba, and the WEC EMEA Entities to determine whether any or all of them would agree to a fully consensual Rule 2004 order to be presented to the Court.

These discussions were partially successful, with the *Order on Consent Pursuant to Bankruptcy Rule 2004 Authorizing Statutory Unsecured Claimholders' Committee to Take Discovery of Debtors and Toshiba* being entered on August 8, 2017 [ECF No. 1106], pursuant to which all but the WEC EMEA Entities consented to the UCC's proposed Rule 2004 order.

6. By way of background, over two months ago, the UCC provided the Westinghouse Debtors, TNEH UK and Toshiba with a proposed Rule 2004 Motion and, alternatively, a consensual Rule 2004 order for their review and comments. As part of the parties' agreement and, at the Westinghouse Debtors', TNEH UK's, and Toshiba's request, the UCC agreed to hold off on filing the proposed Rule 2004 motion so long as they agreed to cooperate with the UCC with respect to certain matters and agreed to the terms of a proposed Rule 2004 order before August 1, 2017.

7. The same proposal and draft motion and order were offered to the WEC EMEA Entities. On July 24, 2017, when the UCC's counsel sought to finalize and confirm agreement on the proposed order, Baker & McKenzie, one of the law firms representing the WEC EMEA Entities, advised that it was not agreeing to the proposed order and would not accept service. What's more, WEC EMEA Entities' counsel would not even confirm for the UCC the list of clients it represents or the scope of that representation, only to later assert that its "clients" had not filed any formal appearance in the bankruptcy case and that it had no authority to accept service on behalf of them with respect to any matter in these Chapter 11 cases.⁴ Of course, all the WEC EMEA Entities are controlled by Toshiba.

8. WEC EMEA Entities' counsel's assertions about Baker & McKenzie's involvement in these cases on behalf of the WEC EMEA Entities are inconsistent with the facts.

⁴ WEC EMEA Entities' counsel ultimately acknowledged that her firm has been engaged by Westinghouse Electric UK Holdings to represent it and its subsidiaries on certain matters (i.e., the WEC EMEA Entities).

At the July 6, 2017 hearing on the Debtors' motion for entry of a stipulated order regarding distributions and respective claims and interests of Toshiba and its affiliates, Ms. Dandeneau, a partner of Baker & McKenzie, was present by telephone. Moreover, during the hearing, Toshiba's counsel stated on the record that he was asked by the WEC EMEA Entities' counsel to represent certain things to the Court on behalf of those parties. *See* Hearing Tr. 17:22 – 18:19 (July 6, 2017). Suffice it to say, whether or not the WEC EMEA Entities have formally appeared in these cases, it is clear that the WEC EMEA Entities have actively *participated* in these cases, and as explained herein, have sought and received direct and substantial benefits therefrom.

9. Nevertheless, now that the UCC seeks discovery from them, the WEC EMEA Entities seek to distance themselves and would have the Court view them as insulated from service of process in the United States and from the Bankruptcy Court's personal jurisdiction. The facts demonstrate otherwise. *See Donahue Declaration*, ¶15 (stating the WEC EMEA Entities' "operations are integral to the Debtors' Core Businesses"); *see also Hearing re: First Day Motions* 19:19 – 21:5 (Mar. 30, 2017) (stating that the WEC EMEA Entities and the Debtors are "very tied together and operate on a very integrated basis.")

10. The WEC EMEA Entities cannot have their proverbial cake and eat it too. On the basis of these representations, among others, the Debtors requested – and the Court granted – through the Final DIP Order on-lending from the Debtors to the WEC EMEA Entities, with tens of millions of dollars already having been extended to certain of them. That the Debtors have been lending money to the WEC EMEA Entities without even having required them to accept service in the United States and to agree to the venue and personal jurisdiction of the Bankruptcy Court for collection actions and any other actions arising out of the chapter 11 cases, only corroborates the UCC's original point. Namely, that the Debtors have not been dealing with the

