

**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. 17-10751 (MEW)**  
 :  
 : **(Jointly Administered)**  
**Debtors.**<sup>1</sup> :  
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**DECLARATION OF LISA J. DONAHUE IN SUPPORT OF CONFIRMATION  
OF DEBTORS’ JOINT CHAPTER 11 PLAN OF REORGANIZATION**

I, Lisa J. Donahue, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Transition and Development Officer of Westinghouse Electric Company LLC (“WEC”) and certain of its affiliates, as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “Debtors”). For a further explanation of my credentials, please see 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 and filed on the Petition Date [ECF No. 4].

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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, Inc. d/b/a WECTEC Global Project Services Inc. (8572), 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 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. I submit this declaration (the “**Declaration**”) in support of confirmation of the Debtors’ *Second Amended Joint Chapter 11 Plan of Reorganization* [ECF No. 2954], dated March 23, 2018 (as may be further modified, amended or supplemented, the “**Plan**”).<sup>2</sup>

3. In my capacity as Chief Transition and Development Officer of WEC, I was directly involved in the development of the Plan and overseeing the day-to-day administration of the Chapter 11 Cases. I have reviewed, and I am generally familiar with, the terms and provisions of the Plan, including the Global Settlement, the documents comprising the Plan Supplement, the Plan Support Agreement, the Plan Funding Agreement, and the Disclosure Statement relating to the Plan (each as defined herein).

4. I am authorized to submit this Declaration on behalf of the Debtors. Except as otherwise indicated, all facts set forth herein (or incorporated by reference herein) are based upon my personal knowledge or the personal knowledge of employees who report to me, my review of relevant documents, information provided to me by the Debtors’ management or legal advisors, or my opinion based upon my familiarity with the Debtors’ business, operations, and financial condition. If I were called upon to testify, I could and would testify competently as to the facts set forth herein.

**BANKRUPTCY CODE REQUIREMENTS FOR CONFIRMATION**

**A. SECTION 1129(a)(1)**

**1) Section 1122**

5. Except for Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims, which I am advised need not be designated as Classes

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Memorandum of Law in Support of Confirmation of Debtors’ Joint Chapter 11 Plan of Reorganization*, filed contemporaneously herewith, as applicable.

under the Plan, Section 3.3 of the Plan provides for the separate classification of Claims and Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests in accordance with applicable law: Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (General Unsecured Claims), Class 4 (Intercompany Claims), Class 5 (U.S. HoldCo Interests), Class 6 (TNEH UK Interests), and Class 7 (Intercompany Interests). I believe that the Claims or Interests in each particular Class are substantially similar to the other Claims or Interests, as the case may be, in such Class, and have the same or similar rights against the Debtors.

6. In addition, to the extent that Claims or Interests of equal priority are placed in different Classes, reasonable business, factual, and/or legal reasons exist for such separate classification. Most importantly, the Plan classification scheme is necessary to implement the Global Settlement and provide the different treatment afforded to the various parties in interest. For example, Class 3 (General Unsecured Claims) and Class 4 (Intercompany Claims) are separate classes of unsecured claims against the Debtors. Class 3 includes general unsecured claims held by non-affiliated entities and Cash Pool Claims, while Class 4 only includes Intercompany Claims. Pursuant to Section 4.3 and 4.4 of the Plan, the Plan provides different treatment to the holders in each Class of Claims: Cash will be paid to holders of Claims in Class 3, other than holders of Cash Pool Claims, who will not receive funds from the Segregated Account; and flexibility is built in for the Debtors to address Intercompany Claims in Class 4 in accordance with the Plan Funding Agreement and Plan Investment Transaction. Furthermore, although Class 3A General Unsecured Claims and Class 3B General Unsecured Claims were considered a single class for voting purposes, holders of Class 3B General Unsecured Claims have agreed to less favorable treatment than the holders of Class 3A

General Unsecured Claims. In particular, one of the primary settlement mechanisms in the Plan is the subordination of Class 3B General Unsecured Claims to the first \$1.15 billion of Class 3A General Unsecured Claims. In addition, Class 5 (U.S. HoldCo Interests), Class 6 (TNEH UK Interests), and Class 7 (Intercompany Interests) represent separate classes of Interests in the different Debtors. Pursuant to Sections 4.5 and 4.6 of the Plan, Interests in U.S. HoldCo and in TNEH UK (held by non-Debtors) will be cancelled upon the Effective Date of the Plan. Intercompany Interests (held by the Debtors) will be reinstated under Section 4.7 of the Plan. Each holder of an Interest supports confirmation of the Plan.

**2) Section 1123(a)**

7. **Section 1123(a)(1).** Section 3.3 of the Plan designates seven (7) Classes of Claims and Interests.

8. **Section 1123(a)(2).** Section 3.3 of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 4 (Intercompany Claims); and Class 7 (Intercompany Interests) are unimpaired by the Plan.

9. **Section 1123(a)(3).** Sections 4.3, 4.5, and 4.6 of the Plan sets forth the treatment of Class 3 (General Unsecured Claims), Class 5 (U.S. HoldCo Interests), and Class 6 (TNEH UK Interests), each of which constitutes an impaired class under the Plan.

10. **Section 1123(a)(4).** Pursuant to Section 4 of the Plan, except to the extent that a holder of an Allowed Claim has agreed to less favorable treatment of its Claim, the treatment of each Claim in each Claim in each respective Class is the same as the treatment of each other Claim in such class. There are two notable instances where holders of Claims within a Class have agreed to less favorable treatment:

(a) As set forth in Section 5.3(b) of the Plan, the holders of Class 3B General Unsecured Claims have agreed to less favorable treatment than other holders of Class 3 General Unsecured Claims.

(b) Under the Cash Pool Settlement, the holders of Cash Pool Claims have agreed to less favorable treatment than other holders of other Class 3A General Unsecured Claims. Each of the holders of Cash Pool Claims has voted in favor of the Plan and have executed a written consent stating that it consents to the Plan.

11. Section 5 of the Plan sets forth a detailed description of the transactions to be implemented under the Plan and the structure of the Reorganized Debtors post-Effective Date. In addition, the Debtors filed the Plan Supplement which contains, among other things, the substantially final forms of the (i) Amended Certificates of Incorporation and Amended By-Laws, (ii) identity of the members of the Plan Oversight Board, (iii) Plan Oversight Board By-Laws, (iv) Reconciliation Plan, (v) form of Toshiba-EMEA Settlement Agreement, (vi) Wind Down Co Organizational Documents, (vii) NI Settlement, (viii) list of Released Subsidiaries, (ix) agreements regarding adjustments to the compensation of WEC's and TNEH UK's independent directors, and (ix) the information required to be disclosed in accordance with section 1129(a)(5) of the Bankruptcy Code. Accordingly, I believe that the Plan, together with the documents and arrangements set forth in the Plan Supplement, provide the means for implementing the Plan.

12. **Section 1123(a)(6).** The certificate of incorporation, articles of incorporation, limited liability company agreement, operating agreement, or similar governing document, as applicable, of each Debtor shall be amended on or prior to the Effective Date to

prohibit the issuance of non-voting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code.

13. **Section 1123(a)(7).** The Plan Supplement, Section 6.2 of the Plan, the Disclosure Statement, and contain provisions with respect to the selection of directors and officers of the Reorganized Debtors that are consistent with the interests of creditors, equity security holders, and public policy.

