

Confirmation Hearing: March 27, 2018, at 11:00 a.m. (ET)
Objection Deadline: March 15, 2018, at 4:00 p.m. (ET)

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

In re:	:	Chapter 11
WESTINGHOUSE ELECTRIC COMPANY, LLC, et al.,	:	Case No. 17-10751 (MEW)
Debtors.¹	:	Jointly Administered
	:	Related to Dkt. 2622, 2632, 2644

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.



**SAVANNAH RIVER REMEDIATION, LLC'S LIMITED OBJECTION
AND RESERVATION OF RIGHTS WITH RESPECT TO
CONFIRMATION OF DEBTORS' MODIFIED FIRST AMENDED
JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Savannah River Remediation, LLC (“SRR”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (the “**Limited Objection**”) with respect to Debtors’ *Modified First Amended Joint Chapter 11 Plan of Reorganization*, dated February 22, 2018 [Dkt. 2622] (together with any amendments, modifications, and supplements thereto, the “**Plan**”). In support of its Limited Objection, SRR respectfully represents as follows:

I. BACKGROUND

A. Savannah River Remediation, LLC’s Relationship with WEC

1. The United States Department of Energy (“DOE”) is the owner and operator of Savannah River Site (“SRS”). SRS is a 300 square mile facility located in Aiken County, South Carolina whose mission “is to safely and efficiently operate SRS to protect the public health and the environment while supporting the nation’s nuclear deterrent.”²

2. SRR has undertaken to perform work for the SRS Liquid Waste Operations Program at SRS for the United States Government represented by the DOE and the U.S. Department of Justice.

3. On July 7, 2016, SRR and Westinghouse Electric Company, LLC (“WEC”) entered into that certain fixed price contract (the “**SRR Contract**”) for WEC’s provision of an ion exchange process to remove radioactive cesium-137 from aqueous high-level waste, hereinafter referred to as a Tank Closure Cesium Removal System (“**TCCR System**”).

² <https://www.srs.gov/general/about/mission.htm> (last visited March 8, 2018).

4. The work WEC is doing on the TCCR System pursuant to the SRR Contract is vitally important to DOE's and SRR's efforts to treat high levels of radioactive waste before any leaks occur and water aquifers for South Carolina and Georgia are affected.

B. The Bankruptcy Proceedings

5. On March 29, 2017 (the "**Petition Date**"), WEC, along with several of its affiliates (collectively, the "**Debtors**"), filed voluntary petitions for relief under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**").

6. On February 22, 2018, the Court entered an Order (the "**Disclosure Statement Order**") which, among other things, approved the Debtors' *Modified First Amended Disclosure Statement for the Joint Chapter 11 Plan of Reorganization* [Dkt. 2623] (together with any amendments, modifications, and supplements thereto, the "**Disclosure Statement**") and scheduled a hearing to consider confirmation of the Plan for March 27, 2018 (the "**Confirmation Hearing**").

7. The Plan contemplates "a transaction valued at approximately \$4.6 billion, pursuant to which Brookfield WEC Holdings, LLC (the "**Plan Investor**" or "**Brookfield**") will provide approximately \$3.802 billion . . . in cash and cash consideration to fund a chapter 11 plan process in exchange for the acquisition of 100% of (i) the equity interests in Westinghouse Electric Holdings UK Limited . . . and (ii) the equity interests in reorganized U.S. HoldCo" (Disclosure Statement, at p. 6).

8. On February 23, 2018, the Debtors filed a *Notice Regarding (I) Executory Contracts and Unexpired Leases, (II) Proposed Cure Obligations, and (III) Related Procedures* [Dkt. 2645] (the "**Notice Regarding Executory Contracts**") stating that, by no later than March 22, 2018, they will file with the Court one or more written notices attaching schedules ("**Notice**

of Schedules of Executory Contracts”) identifying which executory Contracts³ will be assumed on the Effective Date and which ones will be assumed and assigned to Wind Down Co. (*See* Notice Regarding Executory Contracts at ¶ 3). Pursuant to the Plan, Contracts that are not assumed by the Debtors prior to or on the Effective Date will automatically be deemed rejected. (*See* Plan at § 9.1).

9. The Notice Regarding Executory Contracts also provided that, until five business days prior to the Closing Date, Contracts may be added to or removed from any of the schedules by filing a supplemental notice, which will be deemed to update any previously filed notices. (*See* Notice Regarding Executory Contract at ¶¶ 3, 9). Pursuant to the Plan, the Closing Date may not occur until the third business day following the date upon which all closing conditions have been satisfied or waived in writing or such other date as the parties may agree in writing. (*See* Plan at § 2.03).

