

**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)**
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**ORDER AUTHORIZING DEBTORS TO AMEND THE CHAPTER 11 PLAN
AND PLAN FUNDING AGREEMENT AND PROVIDING RELATED RELIEF**

Upon the motion [ECF No. 3615] (the “**Motion**”),² dated July 23, 2018, of Westinghouse Electric Company LLC, Toshiba Nuclear Energy Holdings (UK) Limited, and their debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to section 1127 of the Bankruptcy Code, for an order authorizing the Debtors to amend the *Modified Second Amended Joint Chapter 11 Plan of Reorganization* [ECF No. 2986] (the “**Plan**”) and that certain *Plan Funding Agreement* dated as of January 12, 2018 among Brookfield WEC Holdings LLC (“**Plan Investor**”), TNEH, and TSB Nuclear Energy Services Inc. (the “**PFA**”) and approving related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested

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 (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 Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.



therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and capitalized terms used but not defined herein having the meaning set forth in the Motion,

AND IT APPEARING that a portion of the relief sought in the Motion involves a modification to the terms of the Plan and the PFA to permit the assumption by the Debtors of an Executive Pension Plan (the “**EPP**”), coupled with the granting of an allowed general unsecured claim in favor of the Plan Investor in the amount of \$121.5 million in consideration for the effects of that assumption, plus the sale of that allowed claim by the Plan Investor to Wind Down Co. on the Effective Date for \$120 million; and certain beneficiaries of the EPP who referred to themselves as the “Active EPP Participants” having filed an objection [Dkt. No. 3635]; and counsel to the Active EPP Participants having asserted, among other things, that the Active EPP Participants were concerned that the EPP might be assumed (and a payment might be made to the Plan Investor based on the value of the liabilities being assumed) but that the Debtors and the Plan Investor might have a present intent to modify the benefits under the EPP and to reduce the expected liabilities; and the Court, in response to those concerns, having asked the Debtors and the Plan Investor to represent, on the record at the Hearing, that while the Debtors reserve their rights under the terms of the EPP going forward the Debtors and the Plan Investor do not have a present intent to change the benefits offered under the EPP or the terms of the EPP; and the Debtors

and the Plan Investor having made those representations; and counsel to the Plan Investor having further represented that upon the assumption of the EPP the benefits under the EPP would be subject to the terms of section 3.(A) of Exhibit C to the PFA, pursuant to which the Plan Investor agreed that employee benefits would not be altered during a specified period of time; and the Court having accepted those representations, and having agreed to enter this order in relying on the Debtors' and the Plan Investor's representations; and the Active EPP Participants having withdrawn their objections based on the foregoing,

NOW, THEREFORE, based on the record of the Hearing, and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 1127 of the Bankruptcy Code, the Debtors are authorized to make the modifications to the PFA annexed hereto as **Exhibit 1** and the modifications to the Plan annexed hereto as **Exhibit 2** (collectively, the "**Modifications**").
3. The Debtors shall not be required to re-solicit acceptances to the Plan in light of these modifications.
4. As of the effective date of the Plan (the "**Effective Date**"), the Plan Investor is hereby granted an Allowed Class 3A General Unsecured Claim (as defined in the Plan) in the amount of \$121,500,000 (the "**Allowed EPP Claim**").
5. On or before October 1, 2018 (the "**Cure Cost Deadline**"), Reorganized WEC (as defined in the Plan) shall pay any cure costs payable to the Debtors' former and current

employees that are or could have become eligible to receive benefits (the “**Plan Participants**”) under the Westinghouse Electric Company Executive Pension Plan (as amended and restated on April 1, 2017, the “**EPP**”) on account of benefits that have accrued since March 29, 2017 and remain unpaid (the “**Postpetition Cure Costs**”); *provided*, that the foregoing shall be without prejudice to WEC filing a motion with the Court seeking authority to extend the Cure Cost Deadline for cause (including, but not limited to, an unanticipated delay in the Plan becoming effective), on notice to the Plan Participants, who shall have an opportunity to object; *provided, further*, that if Reorganized WEC and one or more Plan Participants do not reach an agreement on the applicable Postpetition Cure Cost by the Cure Cost Deadline, any and all rights of such Plan Participants to request that any such dispute (a “**Cure Dispute**”) be heard by the Court are fully preserved.