14. **Section 1123(a)(8).** I understand that Section 1128(a)(8) of the Bankruptcy Code is inapplicable to the Plan because the Debtors are not “individuals” (as that term is defined in the Bankruptcy Code).

**3) Section 1123(b)**

15. **Section 1123(b)(1).** Section 4 of the Plan describes the treatment for each Impaired and Unimpaired Class. Claims and Interests is Class 3 (General Unsecured Claims), Class 5 (U.S. HoldCo Interests), and Class 6 (TNEH UK Interests), are impaired by and are receiving appropriate treatment under the Plan. Claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 4 (Intercompany Claims), and Class 7 (Intercompany Interests) are not impaired by the Plan.

16. **Section 1123(b)(2); 1123(d).** Section 9.1 of the Plan provides for the rejection of each of the Debtors’ Executory Contracts and Unexpired Leases that is not being assumed under the Plan or has otherwise not been previously rejected, assumed, or assumed and assigned by the Debtors. Section 9.2 of the Plan provides for the satisfaction of default claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code.

17. To calculate the Cure Amounts listed on the Schedules of Executory Contracts, the Debtors and/or their advisors reviewed the terms and provisions governing the applicable executory contract or unexpired lease, the proofs of claim, if any, filed by the applicable contract counterparty, and the Debtors' books and records, and determined the amount owed for all outstanding defaults as of the time of assumption. I believe the Debtors exercised sound business judgment in identifying the executory contracts and unexpired leases included on the Schedules of Executory Contracts.

18. *Section 1123(b)(3)(A)*. The Plan incorporates a number of settlements, and compromises including the global settlement in Section 5.3 of the Plan (the "**Global Settlement**").

19. *Section 1123(b)(3)(B)*. Pursuant to Section 5.12 of the Plan, the Debtors reserve, subject to the terms of the Plan Funding Agreement, any and all Causes of Action other than Causes of Action against an entity that are waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Bankruptcy Court order.

20. *Section 1123(b)(4)*. Pursuant to Section 5.2 of the Plan provides for the sale of the Debtors' businesses pursuant to the Plan Investment Transaction, in accordance with the terms of the Plan Funding Agreement.

21. *Section 1123(b)(5)*. Section 4 of the Plan modifies the rights of holders of Claims and Interests in Class 3 (General Unsecured Claims), Class 5 (U.S. HoldCo Interests), and Class 6 (TNEH UK Interests). The Plan also leaves unaffected the rights of holders of Claims and Interests in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 4 (Intercompany Claims), and Class 7 (Intercompany Interests).

22. **Section 1123(b)(6).** As set forth below, the Plan provides for certain releases and exculpation provisions. In addition, Section 3 of the Plan provides that “the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases.” These provisions, among other provisions of the Plan, are an integral part of the Plan and the reorganization facilitated thereunder.

**B. SECTION 1129(a)(2)**

23. To the best of my knowledge and belief, based on discussions with the Debtors’ legal counsel, the Debtors (i) are proper debtors under section 109 of the Bankruptcy Code, (ii) have complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court, and (iii) have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Solicitation Procedures Order in transmitting the Disclosure Statement, the Plan, the Ballots, and related documents and notices and in soliciting and tabulating votes on the Plan.

**C. SECTION 1129(a)(3)**

24. The Plan, the Plan Funding Agreement, the Plan Support Agreement, and other agreements and documents contemplated thereby are the result of extensive arms’ length negotiations between and among the Debtors, Toshiba, the UCC, the Plan Investor, and the Consenting Claimholder. The Plan represents the culmination of months of intensive negotiations and discussions among the foregoing parties in interest. The Plan was proposed with the legitimate and honest purpose of maximizing the value of the Debtors’ estates and effectuating a successful reorganization of the Debtors. Each of these parties has acted in good faith. The Plan’s classification, indemnification, exculpation, release, settlement, and injunction



provisions, including, without limitation, Sections 3 and 11 of the Plan, have been negotiated in good faith and at arms' length.

**D. SECTION 1129(a)(4)**

25. Section 2.2 of the Plan provides that all professional fee must be approved by the Court as reasonable pursuant to final fee applications. Further, section 13(h) of the Plan provides that the Court shall retain jurisdiction "to hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred before the Confirmation Date."

26. In addition, the Plan Supplement includes an Amended Disclosure Regarding Director Compensation Adjustment, which describes an annual compensation adjustment for the independent directors who currently serve on those boards (the "**Independent Directors**"). I have been informed that the board of WEC and the shareholder of TNEH UK considered and approved the compensation adjustments, with the Independent Directors having recused themselves from those votes. I have been informed by the parties involved in these discussions that, after arms'-length and good faith negotiations over the proposed adjustment, the Consenting Claimholder, the Debtors' largest unsecured creditor, consented to both the amounts of the compensation adjustments and the conditions on which such amounts would be paid. I have been informed that the Consenting Claimholder and Toshiba have concluded that the terms of the compensation adjustments are reasonable under the circumstances of these cases based upon, among other things, the valuable roles played and to be played by the Independent Directors and the consensus reached among all of the key stakeholders on this issue.

**E. SECTION 1129(a)(5)**

27. Upon and following the Effective Date, the individuals identified in the Plan Supplement shall be the directors of the Reorganized Debtors along with such additional directors as may be designated consistent with the terms of the Plan. The officers of the respective Reorganized Debtors immediately before the Effective Date shall serve as the initial officers of each of the respective Reorganized Debtors on or after the Effective Date and in accordance with any employment agreement with the Reorganized Debtors and applicable non-bankruptcy law. After the Effective Date, the selection of officers of the Reorganized Debtors shall be as provided by their respective organizational documents. Except as otherwise provided in the Plan Supplement, the members of the board of directors and the board of managing members for each of the Reorganized Debtors shall be determined as set forth in the Amended Organizational Documents. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed to the extent such information is available, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of holders of Claims against and Interests in the Reorganized Debtors and with public policy.

**F. SECTION 1129(a)(6)**

28. The Plan does not provide for any rate changes by the Debtors.

**G. SECTION 1129(a)(7)**

29. Under the Plan, the only Claims impaired are the Claims in Class 3. Interests in Class 5 and Class 6 are Impaired under the Plan, but the holders (or the ultimate controlling parent of such holders) of such Interests support and have accepted the Plan pursuant

to that certain *Plan Support Agreement* dated January 17, 2018 (the “**Plan Support Agreement**”).