WEC EMEA Entities at arm's-length, and appropriately protecting their estates. When these non-debtor entities were seeking to receive a significant portion of the debtor-in-possession ("DIP") proceeds made available to the Debtors, they were only too ready to allow their other counsel, Weil, to represent to the Court that their businesses were so inextricably intertwined with those of the Debtors that it was imperative that DIP proceeds be, in turn, lent by Debtors to the WEC EMEA Entities.⁵ This request was approved by the Court and has thus far resulted in more than **\$40 million** being loaned to the WEC EMEA Entities by the Debtors. Moreover, certain of the WEC EMEA Entities have filed proofs of claims in these cases, claims submitted to the claims agent by their counsel, Baker & McKenzie, and requesting that all notices to the creditors regarding the proofs of claims should be sent to the claimants with a copy to Debra Dandeneau of Baker & McKenzie. Furthermore, those claims seek consequential damages for expenses associated with the loans the WEC EMEA Entities received from proceeds of the DIP financing, and state that they will make documents available to parties in interest in the Bankruptcy case.

11. The UCC has advised the Debtors that it objects to any further loans to non-Title 11 debtors, including all the WEC EMEA Entities, unless and until all of them consent to the venue and personal jurisdiction of the Bankruptcy Court and to service of process in New York on Baker & McKenzie and Weil.

12. Although potentially contested by the WEC EMEA Entities, we submit they have

⁵ Weil has also represented to the Court that it too is counsel to the WEC EMEA Entities. The engagement letter, dated February 21, 2017, sent from Weil to the Debtors provides: "WEC UK" and, together with WEC US, the "Companies") and Weil are entering into a letter agreement pursuant to which WEC UK, on behalf of itself and the subsidiaries of WEC UK listed on a schedule thereto (the "WEC UK Subsidiaries"), is agreeing that *Weil also will represent WEC UK and the WEC UK Subsidiaries in Project Rubicon.*" (emphasis added) [ECF No. 108]. Accordingly, service of the subject subpoenas should also be deemed proper if effected through service on Weil. Weil, however, has not stepped forward to confirm it will accept service, preferring to let the WEC EMEA Entities' obstructionism play out to delay the UCC's investigation.

already appeared in these chapter 11 cases and are subject to this Court's personal jurisdiction and service on their New York attorneys. First, Weil has clearly appeared in these cases and made representations on behalf of the WEC EMEA Entities. Baker & McKenzie would not be called "conflicts counsel" if Weil were not otherwise the attorneys for the WEC EMEA Entities on issues not involving conflicts. Second, Ms. Dandeneau was present by telephone in a hearing in these cases. Third, the Debtors claimed the WEC EMEA Entities' business is integral to the Debtors' business. Fourth, the WEC EMEA Entities borrowed money from the Debtors postpetition.

13. The UCC has attempted to work with Debtors' counsel to come to a consensual solution; however, the EMEA Entities still refuse to consent to be subject to this Court's personal jurisdiction and a Rule 2004 order. Meanwhile, Rule 2004 discovery with both the Debtors and Toshiba is proceeding.

Jurisdiction and Venue

14. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334 and to determine this matter pursuant to 28 U.S.C. § 157(b)(1).

15. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

16. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicate for the relief requested herein is Bankruptcy Rule 2004.

Procedural History and Background

18. On March 29, 2017 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to be authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 29, 2017, the Court entered an order [ECF No. 31] authorizing the joint

administration and procedural consolidation of the chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

19. The Debtors set forth their view of their business operations, their capital and debt structure, and the events leading to the filing of these chapter 11 cases in the Donahue Declaration.

20. On April 7, 2017, the Office of the United States Trustee for the Southern District of New York appointed the UCC to represent the interests of the Debtors' unsecured claimholders in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code and filed the *Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 160]. The members appointed to the UCC are: (a) Fluor Enterprises Inc.; (b) SSM Industries, Inc.; (c) Dastech International Inc.; (d) South Carolina Electric and Gas Company; (e) Georgia Power Company; (f) Jones Lang LaSalle Americas, Inc.; and (g) Pension Benefit Guaranty Corporation.

Scope of Requested Bankruptcy Rule 2004 Examination

21. As the UCC represents the interests of the Debtors' unsecured claimholders, it is responsible for the investigation of the Debtors' estates and into any entity that may have impacted its financial condition. The UCC should uncover the source(s) of losses and determine whether there are plausible causes of action belonging to the Debtors' estates. Among other things, the UCC needs to discharge its statutory duties under Bankruptcy Code section 1103(c) by examining (a) the Debtors' purchase of S&W, including potential avoidance actions and claims against directors and officers for at least \$6 billion in cost overruns, (b) certain intercompany transfers between and among the Debtors, Toshiba, and the WEC EMEA Entities, and (c) control over the Debtors and their non-Debtor subsidiaries and affiliates, including the WEC EMEA Entities (collectively, the "Examination Topics").