6. Neither Reorganized WEC’s assumption of the EPP nor anything in this Order shall impact the rights of any Plan Participant with respect to any claims a Plan Participant has asserted or may assert against the Debtors that are not on account of, or arising under, the EPP (“**Non-EPP Claims**”), irrespective of whether such Non-EPP Claims have been asserted in a proof of claim asserting claims on account of, or arising under, the EPP.

7. Notwithstanding anything to the contrary in the Plan or the PFA, Wind Down Co (as defined in the Plan) shall not have any liability with respect to the assumption of the EPP, including any Cure Costs payable in respect thereof.

8. On the Effective Date, Plan Investor shall be deemed to have transferred the Allowed EPP Claim to Wind Down Co in exchange for \$120,000,000, which amount may be satisfied, at the election of Wind Down Co, by crediting or offsetting the Base Purchase Price (as defined in the PFA) owing to Wind Down Co by Plan Investor. Wind Down Co may thereafter,

at its sole discretion, transfer the Allowed EPP Claim to any third-party, including the Consenting Claimholder (as defined in the Plan).

9. The Plan and the PFA (and all exhibits, schedules, and supplements thereto) shall remain unchanged except as expressly set forth in Modifications, and the order confirming the Plan dated March 28, 2018 [ECF No. 2988] and the PFA shall continue to apply in full force and effect.

10. Notwithstanding anything to the contrary contained herein, any payment to be made or relief or authorization granted hereunder shall be not be inconsistent with, and shall be subject to, the requirements imposed on the Debtors under the DIP Order,³ the budget approved thereunder (the “**Budget**”), and the loan and security documents evidencing the Debtors’ debtor-in-possession financing facility (the “**DIP Loan Documents**”).

11. To the extent there is any conflict between this Order and the DIP Order, the DIP Loan Documents, or the Budget, the terms of the DIP Order, DIP Loan Documents, or the Budget, as applicable, shall govern.

12. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

13. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

³ See *Final Order (I) Authorizing Debtors to Obtain Senior Secured, Superpriority, Postpetition Financing, (II) Granting Liens and Superpriority Claims Pursuant to Bankruptcy Code Sections 105, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rule 4001-2 and (III) Granting Related Relief* dated May 26, 2017 [ECF No. 565] (as amended from time to time, the “**DIP Order**”).

15. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order, including all Cure Disputes and any disputes arising out of or relating to the representations made on the record at the Hearing.

Dated: July 27, 2018
New York, New York

s/Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

PFA Modifications

AMENDMENT NO. 1 TO PLAN FUNDING AGREEMENT

THIS AMENDMENT NO. 1 TO PLAN FUNDING AGREEMENT (this "Amendment"), dated as of July 23, 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”

████████████████████

████████████████████

████████████████████

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 PFA as of the date first above written.

TSB NUCLEAR ENERGY SERVICES INC.

By: 
Name: Daniel J. Sumner
Title: Vice President, Finance

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

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

BROOKFIELD WEC HOLDINGS LLC

By: 
Name: Ron Bloom
Title: Vice Chairman & Managing Partner

By: 
Name: Mark Weinberg
Title: Managing Partner

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.

Exhibit 2

Plan Modifications

1.74 **Initial Distribution Date** means a date selected by the Plan Oversight Board for the Initial Distribution that is no later than 60 days after the Effective Date.

1.75 **Intercompany Claim** means any Claim against any of the Debtors by any of the Westinghouse Entities, other than the Cash Pool Claims and AUAM Loan Claim.

1.76 **Intercompany Interest** means an Interest in a Debtor, other than an Interest in U.S. HoldCo or TNEH UK.

1.77 **Interests** means any equity security in a Debtor as defined in section 101(16) of the Bankruptcy Code, including all common stock, preferred stock or other instruments evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interests in a Debtor that existed immediately before the Effective Date.