30. As demonstrated by the liquidation analysis annexed as Exhibit C to the Disclosure Statement (the “**Liquidation Analysis**”), the best interests test is satisfied as to each non-accepting holder of a Claim against or Interests in the Debtors. Holders of Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are Unimpaired under the Plan. Holders of Class 3 (General Unsecured Claims) (other than the holders of (i) Class 3B General Unsecured Claims, who have agreed to different treatment under the Plan, and (ii) Cash Pool Claims who have consented to the Plan) are estimated to receive a recovery ranging between approximately ninety-nine percent (99%) and one hundred percent (100%) under the Plan, as opposed to an estimated recovery ranging from zero percent (0%) to six and a half percent (6.5%) in a hypothetical liquidation. Holders of Class 4 (Intercompany Claims) are Unimpaired under the Plan. In a liquidation scenario, the Class 4 Intercompany Claims would be treated as general unsecured claims to the extent they are not otherwise disallowed.<sup>3</sup> The recovery value for general unsecured creditors set forth in the Liquidation Analysis demonstrates that many of the holders of Intercompany Claims would recover less than would be needed to remain solvent. Further, the Liquidation Analysis assumes that in a liquidation scenario for the Debtors, their non-Debtor subsidiaries, including the EMEA Subsidiaries, would not be able to continue as a going concern and would be forced to liquidate as well. Under the Plan, each of the holders of Intercompany Claims will be rendered Solvent. In a liquidation scenario, solvency of the holders of Intercompany Claims would not be certain, and would likely be impossible. Holders of

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<sup>3</sup> The Liquidation Analysis includes the Intercompany Claims in the calculation of the recovery range for general unsecured claims. The Liquidation Analysis assumes the non-Debtors’ liquidation in a foreign venue would likely have trustee equivalents that would pursue intercompany claims against the Debtors.

Intercompany Claims have recognized this and each of the Debtors' Subsidiaries have executed, or are expected to execute, written consents to the Debtors conveying their consent to the Plan.

31. Interests in Class 5 (U.S. HoldCo Interests) and Class 6 (TNEH UK Interests) are Impaired under the Plan, but holders of such Interests (or the ultimate controlling parent of such holders) have accepted the Plan Pursuant to the Plan Support Agreement. Nonetheless, Interests in Class 5 and Class 6 are not estimated to receive or retain a recovery in a liquidation under chapter 7 of the Bankruptcy Code. Holders of Class 7 (Intercompany Interests) are Unimpaired under the Plan.

32. I believe each holder of a Claim or Interest either (a) has accepted or consented to the Plan and/or (b) will receive or retain a value under the Plan on account of such Claim or Interest property, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

33. The Debtors' Liquidation Analysis is sound and reasonable and incorporates justified assumptions and estimates regarding the Debtors' assets and claims, such as (i) the additional costs and expenses that would be incurred by the Debtors as a result of a chapter 7 trustee's fees and retention of new professionals, (ii) the reduced recoveries caused by an accelerated sale or disposition of the Debtors' assets by the trustee, (iii) the reduced recoveries from the Debtors' inventory due to an inability to sell work in process inventory, and (iv) projected market impediments, including lack of demand.

**H. SECTION 1129(a)(8)**

34. Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 4 (Intercompany Claims), and Class 7 (Intercompany Interests) are not impaired under the Plan

within the meaning of section 1124 of the Bankruptcy Code and are, therefore, conclusively presumed to have accepted the Plan the Bankruptcy Code. As set forth in the Voting Report, I understand that holders of Claims in Class 3 (General Unsecured Claims) have voted to accept the Plan.

35. As set forth above, Class 5 (U.S. HoldCo Interests) and Class 6 (TNEH UK Interests) are not entitled to receive or retain property under the Plan, and are therefore deemed to have rejected the Plan, but holders of such Interests have accepted the Plan pursuant to the Plan Support Agreement.

**I. SECTION 1129(a)(9)**

36. Pursuant to Sections 2.1, 2.2, 2.3, and 2.4 of the Plan, all Allowed Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims will be paid in full. Likewise, pursuant to Section 4.1 of the Plan, all Other Priority Claims will be paid in full, unless the holder of such Claim has agreed to less favorable treatment. On the Effective Date, Wind Down Co will have sufficient Cash to pay Allowed Administrative Expense Claims, Professional Fee Claims, DIP Claims, Allowed Priority Tax Claims, and Allowed Other Priority Claims.

**J. SECTION 1129(a)(10)**

37. One impaired Class at each Debtor has voted to accept the Plan, even excluding the acceptance of the Plan by any insiders in such Classes. Class 3 (General Unsecured Claims) is impaired and has accepted the Plan, without including the acceptance of the Plan by any insiders in such Class.

**K. SECTION 1129(a)(11)**

38. I am confident that the Debtors can timely perform all obligations described in the Plan. The Plan embodies a rational plan for the orderly wind down of the Debtors' estates and delivery of Distributions to holders of Allowed Claims following the consummation of the value-maximizing Plan Investment Transaction pursuant to the Plan.

39. Specifically, I believe that the Plan Investment Transaction will close and be consummated in accordance with the terms of the Plan Funding Agreement. Together with the Plan Investor, the Debtors and their advisors are working tirelessly and constructively with regulators and various other stakeholders to satisfy the conditions to closing the Plan Investment Transaction, including among other things, obtaining all necessary regulatory approvals and providing for the solvency of the EMEA Subsidiaries through the Solvency Steps Plan. The Debtors have already reached the settlements and compromises that are conditions to the effectiveness of the Plan, including the Pension Funding Agreement and NI Settlement. Upon the closing of the Plan Investment Transaction, the Debtors will be able to perform all of their obligations described in the Plan, including with respect to the deposit of the Segregated Funds into the Segregated Account to make Distributions to Class 3A General Unsecured Claims under the Plan.

40. The Debtors have analyzed their ability to fulfill their obligations under the Plan and taken into consideration their estimated costs of administration. The Plan is straightforward and provides for (i) the payment in full of Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, and DIP Claims, Other Priority Claims, and Other Secured Claims, and (ii) distributions to holders of General Unsecured Claims. The Plan provides various mechanisms for accomplishing these objectives, including the formation of

Wind Down Co and the appointment of the Plan Oversight Board to, among other things, oversee and direct Wind Down Co and its implementation and administration of the Plan for the benefit of holders of Claims. The Debtors continue to work constructively with the PSA Parties in anticipation of the establishment of the Plan Oversight Board and Wind Down Co. Indeed, the Debtors filed the Plan Supplement, which included drafts of (i) the Organizational Documents for Wind Down Co; (ii) the identity of the Plan Oversight Board Members; and (iii) the Plan Oversight Board Bylaws. Pursuant to the Plan, on or before the Effective Date of the Plan, the Plan Investor will transfer the Net Plan Investment Proceeds, and the Debtors will transfer the Excluded Assets to Wind Down Co, which I believe will be sufficient to satisfy all of the Debtors' obligations under the Plan that are due on the Effective Date.

**L. SECTION 1129(a)(12)**

41. Section 14.6 of the Plan provides that on the Effective Date, and thereafter as may be required, all fees incurred pursuant to section 1930 of title 28 of the United States Code, together with interest, if any, payable pursuant to section 3717 of title 31 of the United States Code, shall be paid by Wind Down Co.

**M. SECTION 1129(a)(13)**

42. Pursuant to the Plan Funding Agreement, the Reorganized Debtors are assuming the Debtors' obligations under that certain *Westinghouse Electric Company Welfare Benefits Plan*. Accordingly, the Plan provides for the continuation after its Effective Date of payment of all "retiree benefits", as that term is defined in section 1114 of the Bankruptcy Code, at the level established prior the Confirmation Date, for the duration of the period the Debtors were obligated to provide such benefits.