Examination Topic A: The Debtors' Purchase of S&W

22. The Donahue Declaration provides the Debtors purchased S&W from Chicago Bridge & Iron Company (“CB&I”) in late 2015 for a purchase price of \$0, subject to adjustment and deferred consideration that could be received over time. Donahue Declaration ¶ 48. As part of the deal, the Debtors and their non-Debtor affiliates agreed to assume S&W’s then current and future liabilities relating to certain nuclear construction projects in Georgia and South Carolina (the “U.S. AP1000 Projects”), including any liabilities that might arise from cost overruns on the U.S. AP1000 Projects. *Id.* at ¶ 49. The bottom line is the purchase price was not actually zero.

23. In April 2016, the Debtors and their non-Debtor affiliates presented CB&I with a closing statement, wherein they calculated the net working capital at closing to be almost **negative \$1 billion**. *Id.* at ¶ 53.

24. As the Debtors – including S&W – continued to work, it became clear the estimated cost of S&W’s scope of work on the U.S. AP1000 Projects had increased significantly, and to complete the projects on schedule would require an **additional \$3.7 billion** in labor costs. *Id.* at ¶ 58. Moreover, equipment prices and vendor costs associated with the building of specific components would drive up costs by **another \$1.8 billion**, and fee claims by **another \$600 million**. *Id.* Certain of the WEC EMEA Entities provided (and continue to provide) goods and services for the U.S. AP 1000 Projects.

25. In total, the costs and expenses associated with the U.S. AP1000 Projects have overrun projections by **at least \$6.1 billion**. *Id.* Why those responsible for managing and overseeing management did not take preventative measures before costs reached these astounding levels is a question popping off the page and warranting investigation.

26. Suffice it to say, the purchase of S&W exacerbated the Debtors’ financial challenges, and the estates may possess related causes of action worth billions of dollars, the

pursuit of which could provide substantial benefit to the Debtors' unsecured claimholders. While those actions may include avoidance actions under the Bankruptcy Code and applicable state law, they also may present actions against the Debtors' directors and officers for breaches of fiduciary duties.⁶ Knowingly and completely failing to undertake the directors' responsibilities is a breach of the duty of loyalty.⁷ Unlike breaches of the fiduciary duty of care, breaches of the loyalty duty are neither subject to the business judgment rule nor exculpation and indemnity.⁸ Given their involvement in the U.S. AP 1000 Projects, the WEC EMEA Entities (or at least certain of them) will possess information relevant to the UCC's inquiry.

27. Furthermore, on August 16, 2017, SCANA Corporation publicly announced it intends to abandon the two AP1000 projects at the V.C. Summer Nuclear Station in Jenkinsville, SC once the legislature finishes its review—consequently eliminating the completion of those projects as a source of additional revenues for unsecured claimholders—making investigation into this topic more important than ever to identify additional sources of recovery for those same claimholders.

⁶ Delaware law prescribes that “directors are charged with an unyielding fiduciary duty to protect the interests of the corporation.”⁶ *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 360 (Del. 1993). The fiduciary duty of due care requires that “directors of a Delaware corporation use that amount of care which ordinarily careful and prudent [persons] would use in similar circumstances, and—consider all material information reasonably available in making business decisions, and that deficiencies in the directors’ process are actionable only if the directors’ actions are grossly negligent.” *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005) (internal quotations and citations omitted). The duty of loyalty requires “an undivided and unselfish loyalty to the corporation [and] demands that there be no conflict between duty and self-interest.” *Id.* at 751. (internal quotations omitted). A director or officer is considered independent and disinterested “only when [his or her] decision is based entirely on the corporate merits of the transaction and is not influenced by personal or extraneous considerations.” *Cede*, 634 A.2d at 362. If a corporation is insolvent, creditors may enforce, derivatively, the duties owed to the corporation by its officers and directors. *See, e.g., N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 102 (Del. 2007); *Trenwick Am. Litig. Trust v. Ernst & Young, LLP*, 906 A.2d 168, 205 (Del. Ch. 2006) (“[I]nsolvency might weigh heavily in the court’s analysis of, for example, whether the bard acted with fidelity and care in deciding to undertake more debt to continue the company’s operations.”).