1.78 **Interim Compensation Order** means the *Order Pursuant to 11 U.S.C. §§ 105(a), 330, 331, Fed. R. Bankr. P. 2016, and Local Rule 2016-1 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals*, entered by the Bankruptcy Court in the Chapter 11 Cases on May 24, 2017 at ECF No. 544, as the same may be modified by a Bankruptcy Court order approving the retention of a specific Professional or otherwise.

1.79 **L/C Cash Collateralization Amount** has the meaning set forth in the DIP Credit Agreement.

1.80 **LFA Claims** means the claims of WEC against TNEH UK and the EMEA Subsidiaries pursuant to the Liquidity Facility Agreement.

1.81 **Lien** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.82 **Liquidity Facility Agreement** means that certain *Liquidity Facility Agreement* by and among WEC and the borrowers thereto, dated as of April 5, 2017, as has been or may be amended, restated, or modified.

1.83 **Material Claims** means the Claims set forth in (a) Proofs of Claim numbers 2464, 2467, and 3007, (b) the Additional Consent Claims; and (c) Proofs of Claim numbers 3086, 3087, 3413, and 3414, and any amendments thereof, and irrespective of any assignments or transfers thereof.

1.84 **Net Plan Investment Proceeds** means ~~\$3,703,662,000,000~~ in Cash (subject to certain adjustments and holdbacks under the Plan Funding Agreement) to be delivered by the Plan Investor to Wind Down Co pursuant to the Plan Funding Agreement and this Plan.

1.85 **NI Contract** means that certain *API000 Nuclear Island Contract for Nuclear Power Self-reliance Program Supporting Projects* dated as of July 24, 2007 by and between, among others, WEC, Westinghouse Industry Products International Company Ltd., Stone & Webster Asia Inc., Stone & Webster International Inc., and the NI Counterparties.

1.86 **NI Counterparties** means State Nuclear Power Technology Corporation Ltd., Sanmen Nuclear Power Company Ltd., and Shandong Nuclear Power Company Ltd.

1.87 **NI Settlement** means those certain agreements entered into among WEC, Westinghouse Industry Products International Company Ltd., Stone & Webster Asia Inc., Stone &

under or related to the DIP Loan Documents on the earlier of the DIP Maturity Date or the Effective Date, including all principal, interest, default interest, fees, expenses, costs, and other charges provided for thereunder (or, in the case of any DIP L/Cs outstanding on the DIP Maturity Date or the Effective Date, funding of the L/C Cash Collateralization Amount or such other treatment shall have been provided with respect to such DIP L/C as the Debtors and the DIP L/C Issuer shall agree).

1.124 **Representative** shall mean any Person or Entity's successor, predecessor, assign, subsidiary, Affiliate, officer, director, manager, member, shareholder, equity holder, employee, partner, agent, attorney, advisor, investment banker, financial advisor, accountant, actuary, consultant or other professional, in each case in such capacity, serving on or after the Petition Date.

1.125 **Schedule of Assigned Contracts** means the schedule of Executory Contracts and Unexpired Leases to be assumed and assigned by the Debtors to Wind Down Co on the Effective Date pursuant to the Plan Funding Agreement, to be filed in accordance with the Solicitation Procedures Order, in a form and substance reasonably acceptable to Consenting Claimholder, and as may be amended from time to time prior to the Effective Date in accordance with the Solicitation Procedures Order.

1.126 **Schedule of Assumed Contracts** means the schedule of Executory Contracts and Unexpired Leases to be assumed by the Reorganized Debtors on the Effective Date, to be filed in accordance with the Solicitation Procedures Order, and as may be amended from time to time prior to the Effective Date in accordance with the Solicitation Procedures Order.

1.127 **Schedules** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time.

1.128 **Schedules of Executory Contracts** means, collectively, the Schedule of Assigned Contracts and Scheduled of Assumed Contracts and any amendments of, supplements to or modifications to the foregoing.

1.129 **Secured Claim** means a Claim against a Debtor secured by a lien on property in which a Debtor's Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code.

1.130 **Securities Act** means the Securities Act of 1933, as amended.

1.131 **Segregated Account** means a segregated account managed by the Solicitation and Distribution Agent, [or another financial institution agreed upon by Wind Down Co and the UCC](#), to hold the Segregated Funds.

