

**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)**
 :
Debtors.¹ : **(Jointly Administered)**

**DECLARATION OF DANIEL SUMNER
IN SUPPORT OF DEBTORS’ MOTION FOR
AUTHORIZATION TO AMEND THE CHAPTER 11 PLAN AND
PLAN FUNDING AGREEMENT AND FOR RELATED RELIEF**

I, Daniel Sumner, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Financial Officer (“CFO”) of Westinghouse Electric Company, LLC (“WEC”) where I have been employed in various capacities since 2010. I have served as WEC’s CFO since October 2017. Before becoming CFO, I served as the Vice President of Finance and the Debtors’ Chief Compliance Office. Prior to joining WEC, I worked at Alcoa as a member of the corporate audit staff. I am familiar with the businesses and the bankruptcy proceedings of

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, 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 (2348), 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.



WEC and its affiliates, as debtors and debtors in possession, in the above-captioned chapter 11 cases (collectively, the “**Debtors**”).

2. I submit this declaration (the “**Declaration**”) in support of the *Motion of Debtors for Authorization to Amend the Chapter 11 Plan and Plan Funding Agreement and for Related Relief*, dated July 23, 2018 [ECF No. 3615] (the “**Motion**”).²

3. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors and Brookfield (as defined herein) or my opinion based upon my experience, knowledge, and information concerning the Debtors’ operations and the engineering/energy services industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

4. As set forth in greater detail in the Motion, the Debtors, Brookfield WEC Holdings LLC (“**Brookfield**” or the “**Plan Investor**”) and Nucleus Acquisition LLC (the “**Consenting Claimholder**”) have agreed that (a) on the effective date (the “**Effective Date**”) of the Debtors’ *Modified Second Amended Joint Chapter 11 Plan of Reorganization* [ECF No. 2986] (the “**Plan**”) Reorganized WEC will assume the Westinghouse Electric Company Executive Pension Plan (as amended and restated on April 1, 2017, the “**EPP**”) and (b) on or before October 1, 2018, Reorganized WEC shall pay any associated cure costs to certain of the participants under the EPP on account of benefits that have accrued since the Petition Date and remain unpaid. The assumption of the EPP shall be effected through that certain *Amendment No. 1 to the Plan Funding Agreement*, a true and correct copy of which is attached hereto as **Exhibit 1** (the “**PFA Modification**”), as well as certain modifications to the Plan. Pursuant to the PFA Modification,

² Capitalized terms not defined herein shall have the same meaning as set forth in the Motion.

Brookfield will receive a Class 3A General Unsecured Claim in the amount of \$121,500,000 which it will sell to Wind Down Co, on the Effective Date, for \$120 million.

5. It is my understanding that the participants under the EPP have filed 144 proofs of claim asserting purported claims arising under the EPP in an aggregate amount of approximately \$135 million. I also understand that Reorganized WEC's projected monthly expense associated with the EPP currently is approximately \$400,000.

6. In light of my knowledge of WEC's financial condition as its Chief Financial Officer and experience, it is my opinion that the Reorganized Debtors have the financial wherewithal to pay all obligations that may arise under the EPP as such obligations come due in the ordinary course.

7. Since the Petition Date, the Debtors have successfully implemented their 5-year business plan originally approved by WEC's Board of Directors (the "**Board**") in August 2017 and amended and approved by the Board on April 24, 2018 (the "**Amended Business Plan**"). The Amended Business Plan contemplates major and complex cost-reduction initiatives, which the Debtors estimate will have yielded approximately \$241 million in accrued costs savings by December 2018. Indeed, these cost-reduction initiatives, in conjunction with certain other operational enhancements, have led to substantial increases in the Debtors EBITDA, which was \$424 million as of March 31, 2018 and has exceeded the 5-year Amended Business Plan objective.

8. Over the course of these Chapter 11 Cases, the Debtors have maintained their profitable core business while shedding billions of dollars in liabilities. In addition to emerging from these Chapter 11 cases with substantially fewer liabilities, the Reorganized Debtors expect their future operational costs to be equal to or below current levels.

9. In general, I believe that the Reorganized Debtors will emerge from these Chapter 11 cases in a fundamentally healthier financial position, capable of fulfilling all of their obligations under the EPP (as well as any other assumed contracts).