**N. SECTION 1129(a)(14), 1129(a)(15), AND 1129(a)(16)**

43. I understand that sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to the Plan.

**O. SECTION 1129(b)**

44. As set forth in the Voting Report, Class 3 (General Unsecured Claims), the only Class in which creditors were entitled to vote, accepted the Plan by a vote that was well in excess of the applicable acceptance margins. Holders of Interests in Class 5 (U.S. HoldCo Interests) and Class 6 (TNEH UK Interests) have agreed, or are wholly owned by parties who have agreed, to support and accept the Plan and the restructuring transactions contemplated therein pursuant to the Plan Support Agreement. I understand that Toshiba has affirmed that it accepts and supports the Plan, including the treatment of Class 5 (U.S. HoldCo Interests) and Class 6 (TNEH UK Interests).

**1) The Plan Does Not Discriminate Unfairly**

45. While there is discrimination between the treatment of Interests in (i) Class 5 and Class 6, which are not to receive or retain any property under the Plan, and (ii) Class 7 (Intercompany Interests), which are reinstated, there is a reasonable basis for the discrimination. Reinstating Class 7 preserves the legal structure of the Debtors' business and allows the Plan Investor to efficiently acquire the Westinghouse enterprise pursuant to the Plan and Plan Funding Agreement. The discrimination is being proposed in good faith to channel recoveries to holders of Claims against the Debtors prior to holders of the ultimate equity interests of the Debtors to effectuate the Plan and not to unfairly prejudice holders of Class 5 and Class 6.



**2) The Plan is Fair and Equitable**

46. There are no Interests in U.S. HoldCo or TNEH UK that are junior interests to Class 5 and Class 6 and, thus, no holder of junior interests will receive or retain any property under the Plan on account of such interest.

**P. SECTION 1129(c)**

47. The Plan is the only plan filed in these Chapter 11 Cases.

**Q. SECTION 1129(d)**

48. The Plan has not been filed for the purpose of the avoidance of taxes or the application of Section 5 of the Securities Act of 1933.

**R. SECTION 1129(e)**

49. These Chapter 11 Cases are not “small business cases” as defined in the Bankruptcy Code.

**S. SECTION 1127**

50. The Debtors modified the Plan on March 23, 2018. The modifications do not impact any creditor’s or equity holder’s treatment.

**THE GLOBAL SETTLEMENT**

51. The large claims asserted against certain of the Debtors along with the Debtors’ corporate structure presented the potential for extended, complex, expensive, and value-destructive litigation among competing interests and entities. A fundamental objective of the Debtors throughout their cases has been to structure a transaction to maximize recoveries to holders of allowed claims.

52. The prompt, efficient conclusion of the Debtors’ Chapter 11 Cases is premised on the proposed comprehensive resolution and settlement of difficult, diverse, and

multi-faceted issues that permeated these cases, including (a) the attribution of value between and among the U.S. Debtors and TNEH UK and the EMEA Subsidiaries, (b) the amount and allowance or disallowance of the claims relating to the U.S. AP1000 Projects, including the claims of the VC Summer Owners and the Vogtle Owners, and Toshiba's subrogation claims related to its parent guarantees, and (c) the amount and allowance or disallowance of claims of Toshiba and the EMEA Subsidiaries on account of numerous intercompany transactions within a globally-run business. None of these issues have been fully litigated in these cases. However, the UCC had begun discovery related to some of these issues, and the Debtors and holders of the Vogtle Claims and VC Summer Claims had begun to position themselves for litigation over other issues. Significant resources were expended on these initial phases alone.

#### **A. EVENTS LEADING UP TO THE GLOBAL SETTLEMENT**

53. Westinghouse operates an industry-leading global nuclear power business. Westinghouse corporate entities are divided into two sibling chains of corporate entities: (i) a chain of primarily U.S.-domiciled entities that are directly and indirectly owned by U.S. HoldCo and WEC (*i.e.*, the U.S. Debtors), and (ii) a chain of entities in the rest of the world (*i.e.*, the EMEA Subsidiaries) that are directly and indirectly owned by Debtor TNEH UK. Each of the chains are wholly-owned (directly or indirectly) by Toshiba.

54. The Company has a total of 61 offices all over the globe, including 37 offices outside of the United States. Together, the global entities share products, intellectual property, technology, equipment, customers, and professionals, and depend heavily on one another for business support relating to operations, credit support and guarantees. The U.S. Debtors and the EMEA Subsidiaries are co-dependent and in effect are a globally integrated and interdependent nuclear power company. As demonstrated in connection with the Debtors'

postpetition financing, maintenance of the value of each of the U.S. Debtors and EMEA Subsidiaries is dependent on the operation and cooperation of the other. There is no definitive methodology for determining the value of each entity.

55. Given that third-party claims asserted against TNEH UK were relatively small (18 in number and \$33.9 million in amount) and that the portion of the sale proceeds allocable to the EMEA Subsidiaries would flow to TNEH UK, Toshiba, as the equity owner, could potentially recover significant value on account of such claims and interests relating to TNEH UK and the EMEA Subsidiaries. On the other hand, the vast majority of claims against the Debtors (99% in amount and 99% in number), including the claims related to the U.S. AP1000 Projects were asserted against the U.S. Debtors' estates. There has been the looming concern among creditors throughout these cases that the creditors of the U.S. Debtors would not realize the majority of the value of the Westinghouse enterprise.

56. The significant claims of the owners of the U.S. AP1000 Projects added further risk of reduced recoveries for creditors in the U.S. Debtors. For example, the Vogtle Owners asserted claims for \$5.1 billion, and the VC Summer Owners filed an unliquidated claim for, among other things, any and all payments made by the owners under the VC Summer EPC Contract. On August 25, 2017, the Vogtle Owners filed a lift stay motion seeking to crystallize a larger contractual claim, and on December 15, 2017, Citigroup Financial Products, Inc. (the "**VC Summer Claims**"), amended their applicable proofs of claim to assert a liquidated claim of over \$7.5 billion.<sup>4</sup> Together, these claims would dwarf all other claims of third-party creditors. The Debtors have maintained throughout the Chapter 11 Cases that such claims are capped at

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<sup>4</sup> On or about September 27, 2017, the VC Summer Owners announced the sale of the VC Summer Claims to the VC Summer Claimholder. Affiliates of the Consenting Claimholder hold a controlling interest in the VC Summer Claims held by the VC Summer Claimholder.

significantly lower amounts and have expended significant resources and efforts in response to such claims by, among other things, objecting to the Vogtle Owners' lift stay motion and filing a motion estimating the maximum allowable amount of the asserted VC Summer Claims. These issues have not been litigated or determined.

57. In addition, third-party creditors risked further dilution of their recoveries from various significant intercompany claims, including (i) \$6.9 billion in Claims by Toshiba and the Toshiba Affiliates arising out of certain intercompany advances and certain prepetition credit support arrangements and guarantees, including the Toshiba guarantees of the EPC Contracts (the "**Toshiba Claims**"), and (ii) and approximately \$1.2 billion in intercompany claims arising under the Cash Pooling Agreement, as well as approximately \$120 million of intercompany trade claims asserted by the EMEA Subsidiaries. Since the Petition Date, parties in interest have questioned or considered whether such claims could be objected to on various bases, including recharacterization and equitable subordination.