1.132 **Segregated Funds** means \$1,150,000,000 of Available Cash to be deposited with the Solicitation and Distribution Agent in the Segregated Account on the Effective Date.

1.133 **Solicitation and Distribution Agent** means Kurtzman Carson Consultants LLC, the notice, claims, and solicitation and distribution agent retained by the Debtors for the Chapter 11 Cases.

(C) to direct and control the wind down, liquidation, sale and/or abandoning of the remaining assets of Wind Down Co under the Plan and in accordance with applicable law as necessary to maximize Distributions to holders of Allowed Claims; and

(D) prosecute all Causes of Action (other than those Causes of Action that are released, waived, or transferred pursuant to the Plan) on behalf of Wind Down Co for the benefit of holders of Allowed Claims, elect not to pursue any Causes of Action, and determine whether and when to compromise, settle, abandon, dismiss, or otherwise dispose of any such Causes of Action.

(e) *Indemnification.* Wind Down Co shall indemnify and hold harmless each member of the Plan Oversight Board, solely in its capacity as a member of the Plan Oversight Board, for any losses incurred in such capacity, except to the extent such losses were the result of such member's gross negligence, willful misconduct or criminal conduct.

(f) *Continued Existence.* Wind Down Co will continue in existence until all Claims against the Debtors have been fully resolved and all Available Cash has been fully distributed in accordance with the Plan, and all other duties and functions of Wind Down Co and the Plan Oversight Board as set forth this Section 5.4 of the Plan have been fully performed.

5.5. *Cooperation and Access*

Subject to Section ~~6.1~~7.01 of the Plan Funding Agreement, from and after the Effective Date, in connection with any reasonable business purpose, or as is necessary to administer, or satisfy Wind Down Co's obligations in connection with administering the Chapter 11 Cases, the Reorganized Debtors will, (a) afford Wind Down Co and the Plan Oversight Board access to the Reorganized Debtors' properties, books and records, (b) furnish to Wind Down Co and the Plan Oversight Board financial and other information, and (c) make available to Wind Down Co and the Plan Oversight Board those employees of the Reorganized Debtors whose assistance, expertise, testimony, notes or recollections or presence may be reasonably necessary to assist Wind Down Co and the Plan Oversight Board.

5.6. *Segregated Account for Class 3A General Unsecured Claims*

On the Effective Date, Wind Down Co shall deposit the Segregated Funds in the Segregated Account. Until the Final Class 3A Distribution Date, the Segregated Funds shall be utilized for the sole purpose of (a) making Distributions to holders of Allowed Class 3A General Unsecured Claims (other than holders of Cash Pool Claims), (b) establishing a Disputed Claims Reserve for Disputed Class 3A General Unsecured Claims, and (c) making Distributions on account of Disputed Class 3A General Unsecured Claims as such Disputed Claims are resolved. After the Final Class 3A Distribution Date, (i) 95% of any remaining Segregated Funds shall be delivered to Wind Down Co to be distributed to holders of Allowed Class 3B General Unsecured Claims in accordance with the terms herein, and (ii) 5% of any remaining Segregated Funds shall be transferred to Reorganized WEC to be contributed by Reorganized WEC to its pension plans in accordance with the Pension Funding Agreement.

5.7. *Continuing Role of UCC*

The UCC shall continue to exist following the Confirmation Date and Effective Date solely for the purposes of performing its responsibilities under the Reconciliation Plan, overseeing distributions from the Segregated Account, and as otherwise set forth herein. The UCC shall cease to exist upon the earliest to occur of the resignation of all its remaining members, the closing of the Chapter 11 Cases, and the Final Class 3A Distribution Date, if not otherwise provided herein; *provided, however*, that after such date, the UCC shall exist and its Professionals shall continue to be retained and shall

Exhibit J

Excluded Assets

Excluded Assets¹

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, for purposes of the Plan, without regard to the cap contained in the proviso in the definition of “Excess Cash” in the Plan Funding Agreement-; [and](#)
2. [The CB&I Claims.](#)

¹ All capitalized terms in this Exhibit J shall have the meaning ascribed to such terms in the Plan Funding Agreement.