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

<p>In re</p> <p>WESTINGHOUSE ELECTRIC COMPANY, LLC, <i>et al.</i>,</p> <p style="text-align: right;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-10751 (MEW)</p> <p>(Jointly Administered)</p>
<p>FLUOR ENTERPRISES, INC.,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>W WIND DOWN CO LLC,</p> <p style="text-align: right;">Defendant.</p>	<p>Adv. Proc. No. 18-01635 (MEW)</p>

**EX PARTE MOTION PURSUANT TO 11 U.S.C. § 107(b) AND FED. R. BANKR. P. 9018
FOR LEAVE TO FILE DOCUMENTS UNDER SEAL AND REDACT INFORMATION
THAT THE PRODUCING PARTY DESIGNATES AS NONPUBLIC AND
COMMERCIALY SENSITIVE**

TO: THE HONORABLE MICHAEL WILES
UNITED STATES BANKRUPTCY JUDGE



Pursuant to section 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Joint Stipulated Protective Order Governing Confidentiality (“**Protective Order**”) (Adv. Doc. No. 32), Fluor Enterprises, Inc. (“**Fluor**”) hereby requests leave to redact information that the producing party, Westinghouse Electric Company, LLC (“**WEC**”), designates as commercially sensitive nonpublic information from *Fluor’s Motion to Compel WEC to Produce Documents and Information in Response to Subpoena* (“**Motion to Compel**”) filed contemporaneously herewith on August 13, 2019, and from Exhibits F and G attached thereto, and to file unredacted versions of these documents with the Court under seal. Fluor further requests that the Court direct that the sealed and redacted information remain under seal and not be made available to anyone, except as specifically provided in the accompanying proposed order (attached as **Exhibit 1**), without the consent of WEC or further order of the Court.

Under the Protective Order, a Disclosing Party (as defined therein) is permitted to designate material produced in this matter as confidential. *See* Protective Order at ¶ 3. Once a Disclosing Party has made such a designation, the Receiving Party (as defined therein) is prohibited from filing the confidential material in the public record, absent written permission. *Id.* ¶ 16 (“Without written permission from the Disclosing Party or a court order secured after appropriate notice to all interested persons, a Receiving Party may not file in the public record in this Action any Confidential or Highly Confidential Information.”)

Section 107(b) of the Bankruptcy Code provides that “[o]n request of a party in interest, the bankruptcy court shall ... protect an entity with respect to ... commercial information”. 11 U.S.C. § 107(b)(1). Additionally, Bankruptcy Rule 9018 provides that “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret

or other confidential research, development, or commercial information Fed. R. Bankr. P. 9018. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 are designed to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003).

In granting relief under section 107(b) of the Bankruptcy Code, “[t]he court determines whether the subject documents fall within the provisions § 107(b) and the appropriate protective remedy if they do.” *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). Courts have recognized that the term “commercial information” is broad, including information that could have a “chilling effect on [business] negotiations, ultimately affecting the viability of the Debtors.” *In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (citation omitted). The Second Circuit has held that section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 require only “that an interested party need only show that the information it wishes to seal is ‘confidential’ and ‘commercial’ in nature, and no showing of “good cause” is necessary. *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994).

Once a Court determines that a party in interest is seeking protection of information that falls within section 107(b), it “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27. A bankruptcy court may enter a seal order under the broad confidentiality protections in bankruptcy proceedings where necessary to protect commercial information. *See Global Crossing*, 295 B.R. at 725 (finding that the “whole point of [Bankruptcy Rule 9018] is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

Exhibits F & G to Fluor’s Motion are, like the documents sealed pursuant to the Court’s July 31 and August 1 orders granting previous motions to file under seal by Fluor and Wind Down

(See Adv. Doc. Nos. 46 and 48), documents that WEC produced to Fluor in connection with this Adversary Proceeding, and under a non-waiver agreement with Fluor. Fluor's Motion to Compel contains quotations from these documents. WEC labeled Exhibits F & G "CONFIDENTIAL" when WEC produced them, and WEC has since advised that the documents produced to Fluor from its Privilege Log (including Exhibits E & F) contain confidential, commercially sensitive information, which WEC does not consent to making publicly available. WEC also asserts that Exhibits E & F are privileged; and, although Fluor's Motion disputes this claim, the Court has not yet decided the issue. And, while Fluor has agreed not to argue subject matter waiver based on WEC's decision to produce these documents, a public filing of them could allow other parties that have not entered into a non-waiver agreement with WEC to both have access to documents that WEC would have otherwise withheld on the basis of privilege, and/or to argue subject matter waiver by WEC based on public disclosure.