58. In November 2017, the opportunity for a potential integrated resolution of these issues began to develop. On November 19, 2017, Toshiba announced that it had decided to explore strategic alternatives in connection with the majority of its residual claims against and equity interests in Westinghouse. Over the next two months, Toshiba launched and pursued a monetization process for the Toshiba Claims and the Toshiba Equity Interests. On December 14, 2017, the Vogtle Owners, announced that they had received a payment of \$3.225 billion from Toshiba, representing the unpaid balance owed by Toshiba pursuant to the Vogtle Settlement (as defined in the Toshiba Distribution Order). By an agreement between the Vogtle Owners and Toshiba, Toshiba completed such early payment in full satisfaction of its guarantee obligation and on December 21, 2017, the Vogtle Owners' transferred their Proofs of Claim (the "**Vogtle**

**Claims**”) to Toshiba. *See* ECF Nos. 1984–1999. On January 18, 2018, Toshiba announced that it had selected the Consenting Claimholder, an entity managed by an affiliate of the Baupost Group L.L.C., as the buyer of the Toshiba Claims and the Vogtle Claims and had accordingly entered into an assignment and purchase agreement with the Consenting Claimholder. Pursuant to such agreement, Toshiba transferred the Toshiba Claims and Vogtle Claims to the Consenting Claimholder on January 22, 2018. *See* ECF Nos. 2222–2256.

59. Given that Consenting Claimholder now controlled the majority of the largest third-party Claims in the Chapter 11 Cases—aligning interests that were previously adverse—they, along with Toshiba, the Debtors and UCC, had the incentive to reach a compromise of such Claims and a consensual resolution of the Chapter 11 Cases.

60. In an effort to avoid disputes that could jeopardize consummating a sale transaction that captures the highest value of the Debtors’ businesses, extraordinary costs and delays of distributions to economic stakeholders, and continued discovery and protracted litigation, the Debtors and PSA Parties sought to achieve a consensual resolution. To that end, the Debtors and the PSA Parties engaged in good faith negotiations over a period of several weeks in December 2017 and January 2018.

61. The robust, arm’s-length negotiations were successful and yielded substantial consensus and support for a consensual plan, as evidenced by the execution of the Plan Support Agreement by the UCC, Toshiba, the Consenting Claimholder, and Brookfield Capital Partners LLC (“**Brookfield**”). The Plan Support Agreement provided for the suspension of the UCC’s discovery and litigation regarding the VC Summer Claims and Vogtle Claims, support of a sale through a chapter 11 plan of the global businesses to Brookfield and placed the Debtors on a path towards a consensual confirmation.

62. In addition, in order to maximize the value available to holders of Class 3A General Unsecured Claims, the Debtors worked diligently to resolve the claims of other significant stakeholders in the case, including the NI Counterparties, the PBGC, and the EMEA Subsidiaries.

63. The Plan is the culmination of negotiations between the Debtors, Toshiba, and the other PSA Parties, each of which had their separate counsel and financial advisors. In addition, the Board of Directors of WEC delegated the responsibility of overseeing formulation and negotiation of the Plan, among other things, to an independent special committee. Similarly, the Board of Directors of TNEH UK delegated responsibility to its independent directors. Toshiba's affiliated directors subsequently resigned from the board of TNEH UK. Any potential for undue influence was countered by the existence of the PSA Parties and by the oversight of the independent directors and special committee.

#### **B. OVERVIEW OF THE GLOBAL SETTLEMENT**

64. The Global Settlement in section 5.3 of the Plan is a foundation of the Plan and includes the compromises made by the Debtors, PSA Parties, and certain other parties in interest.

##### **1) Treatment of U.S. AP1000 Project Owner Claims, Toshiba Parent Guarantee Claims, and Toshiba Intercompany Loan Claims**

65. To enhance the recoveries available to general unsecured third-party creditors and to avoid protracted litigation regarding the allowance and amount of the VC Summer Claims, Vogtle Claims, and Toshiba's intercompany loan and parent guarantee claims, which were asserted in an aggregate amount exceeding \$20 billion, Consenting Claimholder consented to:

- (i) \$1.15 billion of Available Cash being segregated and utilized to satisfy the claims of all other holders of Allowed General Unsecured Claims;
- (ii) defer their recoveries to allow for (i) \$100 million of the Plan Investment Proceeds, and (ii) 5% of the remaining Segregated Funds after the satisfaction of all Class 3A General Unsecured Claims, to be advanced to the Reorganized Debtors for the benefit of their qualified pension plans in accordance with the Pension Funding Agreement; and
- (iii) the VC Summer Claims being deemed discharged without consideration.

## **2) Deemed Substantive Consolidation for Distribution Purposes**

66. To avoid protracted litigation over the allocation of the Plan Investment Proceeds, creditors of all of the Debtors will recover pro rata from the Segregated Funds and/or Wind Down Co. The Debtors' estates will be substantively consolidated for distribution purposes only.

## **3) Settlement of Intercompany Claims**

67. To (i) enhance the recoveries available to general unsecured creditors of the U.S. Debtors, (ii) avoid protracted litigation over the allowance and amount of Intercompany Claims and Cash Pool Claims against the Debtors, and (iii) provide for the Solvency of the EMEA Subsidiaries and successful sale and emergence of Westinghouse's global businesses, the EMEA Subsidiaries and PSA Parties have consented to the following settlements:

(a) ***Settlement of Cash Pool Claims.*** The holders of Cash Pool Claims, which were asserted in an amount exceeding \$470 million, have consented to the Plan, which provides for the waiver, release, satisfaction or other agreed treatment of such claims in exchange for being rendered Solvent on the Effective Date.

(b) ***Settlement of Intercompany Claims.*** The holders of Intercompany Claims, which were asserted in an amount exceeding \$115 million, have consented to the Plan,

which provides for the Reinstatement, settlement, offset, cancellation, extinguishment, or elimination of such claims in exchange for being rendered Solvent on the Effective Date.

(c) ***Waiver of LFA Claims Against TNEH UK and the EMEA Subsidiaries.*** WEC has agreed (with the support of the UCC and Consenting Claimholder) to waive and release its right to repayment of the LFA Claims against TNEH UK and the EMEA Subsidiaries, which as of today, exceed \$165 million.

#### **4) Waiver of Claims Against EMEA Entities**

68. To (i) incentivize the EMEA Subsidiaries to compromise their claims against the U.S. Debtors, (ii) provide for the Solvency of the EMEA Subsidiaries and successful emergence of Westinghouse's global businesses, Toshiba and the Debtors (supported by the UCC and Consenting Claimholder) have consented to the following:

(a) ***Waiver of Toshiba Claims Against the EMEA Subsidiaries.*** Toshiba will support the solvency of WEC EMEA entities by (i) waiving and releasing over \$400 million of claims against such WEC EMEA entities, (ii) agreeing to the €144 million Mangiarotti Claim Waiver (as defined in the Disclosure Statement), and (iii) consummation of the Claim Swap (as defined in the Disclosure Statement). This allows WECHOL to waive repayment of \$650 million Toshiba-WECHOL Claim, thereby maximizing sale proceeds received by the Debtors' estates pursuant to the Plan Investment Transaction.

(b) ***Waiver of TNEH UK Claims Against the EMEA Subsidiaries.*** TNEH UK will support the solvency of WEC EMEA entities by waiving and releasing over \$760 million of claims against such WEC EMEA entities (provided, however, that any holders of Claims against or Interests in TNEH UK will receive treatment under the Plan consistent with the terms set forth in the Plan).