10. The SRR Contract is listed on Exhibit A to the Notice Regarding Executory Contracts with a proposed cure amount of \$0.

11. On March 9, 2018, SRR timely filed an objection and reservation of rights with respect to the Notice Regarding Executory Contracts [Dkt. 2784] (the “**SRR Notice Objection**”), which is incorporated herein by reference as if repeated verbatim herein.

II. LIMITED OBJECTION

12. As of the filing of this Limited Objection, the Debtors have not filed their Notice of Schedules of Executory Contracts or provided SRR with any indication of how the SRR Contract is to be treated. Moreover, WEC has not yet proffered any evidence to support its yet unknown decision as to the SRR Contract’s treatment.

³ Capitalized terms not defined herein shall have the meanings ascribed to them in the Notice Regarding Executory Contract and the Plan, as applicable.

13. If the Debtors intend to reject the SRR Contract, there are very serious public safety, health and other interests at stake (including the potential for an extraordinarily large rejection damages claim against WEC's estate pursuant to, among others provisions, Article 20 of the SRR Contract) which will require the Debtors to satisfy a heavier and more rigorous burden to justify the decision. *See, e.g., NLRB v. Bildisco and Bildisco (In re Bildisco and Bildisco)*, 465 U.S. 513, 526 (1984) (recognizing "national labor policies of avoiding labor strife and encouraging collective bargaining" required rejection be approved only if the parties failed to negotiate a solution and then only if the contract was clearly burdensome and after balancing the equities); *In re Mirant Corp.*, 318 B.R. 100, 107 (N.D. Tex 2004) ("In the instant action, the Fifth Circuit concluded that the business judgment standard would be inappropriate, explaining: Use of the business judgment standard would be inappropriate in this case because it would not account for the public interest in the transmission and sale of electricity.") (internal quotation marks omitted); *In re Pilgrim's Pride Corp.*, 403 B.R. 413, 424 (Bankr. N.D. Texas 2009) ("The court can easily conceive of a case where rejection of a contract would have a significant impact upon, say, public health, such that its rejection should be allowed only after a more critical review by the court than is contemplated under the ordinary business judgment rule....").

14. While SRR does not oppose the Debtors' efforts to reorganize, in light of the public interest issues at stake if the SRR Contract is to be rejected, SRR will object to any effort by WEC to reject the SRR Contract prior to or at the Confirmation Hearing. In that event, SRR should have the opportunity to fully prosecute its objection at confirmation, without having to speculate as to the proposed treatment of the SRR Contract and the Debtor's proof, if any.

15. Moreover, SRR objects to any effort by the Debtors or the Plan Investor to alter the treatment of the SRR Contract after confirmation. As stated above, in this case, it appears the

Debtors and Plan Investor seek authority to alter the treatment of executory contracts *after* confirmation of the Plan. However, Section 365(d)(2) of the Bankruptcy Code states that in a chapter 11 case a “trustee may assume or reject an executory contract . . . at any time *before* confirmation of a plan but the court, on the request of any party to such contract . . . , may order the trustee to determine within a specified period of time whether to assume or reject such contract” 11 U.S.C. § 365(d)(2) (emphasis added). Section 1129(a), in turn, provides that a bankruptcy court shall confirm a plan only if, among other things, “[t]he plan complies with the applicable provisions of this title.” 11 U.S.C. § 1129(a)(1).

16. Accordingly, the Court should deny confirmation of the Debtors’ Plan to the extent it allows the Debtors to modify the treatment of the SRR Contract after confirmation. In the event WEC designates the SRR Contract as one to be assumed prior to or at the Confirmation Hearing and then subsequently seeks to alter that proposed treatment after the Confirmation Hearing, the Court should schedule a hearing, and provide SRR with a full opportunity to be heard with respect to any such altered treatment of the SRR Contract.

III. RESERVATION OF RIGHTS

17. SRR reserves the right to amend or supplement this Limited Objection and expressly reserves the right to object to any additional relief sought by the Debtors in connection with the SRR Contract.

WHEREFORE, for all the foregoing reasons, SRR respectfully requests that the Court enter an order (i) sustaining its Limited Objection; (ii) prohibiting the Debtors from rejecting the SRR Contract; (iii) requiring notice and a hearing in the event the Debtors first seek to assume the SRR Contract but then subsequently amend the treatment after the Confirmation Hearing; and (iv) granting such other and further relief as the Court deems just and proper.

DATED: New York, New York
March 15, 2018

Respectfully submitted,

/s/ Mark Tsukerman

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