10. Based on the foregoing, the Reorganized Debtors will be able to perform financial obligations arising under the EPP based on the financial condition of Reorganized WEC.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Dated: July 27, 2018
New York, New York

/s/ Daniel Sumner
By: Daniel Sumner
Title: Chief Financial officer
Westinghouse Electric Company LLC

Exhibit 1

PFA Modification

AMENDMENT NO. 1 TO PLAN FUNDING AGREEMENT

THIS AMENDMENT NO. 1 TO PLAN FUNDING AGREEMENT (this “Amendment”), dated as of July [●], 2018, is made and entered into by and among TSB Nuclear Energy Services Inc. (“**TNESI**”), Toshiba Nuclear Energy Holdings (UK) Limited (together with TNESI, the “**Companies**”) and Brookfield WEC Holdings LLC (“**Plan Investor**” and, together with the Companies, the “**Parties**”).

WHEREAS, the Parties entered into that certain Plan Funding Agreement, dated as of January 12, 2018 (the “**Plan Funding Agreement**”); and

WHEREAS, in furtherance of the foregoing and in accordance with Section 13.11 of the Plan Funding Agreement, the Parties desire to amend the Plan Funding Agreement and agree as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Section 1.1 Defined Terms; References. All capitalized terms, unless otherwise defined or amended herein, shall have the meaning given to them in the Plan Funding Agreement. Each reference to “hereof,” “herein,” “hereunder,” “hereby” and “this Agreement” shall, from and after the date hereof, refer to the Plan Funding Agreement, as amended by this Amendment. Notwithstanding the foregoing, references to the date of the Plan Funding Agreement, as amended hereby, shall in all instances continue to refer to January 12, 2018, references to “date hereof” and “the date of this Agreement” shall continue to refer to January 12, 2018.

Section 1.2 Amendments. The Plan Funding Agreement and the Disclosure Schedules thereto are hereby amended as follows:

(a) Schedule 2.02(a) and Schedule 2.02(b) of the Disclosure Schedules are hereby deleted in their entirety and replaced with Schedule 2.02(a) and Schedule 2.02(b) attached hereto, respectively.

(b) Section 2.04 of the Plan Funding Agreement is hereby amended to add the following as a new subsection at the end of Section 2.04:

“(i) Notwithstanding anything to the contrary in this Section 2.04, after the Closing and prior to October 1, 2018, reorganized Westinghouse Electric Company LLC shall pay any Cure Costs payable to participants in the Westinghouse Electric Company Executive Pension Plan on account of benefits that are accrued since March 29, 2017 and unpaid, and Wind Down Co shall not have any obligation to pay any Cure Costs related to the assumption of the Westinghouse Electric Company Executive Pension Plan.”

(c) Reference to “\$3.802 billion” in Section 3.01(a) of the Plan Funding Agreement is hereby replaced with “\$3.762 billion”.

(d) Section 3.03(b)(i) of the Plan Funding Agreement is hereby deleted in its entirety and replaced with the following:

“(i) the Closing Payment (*less* the sum of the Purchase Price Escrow Funds, [REDACTED], and the [REDACTED] Holdback, if any), as specified in the Closing Notice, by wire transfer of immediately available funds, to an account or accounts of Wind Down Co as directed by Companies in the Closing Notice;”

(e) The Parties hereby acknowledge and agree that the Hematite Adjustment Amount is \$4,731,770.

(f) Section 3.06(d)(a)(ii) of the Plan Funding Agreement is hereby deleted in its entirety and replaced with the following:

“(ii) Wind Down Co submits a Dispute Notice and the absolute value of the amount of the Post-Closing Adjustment that would result if Wind Down Co’s position with respect to all amounts in dispute were finally determined in favor of Wind Down Co would be greater than the Post-Closing Adjustment Threshold, and”

(g) Reference to “the Company’s balance sheet” in Section 3.11(c) of the Plan Funding Agreement is hereby replaced with “the applicable Company Group Member’s balance sheet”.

(h) Section 3.13 of the Plan Funding Agreement is hereby deleted in its entirety and replaced with the following:

“Section 3.13. [Reserved.]”

(i) The Plan Funding Agreement is hereby amended to add the following as a new Section 7.06:

“Section 7.06. Assigned CB&I Claims. From and after the Closing, irrespective of such claim being an Excluded Asset hereunder, Wind Down Co will use commercially reasonable efforts to pursue the claims that any Company Group Member may have against Chicago Bridge & Iron Company N.V. (“CB&I”) and its Affiliates, including the dispute regarding working capital and related purchase price adjustments, arising under that certain Purchase Agreement (the “CB&I Purchase Agreement”), dated October 27, 2015, by and among Westinghouse Electric Company LLC, CB&I, CB&I Stone & Webster, Inc. and WSW Acquisition Co., LLC (the “CB&I Claims”), which commercially reasonable efforts may include offsetting or netting claims asserted by CB&I or its Affiliates that arise under the CB&I Purchase Agreement,

including Proofs of Claim 3413 and 3414 (amending proof of claim numbers 3086 and 3087) filed in the Bankruptcy Cases (the “CB&I Bankruptcy Claims”). Promptly, and in any case within five (5) Business Days after any amount is paid in cash to or for the benefit of Wind Down Co with respect to, arising out of, or relating to the CB&I Claims, Wind Down Co will pay by wire of immediately available funds to Plan Investor an amount equal to 60% of the aggregate amount of such cash payment net of any amount that Wind Down Co pays to CB&I or its Affiliates on account of the CB&I Bankruptcy Claims.”