(c) *Allowance of AUAM Loan Claim.* Settling the AUAM Loan Claim as an Allowed Class 3A General Unsecured Claim in an amount equal to \$43,152,613.01.

**5) Settlement of Significant Claims Against Debtors' Estates**

69. The Debtors also entered into several other third-party settlements that minimize the claims pool and thereby maximize distributions to Class 3A creditors:

(a) *Settlement of NI Contract Claims.* The Claims of the NI Counterparties related to the NI Contract, which were asserted in an amount exceeding \$6 billion, have been settled and released in accordance with the NI Settlement, which will result in the NI Counterparties providing net proceeds of approximately \$27 million and the assumption of the NI Contract.

(b) *Settlement of PBGC Claims.* The Plan Investor will assume certain of Debtors' pension plans. The Claims of the PBGC, which were asserted in an amount of approximately \$1 billion (plus unliquidated claims), will be deemed withdrawn on the Effective Date in exchange for the contributions to be provided under the Pension Funding Agreement (i.e., (i) \$100 million of the Plan Investment Proceeds, and (ii) 5% of the remaining Segregated Funds after the satisfaction of all Class 3A General Unsecured Claims.

(c) *Settlement of Toshiba Trade Claims.* The Toshiba GUC Claims, which were asserted in amount of \$43,665,642.48 (plus millions of dollars in potential contingent and unliquidated claims) have been settled in an amount not to exceed the asserted liquidated amount.

**6) Releases, Exculpation, and Injunction**

70. In order to incentivize the PSA Parties to grant the concessions outlined above, and in consideration of the substantial contribution provided by the Released Parties, the

Debtors agreed to prosecute and pursue the releases, exculpation, and injunction provisions set forth in section 11 of the Plan.

71. Each aspect of the Global Settlement is interdependent and relied upon by the PSA Parties, who made material concessions as to their respective positions to enable the expeditious confirmation of the Plan. Such settlements take into account the legal and factual risks to the allowance of the claims. Modifications to any aspect of the Global Settlement or the failure to approve the Global Settlement *in toto* undoubtedly may result in events of termination under the Plan Support Agreement, jeopardize the sale of the Debtors' businesses, and set back the administration of the Chapter 11 Cases for an extended period as the Debtors and their adversaries get bogged down in the maze of uncontrolled litigation for prosecution of competing proposed plans.

**C. The Global Settlement is Fair and Reasonable, Supported by Sound Business Justifications, and is in the Best Interests of the Estates**

**1) Potential Litigation**

72. The possibility of parties successfully pursuing multiple claims objections and actions settled under the Plan is speculative at best, while the Global Settlement as a whole and the PSA Parties' contributions provide definite and substantial recoveries to the Debtors' creditors. Through their experienced counsel and financial consultants, both the Debtors and the UCC began investigations into potential avoidance actions and claims objections, including with respect to (i) VC Summer Claims, Vogtle Claims, and certain claims of Toshiba and the EMEA Subsidiaries, and (ii) the time and expense that would be involved in litigating the allocation of the Plan Investment Proceeds between and among the U.S. Debtors and TNEH UK and the EMEA Subsidiaries. Additionally, the Debtors and their advisors also conducted an extensive analysis and review of solvency issues facing the EMEA Subsidiaries, intercompany claims, and

other substantial claims filed against the Debtors by, among others, NI Counterparties and the PBGC.

73. ***Treatment of U.S. AP1000 Project Owner Claims, Toshiba Parent Guarantee Claims, and Toshiba Intercompany Loan Claims.*** Potential litigation relating to the allowance and amount of the VC Summer Claims, Vogtle Claims, and Toshiba intercompany loan and subrogation claims would have been uncertain. After analyzing the relevant information in connection with investigating such claims and potential objections and avoidance actions, and in consideration of the substantial contributions made by Toshiba and the Consenting Claimholder to the Plan (including the waiver and subordination of significant claims) and other relevant factors, the Debtors and UCC concluded that while the Debtors had colorable objections against the claims held by the Consenting Claimholder, given its agreement to subordinate recoveries to a level that the Debtors project will ultimately provide for full recoveries for other holders of general unsecured claims, prosecuting such objections was not in the best interests of the Debtors' estates. Any such litigation would cost the estates a great deal of time, effort, and resources, and such objections and avoidance actions would be vigorously opposed. Given the option of providing unsecured claim holders nearly 100% recoveries, pursuing lengthy and costly legal battles with the Consenting Claimholder was not a reasonable option.

74. ***Substantive Consolidation.*** With respect to the valuation of the U.S. Debtors, TNEH UK, and the EMEA Subsidiaries, and the associated allocation of Plan Investment Proceeds, litigation would involve comprehensive expert testimony, have an unpredictable outcome, and potentially drive these Chapter 11 Cases into a multi-year allocation fight. The Plan Investment Proceeds received by the Debtors and the Assumed Liabilities to be

assumed by the Plan Investor were not allocated on a debtor-by-debtor basis or even asset-by-asset. In the absence of the Global Settlement, allocation could lead to prolonged disputes or litigation that risks tying up the Plan Investment Proceeds for an indefinite period of time, thereby prohibiting timely distributions to creditors and significantly delaying the resolution of the Chapter 11 Cases.

75. Substantive consolidation of the Debtors' estates for distribution purposes has three major effects: (i) all assets and liabilities of the Debtors will be treated as though they were pooled, (ii) it eliminates guarantees of the obligations of each of the Debtors to any of the other Debtors, and (iii) each Claim filed against any of the Debtors would be considered to be a single claim against the consolidated Debtors. This will eliminate multiple and duplicative claims, joint and several liability claims, and will afford payment of Allowed Claims against each of the consolidated Debtors from a common fund. Ultimately, substantive consolidation eliminates the need to allocate Plan Investment Proceeds between Debtor entities, thereby avoiding potential protracted litigation between and among the Debtors and TNEH UK and their respective stakeholders. Substantive consolidation also removes the need to reconcile intercompany claims, thereby avoiding a difficult and costly process that could potentially lead to protracted litigation between Debtor entities.

76. The limited substantive consolidation effectuated pursuant to the Plan will not harm creditors of any of the Debtors and will result in substantial benefits to the estates and creditors of each of the Debtors. The Debtors estimate that holders of Class 3A General Unsecured Claims will recover 99-100% of their Allowed Claims. To the extent a creditor of a specific debtor would receive a marginally higher recovery under a non-consolidated plan, such

gain would be offset or lost by the time, risk, and expense required to resolve intercompany claims and litigate over the allocation of the Plan Investment Proceeds.

77. ***Settlement of Intercompany Claims.*** There are substantial Intercompany Claims and Cash Pool Claims between and against Debtor entities that are settled under the Plan. Based on the Debtors' review, a lengthy, extensive, and costly process would be required to reconcile such claims, which may lead to disputes and potential litigation. The potential for litigation seeking equitable subordination or reclassification of such claims also exists. Settling the Intercompany Claims avoids litigation and enhances recoveries available to holders of General Unsecured Claims of the U.S. Debtors by not diluting the general unsecured claims pool. Waiving LFA Claims against TNEH UK and the EMEA Subsidiaries also ensures Solvency of the EMEA Subsidiaries and the successful emergence of Westinghouse's global businesses.