⁷ *Lyondell Chemical Co. v. Ryan*, 970 A.2d 235, 243-244 (Del. 2009).

⁸ 8 Del. C. § 102(b)(7).

Examination Topic B: Intercompany Transfers

28. Prior to the Petition Date, the Debtors also engaged in various transactions with non-Debtor affiliates, including certain of the WEC EMEA Entities. Accordingly, the Debtors and the WEC EMEA Entities likely have intercompany transactions on their books and records, including intercompany receivables and payables between and among them. The UCC's investigation will determine whether those transactions were performed at arms'-length and identify those, if any, that could be subject to equitable subordination and avoidance actions, including preferences and fraudulent transfers under the Bankruptcy Code, to the benefit of the Debtors' unsecured claimholders. If the Debtors' directors and officers caused them to transfer value away from the Debtors for less than reasonably equivalent value while they were insolvent, the estates may also possess related claims for breaches of fiduciary duties.

Examination Topic C: Who Controlled the Debtors and Non-Debtors

29. Ultimately, Toshiba is the controlling shareholder of Westinghouse, owning 87% of the equity of (a) WEC's non-Debtor parent, and (b) Debtor TNEH UK. Either Toshiba or intermediate holding companies, including certain of the WEC EMEA Entities, may have impacted decisions relating to the acquisition of S&W, the evaluation of costs associated with the U.S. AP1000 Projects (as defined herein), and the Debtors' liquidity position prior to the bankruptcy filing.

Relief Requested

30. By this Motion, the UCC seeks an order, pursuant to Bankruptcy Rule 2004, authorizing the UCC to issue subpoenas for the production of documents (the "Subpoenas") from, and for depositions of, the WEC EMEA Entities.

Basis for Relief Requested

31. Bankruptcy Rule 2004 provides, in relevant part:

(a) *Examination on Motion.* On motion of *any* party in interest, the court may order the examination of any entity.

(b) *Scope of Examination.* The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge . . . [in] a reorganization case under chapter 11 of the Code . . . , the examination may also relate to . . . any other matter relevant to the case or to the formulation of a plan.

(c) *Compelling Attendance and Production of Documents.* The attendance of an entity for examination and for the production of documents . . . may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

Fed. R. Bankr. P. 2004 (emphasis added). Thus, a Bankruptcy Rule 2004 examination is not limited to the debtor, but may be made of any entity or person with knowledge of the debtor's acts, property, liabilities, and financial affairs relating to the debtor's bankruptcy proceedings. *See In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990) (“[A]n examination pursuant to this rule may extend to third parties who have had dealings with the debtor.”); *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (emphasizing that while a debtor may invoke Bankruptcy Rule 2004, the rule is “creditor and trustee oriented”); *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (noting “[Bankruptcy Rule 2004] examination is not limited to the debtor or his agents, but may properly extend to creditors and third parties who have had dealings with the debtors”).

32. Significantly, courts permit the examination of any third party who can be shown to have had dealings with the debtor. *See In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff'd* 17 F.3d 600 (2d Cir. 1994) (“Because the purpose of the Rule 2004 investigation is to aid in the discovery of assets, any third party who can be shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation.”); *In re Recoton Corp.* 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (“Any third party who has a relationship with a

debtor may be made subject to a Rule 2004 investigation.”); *In re Valley Forge Plaza Assocs.*, 109 B.R. at 674 (internal citations omitted). As set forth in the Donahue Declaration and the Debtors’ cash management motion [ECF No. 6], not only have the WEC EMEA Entities had dealings with the Debtors, they actively continue such dealings.

33. The discovery sought by the UCC falls squarely within the scope of Bankruptcy Rule 2004. *See In re Recoton Corp.*, 307 B.R. at 755-56 (granting the creditors’ committee Bankruptcy Rule 2004 motion to investigate former officers and noting such discovery is consistent with the purpose of “allowing the [UCC] to obtain information necessary to determine whether claims beneficial to the estates exist and whether to pursue such claims”). The documents and other information sought through the Subpoenas relate directly to key facts that would enable the UCC to evaluate potential causes of action that could significantly increase the value of Debtors’ estates and shed light on the role that the WEC EMEA Entities played in the Debtors’ affairs, including the events leading to the Debtors’ need to seek protection under the Bankruptcy Code.

