

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	(Jointly Administered)
Debtors.)	
_____)	D.I. 42, 152

**LIMITED OBJECTION TO NOTICE OF PROJECT
COMPLETION AGREEMENT WITH CONSUMERS ENERGY
COMPANY AND REQUEST FOR CLARIFICATION**

The Pipeline Industry Benefit Fund (the “PIBF”)², the Pipeliners Local Union 798 (the “Union”), the Operating Engineers’ Local 324 Fringe Benefit Funds (the “Operators”)³, and the Michigan Laborers’ Fringe Benefit Funds (the “Laborers”, and collectively with the PIBF and the Operators, the “Funds”)⁴, by and through their counsel, state their Limited Objection to the *Notice of Project Completion Agreement with Consumers Energy Company* (the “Notice”) [Docket No. 152] as follows:

1. On October 22, 2018 (the “Petition Date”), each of the Debtors commenced a voluntary case under Chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

² The PIBF consists of the Pipeline Industry Benefit Fund, the Pipeline Industry Pension Fund, the Pipeline Industry Annuity/401(k) Fund, the UA Local 798 Training Center, the UA International Training Fund, and the Pipeline Industry Advancement Fund.

³ The Operating Engineers’ Local 324 Fringe Benefit Funds consist of the Operating Engineers’ Local 324 Health Care Plan, the Operating Engineers’ Local 324 Pension Fund, the Operating Engineers’ Local 324 Retiree Benefit Fund, the Operating Engineers’ Local 324 Vacation and Holiday Fund, the Operating Engineers’ Local 324 Supplemental Vacation Fund, the Operating Engineers’ Local 324 Journeyman and Apprenticeship Training Fund, the Operating Engineers’ Local 324 Labor-Management Education Committee, and the Operating Engineers’ Local 324 Defined Contribution Pension Plan.

⁴ The Michigan Laborers’ Fringe Benefit Funds consist of the Michigan Laborers’ Health Care Fund, the Michigan Laborers’ Vacation Fund, the Michigan Laborers’ Training Fund, the Michigan Laborers’ Pension Fund, the Michigan Laborers’ Labor and Management Training Fund, and the Michigan Laborers’ Industry Advancement Fund.



their businesses and manage their properties as debtors in possession pursuant to the Bankruptcy Code.

2. On October 22, 2018, the Debtors filed their *Motion for Entry of an Order, Pursuant to Sections 105(A), 363(B), 503(B)(L), 1107(A) and 1108 of the Bankruptcy Code, Authorizing, but not Directing (I) the Debtors to Pay Certain Prepetition Claims, Conditioned Upon Prior Customer Payment, (II) the Debtors to Honor Customer Obligations, (III) the Debtors to Implement Control Procedures for Customer Project Funding and Completion, and (IV) Granting Related Relief* (the “Customer Procedures Motion”)[Docket No. 12].

3. On October 23, 2018, the Court entered an order approving the Customer Procedures Motion on a final basis (the “Customer Procedures Order”) [Docket No. 42]. Among other things, the Customer Procedures Order authorizes the Debtors to enter into Customer Project Completion Agreements with their customers without further order of the Court, and also permits the Debtors to submit an order approving a Customer Project Completion Agreement under certification of counsel for Court approval.

4. On November 5, the Debtors submitted the Notice, which seeks entry of an order approving the Customer Project Completion Agreement with Consumers Energy Company (the “Completion Agreement”). Among other things, the Completion Agreement provides for payment by Consumers Energy to the Debtors with respect to remaining amounts due for work on the 2018 Project, as well as a Termination Fee for the 2019-2020 Project.⁵ These funds are to be held in trust by the Debtors, and utilized to, among other things, pay subcontractors, materialmen, and others who are listed on Schedule B of the Completion Agreement. The Schedule B that is attached to the Completion Agreement is blank.

⁵ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Completion Agreement.

5. As the Court and the parties are aware, Debtor Welded Construction, L.P. is a party to the National Pipeline Agreement (the “Pipeline Agreement”), which, among other things, requires the Debtor to pay certain fringe benefit contributions to the Funds and deduct and pay union dues to the Union with respect to employees who performed covered work on the Debtors’ projects. One of those projects is the 2018 Project.

6. Both the Union and the Funds recognize the intentions of, and effort expended by, the Debtors and their customers to satisfy all of the pre- and post-petition claims related to the sub-contractors, materialmen, labor, and others who have provided work and materials in furtherance of the Debtors’ projects. Indeed, both the Union and the Funds received payments in the days leading up the Petition Date that may satisfy their pre-petition claims. However, as of the date of this filing, neither the Funds nor the Union can verify with certainty whether this is the case.

7. For instance, the Laborers are aware of certain payments that have been made by the Debtors to the Laborers-Employers Benefit Plan Collection Trust, but have not yet been distributed to the Laborers. With respect to the remaining Funds and the Union, payments have been received but they have not been reconciled with respect to the time period they are intended to cover, and whether full payment was received for such time period. Finally, with respect to the Funds in particular, there is no way to be fully and finally certain whether any fringe benefit contributions may be owed without conducting an audit of the Debtors’ payroll books and records.

8. To the extent the Funds or the Union have not been paid in full for the amounts owed for pre-petition work, the Completion Agreement itself does not make clear whether any of

the monies paid by Consumers Energy to the Debtors are designated to pay amounts that may be owed with respect to work performed on the Consumers Energy projects.