(j) Exhibit A to the Plan Funding Agreement is hereby amended by deleting the following defined terms listed therein:

1. “Applicable Percentage”

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████████████████████

████████████████████

5. “Incurred Liquidated Damages”

6. “Required Items”

7. “Waived Liquidated Damages”

(k) Schedule 1 to Exhibit C to the Plan Funding Agreement is hereby amended by deleting the first item listed thereon: “Westinghouse Electric Company Executive Pension Plan”.

Section 1.3 No Other Modifications. Except as expressly set forth herein, the terms and provisions of the Plan Funding Agreement remain unmodified and in full force and effect. This Amendment forms a part of the Plan Funding Agreement for all purposes and this Amendment and the Plan Funding Agreement shall be read together as one agreement.

Section 1.4 Miscellaneous. Articles XIII is hereby incorporated into this Amendment *mutatis mutandis*.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have duly executed this Amendment No. 1 to the Plan Funding Agreement as of the date first above written.

TSB NUCLEAR ENERGY SERVICES INC.

By: _____
Name: Marc Beilinson
Title: Authorized Signatory

**TOSHIBA NUCLEAR ENERGY HOLDINGS
(UK) LIMITED**

By: _____
Name: David J. Baker
Title: Director

BROOKFIELD WEC HOLDINGS LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 2.02(a)

Excluded Assets

1. Excess Cash of the Debtors (excluding in all respects all Regulator Cash and Returned Regulator Cash) in excess of \$35,000,000; provided however, that the amount of Excess Cash shall be calculated without regard to the cap provided for in the definition of “Excess Cash” on Exhibit A.
2. The CB&I Claims.

Schedule 2.02(b)

Assumed Liabilities

The “**Assumed Liabilities**” consist solely of the following Liabilities of Debtors:

(i) all Liabilities in the amounts that have been reserved against and to the extent taken into account in the calculation of the items set forth on the Final Closing Statement (it being agreed and acknowledged that, notwithstanding anything to the contrary in this Agreement, reserves taken into account in the calculation of the items set forth in the Final Closing Statement shall include reserves with respect to warranty obligations arising under or with respect to all Contracts, including Designated Contracts and Excluded Contracts);

(ii) all Liabilities of any Debtor with respect to performance under any of the Designated Contracts, assumed by Debtors pursuant to the Plan, in each case, to the extent arising after the Closing and all other Liabilities with respect thereto that arise from any events, facts or circumstances (including any breach or course of conduct) that occur after the Closing. Notwithstanding the foregoing or anything to the contrary in this Agreement, (a) warranty claims or obligations under the Designated Contracts that are asserted after the Closing shall constitute Assumed Liabilities regardless of whether such warranty claims or obligations arise from events, facts or circumstances arising before or after the Closing; and (b) warranty claims or obligations under Designated Contracts that are asserted before the Closing shall not constitute Assumed Liabilities unless otherwise assumed pursuant to item (i) of this Exhibit I;

(iii) all Liabilities for (a) Taxes of the U.S. Debtors for Post-Closing Tax Periods and (b) Transfer Taxes allocated to the Plan Investor pursuant to Section 10.01;

(iv) all Liabilities relating to the Reorganized Debtors’ ownership or operation of the Business Assets, to the extent arising from events, facts or circumstances that occur following the Closing;

(v) all decommissioning Liabilities arising before, on or after the Closing;

(vi) all Liabilities expressly assumed by the Reorganized Debtors pursuant to Exhibit C;

(vii) all Liabilities to indemnify or hold harmless any current or former director or officer of an Acquired Company for claims that relate to periods prior to or following the Closing;

(viii) all Liabilities of Debtors to the extent arising on or after the Closing under the Transaction Documents; and

(ix) all Liabilities under Environmental Laws to investigate, cleanup, remediate, respond, remove, report, monitor or take similar actions with respect to the Owned Real Property

or Leased Real Property (together with (to the extent of such Debtor's interest therein) all buildings, structures, improvements and fixtures thereon) on and after the Closing Date, regardless of whether the conditions giving rise to such Liabilities were known or unknown or existed before, on or after the Closing Date, and which Liabilities do not constitute "claims," as that term is defined in section 101 of the Bankruptcy Code.