34. Moreover, the scope of a Bankruptcy Rule 2004 examination is “unfettered and broad,” and may be in the nature of a “fishing expedition.” *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996) (internal citations omitted); *In re Foerst*, 93 F. 190, 191 (S.D.N.Y. 1899) (“The examination . . . is of necessity to a considerable extent a fishing examination”); *In re Ecam Publ’ns, Inc.*, 131 B.R. at 559 (“[d]iscovery under Rule 2004 is broader than that available under the Federal Rules of Civil Procedure . . . the scope of a Rule 2004 examination is so broad that it can be in the nature of a ‘fishing expedition’”) (internal citations omitted). “The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining

transactions and assessing whether wrongdoing has occurred.” *In re Almatris B.V.*, Case No. 10-12308 (MG), 2010 Bankr. LEXIS 4243, at *10 (Bankr. S.D.N.Y. Nov. 24, 2010) (citing *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991)).

35. The Bankruptcy Code grants substantial investigative powers and duties to statutory creditors’ committees. One of the central functions of the UCC is to “investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor’s business . . . and any other matter relevant to the case or to the formulation of a plan.” 11 U.S.C. § 1103(c)(2). Indeed, “[w]hen a power granted under section 1103 is needed for the committee to fulfill its overriding duty of protecting the creditors’ interest, the committee is obliged to employ the power.”⁹ Therefore, as the only party actively monitoring the Debtors’ conduct (the Debtors’ prepetition capital structure has no secured debt), it is necessary for the UCC to receive the information sought to ensure the formulation of a chapter 11 plan that maximizes value for the Debtors’ unsecured claimholders. Accordingly, to properly perform its statutory and fiduciary duties, the UCC requests it be authorized to issue subpoenas to the WEC EMEA Entities.

36. Pursuant to Fed. R. Bankr. P. 7034, (adopting Fed. R. Civ. P. 34) this court has the authority to shorten the 30 day period to respond to document requests. (“A shorter or longer time [to respond to document requests] may be . . . ordered by the court.”). Exercising that authority is appropriate in these circumstances. As explained herein, the WEC EMEA Entities have engaged in a game of “dodge, obfuscate and delay” in an effort to evade this important

⁹ *Advisory Comm. of Major Funding Corp. v. Sommers (In re Advisory Comm. of Major Funding Corp.)*, 109 F.3d 219, 224 (5th Cir. 1997); see also *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (S.D.N.Y. 1994) (“An official committee of creditors plays a pivotal role in the bankruptcy process. The function of an official creditors committee is to aid, assist and monitor the debtor to ensure that the unsecured creditors’ views are heard and their interests promoted and protected.”) (internal citations omitted).

discovery. Their tactical maneuvers should not be rewarded. Moreover, there is no prejudice to expediting the date by which the WEC EMEA Entities must respond to the UCC's discovery requests. They have had ample notice of the Examination Topics, having received a draft of the proposed Rule 2004 motion over two months ago.

No Prior Request

37. No prior request for the relief sought by this Motion has been made to this or any other Court.

Reservation of Rights

38. The UCC expressly reserves the right to seek such further discovery from the WEC EMEA Entities and other entities as appropriate.

[Remainder of Page Left Intentionally Blank]

WHEREFORE the UCC respectfully requests the Court grant the UCC the relief requested herein and such other and such other and further relief as is just.

Dated: September 27, 2017
New York, New York

Respectfully submitted,

/s/ Martin J. Bienenstock

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*Counsel to the Statutory
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Westinghouse Electric Company LLC, et al.*

Exhibit A

Proposed Order

Martin J. Bienenstock

Hearing Date: October 17, 2017 at 10:00 a.m. (ET)

Timothy Q. Karcher

Objection Deadline: October 10, 2017 at 4:00 p.m. (ET)

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*Counsel to the Statutory Unsecured Claimholders'
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**Westinghouse Electric Company LLC, et al.,
Debtors.¹**

**Statutory Unsecured Claimholders' Committee,
Movant,**

v.