78. ***Waiver of LFA Claims Against EMEA Subsidiaries.*** The waiver by Toshiba and TNEH UK of certain claims against the EMEA Subsidiaries carries substantial benefits to the Debtors' Estates. It will ensure the solvency of the EMEA Subsidiaries, which was instrumental to the negotiation and formulation of the Plan Funding Agreement. This waiver also maximizes the distributable value available to third-party creditors of the Debtors estates. Pursuing such claims would simply be value deteriorating.

79. ***Other Settlements.*** The other claim settlements under the Global Settlement, including the settlements of the NI Claims, the PBGC Claims, and the Toshiba GUC Claims, described more fully in the Disclosure Statement (*see* Disclosure Statement Part IV. S., p. 46) expediently resolve significant claims asserted against the Debtors. The NI Settlement, resolves over \$6 billion of claims asserted against the estate, and could have taken a significant

period of time to litigate. Likewise, settling the PGBC and Toshiba GUC Claims in an expeditious manner only benefits creditors by facilitating a timely resolution of these Chapter 11 Cases and enhancing their recoveries.

**2) Paramount Interests of Creditors and Support for the Global Settlement.**

80. The Global Settlement undoubtedly serves the paramount interests of creditors. It provides them with timely, substantial recoveries that may not otherwise be available without a global integrated resolution and support of the PSA Parties. In fact, the Global Settlement provides Class 3A General Unsecured Claims with as good, if not better, recoveries than if the Debtors had pursued all causes of action that are proposed to be settled. The Debtors, UCC, and the Debtors' creditors, who almost unanimously accepted the Plan, have clearly expressed their judgment that the Global Settlement balances the risks and provides a practical solution that is fair, reasonable, and efficient means to end these Chapter 11 Cases. As evidenced by the Plan Support Agreement and by the 99% of Class 3 General Unsecured Claim holders asserting more than \$40 billion of Claims that voted in favor of the Plan, the Global Settlement has the near unanimous support of the Debtors' creditors and other parties in interest.

**3) Competency and Experience of Counsel and Knowledge of the Bankruptcy Court Judge and the Extent that the Settlement is the Product of Arm's-Length Bargaining**

81. The Debtors and the PSA Parties are all represented by highly experienced and competent counsel who unanimously agree that approval of the Global Settlement is a significantly better outcome than litigation. Many creditors in Class 3A are also represented in these cases by experienced and competent counsel. As set forth above, the Global Settlement is the result of extensive arm's-length negotiations over the course of several months between the Debtors and the PSA Parties.

#### **D. PLAN RELEASES, EXCULPATION, AND INJUNCTION**

##### **1) Debtor Releases**

82. Section 11.6 of the Plan contains a release of claims of the Debtors, the Reorganized Debtors, and any other person seeking to exercise the rights of the estate against certain parties (i.e., the Released Parties) relating to the Debtors or their Affiliates, existing as of the Effective Date or thereafter arising from occurrences prior to the Effective Date (the “**Debtors’ Release**”). The Released Parties are (a) the Debtors, Reorganized Debtors, and Wind Down Co, (b) the DIP Lenders, (c) the DIP Agent, (d) the Plan Oversight Board, (e) the Released Subsidiaries, (f) the PSA Parties, (g) VC Summer Claimholder, and (h) with respect to each of the foregoing entities in clauses (a) through (g), such Entities’ Representatives, in each case, solely in their capacity as such.

83. The Debtors’ Release constitutes a sound exercise of the Debtors’ business judgment and meets the applicable legal standard: the Debtors’ Release is fair, reasonable, and in the best interests of the Debtors. During the course of negotiations regarding the Plan, the Plan Support Agreement, the Global Settlement, and the Plan Investment Transaction, it was clear that the Debtors’ Release would be a necessary condition to consummation of the transactions embodied in the Plan. In exchange for such releases, the Debtors secured the substantial concessions provided by the Global Settlement, and the Plan, including, without limitation, the estimated 100% satisfaction of Allowed Class 3A General Unsecured Claims (or close thereto). Similarly, the Released Parties provided integral support throughout the Chapter 11 Cases. Had the Debtors’ Release not been provided, the Debtors chances of securing (i) the valuable concessions provided under the Plan Support Agreement, (ii) the consideration under

the Plan Investment Transaction, and (iii) the benefits of the DIP Facility, would have been diminished.

## 2) **Third Party Releases**

84. Section 11.7 of the Plan contains releases by the Releasing Parties (the “**Third Party Releases**”) of the Released Parties—the same parties released pursuant to the Debtors’ Release—from liability based on or relating to the Debtors or stemming from the Chapter 11 Cases. The Third Party Releases are tailored to apply only in connection to the Debtors and matters relating to the Chapter 11 Cases, including, among other things, the negotiation, formulation, confirmation and consummation of the Plan and the restructuring transactions contemplated thereby, the DIP Loan Documents, and the DIP Credit Agreement. The Third Party Releases do not apply to (i) the liability of any person or entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract or other agreement previously assumed, entered into during the Chapter 11 Cases or to be entered into or assumed in connection with the Plan, (ii) the liability of any Released Party that would otherwise result from any act or omission that constitutes fraud, gross negligence, or willful misconduct or (iii) any non-Released Party.

85. The Third Party Releases apply to each holder of a Claim against or an Interest in a Debtor, other than those who (a) were entitled to vote on the Plan and did not vote on the Plan, or (b) voted to reject and also did not check the box on the applicable Ballot indicating that they opt to grant the releases provided in the Plan. Pursuant to this mandatory opt-in scheme, if a creditor votes to reject the Plan, and does not check the box granting the Third Party Releases, that creditor will not be bound to such releases. Similarly, if a creditor



received a ballot but abstained from voting, such creditor will not be deemed to grant such releases.

86. The Third Party Releases were disclosed to creditors. The Ballots contain bold, capitalized explanatory text with respect to the releases. Similar language was also set forth for the benefit of creditors in the Disclosure Statement.

87. The Third Party Releases are consensual with respect to Class 3 (General Unsecured Claims), Class 4 (Intercompany Claims), Class 5 (U.S. HoldCo Interests), Class 6 (TNEH UK Interests), and Class 7 (Intercompany Interests). Holders of Class 3 (General Unsecured Claims) that voted in favor of the Plan have consented to the Third Party Releases and holders of Class 3 Claims who voted against the Plan were provided with the opportunity to affirmatively opt-in to the Third Party Releases. Holders of Claims in Class 4 (Intercompany Claims) and Interests in Class 5 (U.S. HoldCo Interests), Class 6 (TNEH UK Interests), and Class 7 (Intercompany Interests), are either proponents of the Plan, will have otherwise consented to the Plan as a party to the Plan Support Agreement, or by delivering an executed consent to the Plan.

(a) ***Substantial Contribution***

88. Each of the Released Parties has provided substantial contributions to the Debtors' Estates and for the benefit of the Debtors' creditors and parties in interest, including as set forth below.

89. Certain of the Released Parties have contributed to the Debtors' Chapter 11 Cases in the form of cash investments or loans:

(a) The Plan Investor will be released after it has, among other things  
(i) provided the Plan Investment Proceeds under the Plan Funding Agreement, which will fund

the substantial recoveries for creditors, (ii) assumed certain of the Debtors' and their non-Debtor affiliates liabilities, and (iii) enabled the continuation of the Debtors' critically important global businesses.