8. Again, the Union and the Funds appreciate and recognize the efforts that have been made by the parties involved to make them whole. However, the Union and the Funds do not want the Completion Agreement, the payment of any monies by Consumers Energy to the Debtors, or the payment of those monies to the Funds or Union, to be construed as granting a release to Consumers Energy, the Debtors, or any third party with respect to amounts that may remain due and owing.

9. While the Funds and the Union do not believe that a release was the intent of the parties, they would like the record to confirm as much. Accordingly, the Funds and the Union file this limited objection requesting clarification that the Completion Agreement and the payment of the Receivables, the Remaining Contract Funds, and the Termination Fee to the Debtors, and the Debtors subsequent payment of any of those monies to the Funds or Union, does not result in Consumers Energy, the Debtors, or any third party receiving a release with respect to any amounts that may be owed to the Funds or the Union in relation to the Consumers Energy Projects.

10. The Funds and the Union are aware that, pursuant to the Customer Procedures Motion and Customer Procedures Order, the Debtors have entered into certain Commitment Letters with Transcontinental Gas Pipe Line Company, LLC, and have entered into the Columbia Gas Agreement. To the extent that the Commitment Letters, the Columbia Gas Agreement, or any other customer agreements entered into pursuant to the Customer Procedures Motion and Customer Procedures Order may be interpreted as providing a release to the Debtors' customers,

the Debtors, or any third parties, the Funds and the Union request clarification and confirmation that this is not the case.

WHEREFORE, the PIBF, the Union, the Operators, and the Laborers respectfully request that any order approving the Completion Agreement with Consumers Energy contain a provision that confirms that the Completion Agreement, the payment of any monies by Consumers Energy to the Debtors pursuant to the Completion Agreement, or the payment of such monies to the Funds or the Union, shall not prejudice any of the rights and remedies that the Funds or the Union may have against Consumers Energy, the Debtors, or any third party with respect to amounts that may remain due and owing to the Funds or the Union on the Consumers Energy projects. The PIBF, the Union, the Operators, and the Laborers further request that this Court confirm that any other agreements the Debtors enter into with their customers pursuant to the Customer Procedures Motion and Customer Procedures Order are likewise without prejudice to any of the rights and remedies that the Funds or the Union may have against the Debtors' customers, the Debtors, or any third party with respect to amounts that may remain due and owing to the Funds or the Union on the relevant projects.

[Signatures follow on next page]

Dated: November 8, 2018

MORRIS JAMES LLP

/s/ Carl N. Kunz, III

Carl N. Kunz, III (DE Bar No. 3201)
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, DE 19899-2306
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
E-mail: ckunz@morrisjames.com

and

Craig E. Zucker, Esquire
David M. Eisenberg, Esquire
Maddin, Hauser, Roth & Heller, P.C.
28400 Northwestern Highway
2nd Floor Essex Centre
Southfield, MI 48034
Telephone: (248) 354-4030
Facsimile: (248) 354-1422
E-mail: czucker@maddinhauser.com
E-mail: deisenberg@maddinhauser.com

Counsel to the the Pipeline Industry Benefit
Fund, the Pipeliners Local Union No. 798,
the Operating Engineers' Local 324 Fringe
Benefit Funds, and the Michigan Laborers'
Fringe Benefit Funds

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>WELDED CONSTRUCTION, L.P., <u>et al.</u>,</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 18-12378 (KG)</p> <p>(Jointly Administered)</p>
--	---

AFFIDAVIT OF JAMIE L. DAWSON, PARALEGAL

STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, Jamie L. Dawson, certify that I am, and at all times during the service, have been an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on November 8, 2018, I caused to be served:

**LIMITED OBJECTION TO NOTICE OF PROJECT
COMPLETION AGREEMENT WITH CONSUMERS ENERGY
COMPANY AND REQUEST FOR CLARIFICATION**

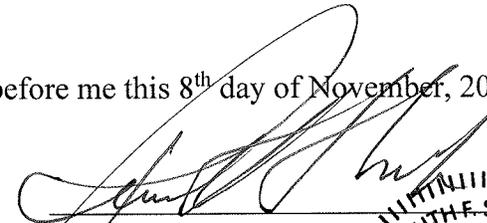
Service was completed upon the parties on the attached list as indicated thereon.

Date: November 8, 2018

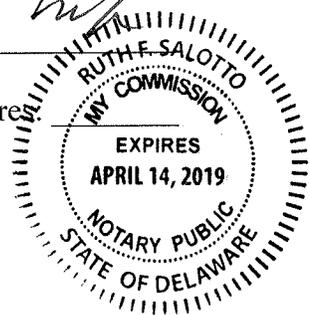


Jamie L. Dawson

SWORN AND SUBSCRIBED before me this 8th day of November, 2018.



 Notary
 My commission expires _____



VIA HAND DELIVERY

M. Blake Cleary, Esq.
Sean M. Beach, Esq.
Justin H. Rucki, Esq.
Tara C. Pakrouh, Esq.
Young Conaway Stargatt & Taylor, LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801
[Counsel for the Debtors and
Debtors-in-Possession]

Josef W. Mintz, Esq.
Jose F. Bibiloni, Esq.
Blank Rome LLP
1201 Market Street, Suite 800
Wilmington, Delaware 19801
[Counsel for the Official Committee of
Unsecured Creditors]

Jaclyn Weissgerber
Trial Attorney
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035

Adam Hiller, Esq.
Hiller Law, LLC
1500 North French Street, 2nd
Wilmington, DE 19801
[Counsel to Consumers Energy Company]

VIA FIRST CLASS MAIL

John E. Lucian, Esq.
Michael B. Schaedle, Esq.
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
[Counsel for the Official Committee of
Unsecured Creditors]