**Springfields Fuels Ltd., et al.,
Respondents.²**

Chapter 11

Case No. 17-10751 (MEW)

(Jointly Administered)

Re: ECF No. _____

¹ 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.

² The Respondents, consisting of the Debtors' non-debtor affiliates, along with the last four digits of each Respondent's federal tax identification number, if any, are: Springfields Fuels Limited (W481), Springfields Segregated Assets Limited (W563), Uranium Asset Management Limited (M480), Advance Uranium Asset Management Limited (M400), PWR Power Projects Limited, Westinghouse Electric UK Holdings Limited (W514), Westinghouse Electric Company UK Limited (W553), Westinghouse Electric Belgium S.A. (W508), Westinghouse Electric India Private Limited (W562), Westinghouse Operations Belgium (W567), Westinghouse Electric Czech Republic S.R.O. (W187), Westinghouse Electric Do Brasil Servicos E Consultaria Para Centrais Nucleares LTDA (W570), Westinghouse Electric Germany GMBH (W504), Konte Gelsellschaft Fur Technische Kommunikation MBH (W512), HTR GMBH, TSB (Investment Europe) Limited (W515), Westinghouse Electrique France SAS (W533), Astare (W548), Westinghouse Barras Provence (W522), Westinghouse Service Nuclearire (W523), TNEE Electric Sweden Holdings AB (W528), Westinghouse Electric Sweden AB (W527), Wesdyne Sweden AB (W530), Westinghouse Electric (Asia) SA (W190), Westinghouse Electric Canada, Inc. (W564), Westinghouse Electric South Africa (Pty) LTD. (W546), Magiarotti S.P.A. (M500), Westinghouse Electric Spain, S.A.U. (W510), Westinghouse Technology Services S.A. (W509), Enwesa Operaciones, S.A., ENUSA Enewesa AIE, Tecnatom S.A. Westinghouse Technology Services, S.A. ENUSA, Westinghouse Electric Ukraine AB (W572), Westinghouse

**ORDER PURSUANT TO BANKRUPTCY
RULE 2004 AUTHORIZING DISCOVERY FROM WEC EMEA ENTITIES AND
SHORTENING TIME TO PRODUCE DOCUMENTS**

Upon the motion (the “Motion”)³ of the statutory unsecured claimholders’ committee (the “UCC”) of Westinghouse Electric Company LLC, *et al.* (the “Debtors”), for an order pursuant to Rule 2004(a) of the Federal Rules of Bankruptcy Procedure authorizing the UCC to take document discovery and deposition testimony from the WEC EMEA Entities; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B); and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is GRANTED as set forth herein.
2. The UCC is authorized to issue subpoenas to the WEC EMEA Entities for the production of documents, electronically stored information, or tangible things responsive to requests relating to the Examination Topics described in the Motion.
3. The WEC EMEA Entities shall produce documents in accordance with this order on or before a date that is twenty (20) days from the service of such subpoenas unless otherwise ordered by the Court.
4. The UCC is authorized to issue deposition subpoenas to the WEC EMEA Entities and issue service on any of the WEC EMEA Entities.
5. The UCC may serve the subpoenas upon Baker & McKenzie LLP and/or Weil, Gotshal & Manges LLP and such service shall be deemed sufficient service.
6. All discovery may be taken in the Southern District of New York, subject to the right of any witness to request a protective order.
7. Following a good faith effort to meet and confer, any motions to quash or otherwise modify such subpoenas shall be filed with this Court as the court for the district where

Electric Company (China) Co., Ltd. (W565), Par TZ (China/Taiyuan) Nuclear Company, Ltd. (W566), SNPTC-WEC Nuclear Power Technical Services (Beijing) Company, Ltd. (W569), State Nuclear WEC Zirconium Hafnium Co., Ltd. (W555), Westinghouse Electric Japan Limited (W552), Nuclear Fuel Industries, Ltd. (W554), Toho Engineering Co., Ltd., and Nuclear Engineering Ltd.

³Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

8. This Court shall retain jurisdiction with respect to all matters, claims, rights, or disputes arising from or related to the implementation of this Order.

Dated: _____, 2017
New York, New York

United States Bankruptcy Judge