(b) The DIP Lenders and the DIP Agent agreed to continue to fund the Debtors' Chapter 11 Cases through the DIP Facility at favorable interest rates and fees for the period between the Confirmation Date and the Effective Date. The DIP Lenders and DIP Agent provided the flexibility the Debtors needed to preserve their businesses and the businesses of their non-Debtor affiliates for the benefit of parties in interest in these cases and beyond.

90. Other released parties have substantially contributed by agreeing to forego or give up certain rights:

(a) The Consenting Claimholder has substantially contributed by agreeing to less favorable treatment of their Claims, in accordance with section 5.3(a) of the Plan, by (i) subordinating their recoveries to \$1.15 billion of Available Cash that will be segregated for the payment of Class 3A General Unsecured Claims, and (ii) agreeing that \$100 million in Available Cash and 5% of any remaining Segregated Funds upon the Final Distribution Date, which would otherwise constitute Available Cash distributable to the Consenting Claimholder, will be made available to the Reorganized Debtors for use in accordance with the Pension Funding Agreement. Furthermore, Consenting Claimholder has consented to the substantive consolidation of the Debtors' Estates.

(b) For similar reasons, the VC Summer Claimholder has substantially contributed by agreeing to suspend all litigation related to the VC Summer Claims, and to have the VC Summer Claims be deemed discharged without consideration on the Effective Date.

(c) Toshiba has substantially contributed by, among other things, (i) conditioning its sale of their Class 3B General Unsecured Claims to Consenting Claimholder on the condition that the Consenting Claimholder would agree to less favorable treatment than other holders of General Unsecured Claims; (ii) consenting to the substantive consolidation of the Debtors' Estates notwithstanding their ownership of the TNEH UK Interests, (iii) agreeing to waive, release, deem satisfied, or otherwise discharge any and all right to repayment of the Released Toshiba Claims pursuant to the to the Toshiba-EMEA Settlement Agreement, (iv) agreeing to the €144 million Mangiarotti Claim Waiver, (v) consummating the Claim Swap, (vi) agreeing to settle the Toshiba GUC Claims for an amount not to exceed \$43,665,642.48; and (vii) supporting the Debtors' postpetition operations by providing \$518 million cash collateral to backstop prepetition letters of credit.

(d) The Released Subsidiaries have substantially contributed by consenting to the Plan, including (i) the waiver and release of the Cash Pool Claims in accordance with the Plan, and (ii) the reinstatement, settlement, offset, cancellation, extinguishment, or elimination of Intercompany Claims in accordance with the Plan. Further, the EMEA Subsidiaries will (i) pursuant to the Toshiba-EMEA Settlement Agreement, release each claim that such EMEA Subsidiary has, had, or may have against Toshiba and the Toshiba Affiliates, and (ii) participate in the Solvency Steps Plan for the benefit of the Debtors' reorganization.

(e) The UCC has agreed to (i) suspend and forbear from pursuing any document discovery or deposition testimony requests on the Debtors, the EMEA Subsidiaries, and Toshiba, and (ii) a cap of the Segregated Funds made available for the benefit of holders of Allowed Class 3A General Unsecured Claims at \$1.15 billion.

91. Finally, other Released Parties will provide a substantial contribution in the period between the Confirmation Date and Effective Date, and thereafter, through the provision of services to the Debtors' estates:

(a) The Plan Oversight Board has agreed to implement the Reconciliation Plan after the Confirmation Date, and the Plan Oversight Board and Wind Down Co's will administer and implement the Plan following the Effective Date, in each case for the benefit of the Debtors' creditors.

92. Each of the Released Parties have substantially contributed to the Chapter 11 Cases. The Released Parties' Representatives are being released solely in their capacity as representatives to the Released Parties.

(b) ***The Third Party Releases are an Essential Component of the Plan***

93. Without the Third Party Releases contained in the Plan, the Debtors would not have obtained the high level of support that enabled them to negotiate the Global Settlement, which will facilitate, among other things, recoveries of up to 100% for holders of Allowed Class 3A General Unsecured Claims, and allow the Debtors to emerge as a reorganized company. Specifically, in the absence of the Third Party Releases, it is extremely unlikely that Toshiba and Consenting Claimholder (or another buyer) would have come to the agreement under which Consenting Claimholder agreed to subordinate a meaningful portion of its recoveries to other claim holders. Similarly, the Plan Investor, UCC, and Consenting Claimholder would not likely have agreed to make the concessions set forth above, which are absolutely essential to the Plan.

94. Additionally, the Third Party Releases do not absolve the Released Parties from any act or omission that constitutes fraud, gross negligence, or willful misconduct.

95. Without the consensus facilitated by the Third Party Releases, the Debtors would not have the support of the PSA Parties, would not have been able to reach the Global Settlement and would have suffered significant loss in value, to the detriment of all parties.

### **3) Plan Exculpation Provision**

96. Section 11.8 of the Plan contains a release and exculpation for certain Exculpated Parties for claims arising out or relating to, among other things, the Chapter 11 Cases, the Disclosure Statement, the DIP Loan Documents, the solicitation, confirmation and consummation of the Plan and any transactions contemplated thereby (the “**Exculpation Provision**”).

97. The Exculpated Parties greatly contributed to the Debtors’ reorganization efforts and enabled the successful prosecution of the Plan in exchange, in part, for the Exculpation Provision. Failing to approve this provision will expose the Exculpated Parties to litigation after months of good faith negotiations. Therefore, the Court should approve the Exculpation Provision as an integral and important part of the Debtors’ Plan.

### **4) Plan Injunction**

98. The injunction set forth in Section 11.9 of the Plan (the “**Plan Injunction**”) enjoins parties from interfering with the implementation of the Plan, provides a means to enforce the Global Settlement, the Debtors’ Releases, the Third Party Releases, the Exculpation Provision, and other provisions of the Plan against the Debtors, the Reorganized Debtors, the Released Parties or any of their respective assets or property.

## **PLAN INVESTMENT TRANSACTION**

99. Section 5.2 of the Plan provides for the issuance of 100% of the outstanding equity interests in Reorganized U.S. HoldCo and the sale and transfer of 100% of the

issued and outstanding equity interests in WECHOL to the Plan Investor in accordance with the terms and conditions of the Plan Funding Agreement. The Plan Investment Transaction permits the Debtors to achieve their key objectives, including (i) maximizing the value of their estates for the benefit of their creditors, (ii) reducing potential claims against the estates, (iii) preserving their profitable core businesses, allowing them to continue to operate and preserve the jobs of thousands of employees, and (iv) restructuring their businesses and reducing their go-forward liabilities.

### **STAY OF THE CONFIRMATION ORDER**

I believe that under the circumstances, it is appropriate for the Court to permit the Debtors to consummate the Plan and commence its implementation without delay after the entry of the Confirmation Order. I believe that a waiver of the 14-day stay is in the best interests of the estates and all other parties in interest and will not prejudice any party in interest.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 23, 2018

WESTINGHOUSE ELECTRIC COMPANY LLC

By: /s/ Lisa J. Donahue  
Lisa J. Donahue  
Chief Transition and Development Officer