Accordingly, Fluor requests the authority to file the confidential information in these documents under seal and in redacted form pursuant to the Protective Order, and the Court's authority under 11 U.S.C. § 107(b)(1) and Fed. R. Bankr. P. 9018. Fluor is filing redacted versions of its Motion to Compel and Exhibits F & G thereto contemporaneously with this Motion, and will deliver unredacted versions of its Motion to Compel and Exhibits F & G to the Court for *in camera* review.

WHEREFORE, Fluor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: August 13, 2019

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

/s/ Patrick J. Potter

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Counsel for Fluor Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, an electronic copy of the foregoing Ex Parte Motion was filed electronically through the Court's CM/ECF system, which caused all parties or counsel requesting notice in the above-captioned adversary proceeding to be served by electronic means on the date of filing. I further certify that the foregoing motion was served on the parties identified below via e-mail or, for those parties with no e-mail address listed, via first-class mail.

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/s/ Cynthia Robertson
Cynthia Robertson

EXHIBIT 1

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re		Chapter 11
WESTINGHOUSE ELECTRIC COMPANY, LLC, <i>et al.</i> ,	Debtors.	Case No. 17-10751 (MEW) (Jointly Administered)
FLUOR ENTERPRISES, INC.,	Plaintiff,	
v.		Adv. Proc. No. 18-01635 (MEW)
W WIND DOWN CO LLC,	Defendant.	

**[PROPOSED] ORDER PURSUANT TO 11 U.S.C. §§ 107(b) AND FED. R. BANKR.
P. 9018, AUTHORIZING FLUOR TO FILE DOCUMENTS UNDER SEAL AND
REDACT COMMERCIALY SENSITIVE, NONPUBLIC INFORMATION**

Upon the *ex parte* motion by Fluor Enterprises, Inc. (“**Fluor**”) dated August 13, 2019 (the “**Motion**”), in the above-captioned adversary proceeding, pursuant to section 107(b) of title 11 of the United States Code and Rule 9018 of the Federal Rules of Bankruptcy Procedures for: (i) leave to (a) redact information that the producing party, Westinghouse Electric Company, LLC (“**WEC**”), designates as commercially sensitive nonpublic information from to Fluor’s *Motion to Compel* (“**Motion to Compel**”), filed contemporaneously herewith, and Exhibits E & F thereto, and (b) to file unredacted versions with the Court under seal; and (ii) an order directing that the sealed and redacted information shall remain under seal and not be made available to anyone, except as specifically provided in this Order, without the consent of WEC or further order of the Court, all as more fully set forth in the Motion; and the Court, having jurisdiction to consider the Motion and the relief requested therein; and having found and determined that the relief sought in

the Motion is in the best interests of all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Fluor's Motion is granted as set forth herein.
2. Fluor shall, to the extent it has not already done so, provide unredacted copies of its Motion to Compel and Exhibits F & G thereto to Fluor's Report to the Court for *in camera* review.
3. All information filed under seal pursuant to this Order shall remain under seal until further order of the Court.
4. Fluor shall submit unredacted copies of its Motion to Compel and Exhibits F & G thereto to Fluor's Report with the Clerk of this Court under seal in an envelope, clearly indicating that the same has been filed under seal by order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed until and unless permitted by further order of the Court.
5. The Clerk of the Court shall treat the unredacted copies of Fluor's Motion to Compel and Exhibits F & G thereto as confidential and counsel for Fluor shall contact the Clerk's Office regarding the return or disposition Fluor's Motion to Compel and Exhibits F & G thereto as soon as practicable following the resolution of this adversary proceeding.
6. Fluor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August ____, 2019
New York, New York

UNITED STATES BANKRUPTCY JUDGE