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

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In re:	Chapter 11
Westinghouse Electric Company, LLC, <i>et al.</i> , <sup>1</sup>	Case No. 17-10751 (MEW)
Debtors.	(Jointly Administered)

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**OBJECTION OF RSCC WIRE & CABLE LLC TO DEBTORS' THIRD  
SUPPLEMENTAL NOTICE REGARDING (I) EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES, (II) PROPOSED CURE OBLIGATIONS  
AND (III) RELATED PROCEDURES [DOCKET NO. 2919]**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtor's federal tax identification number, if any, are: Westinghouse Electric Company LLC (09933), 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 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 Global Project Services Inc. (8572), 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).



TO THE HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE:

RSCC Wire & Cable LLC (“RSCC”) by and through undersigned counsel, respectfully files this Objection to the Debtors’ *Third Supplemental Notice Regarding (I) Executory Contracts and Unexpired Leases, (II) Proposed Cure Obligations, and (III) Related Procedures* (the “Notice”) [Dkt No. 2919] (the “Objection”), and in support thereof, states as follows:

**Background**

1. On March 29, 2017, (the “Petition Date”) the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors have been operating their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Rules”).

3. RSCC was a subcontractor and supplier to the Vogtle Project and the VC Summer Project, and RSCC manufactured and delivered qualified nuclear cable products (the “Goods”) to the Vogtle Project and VC Summer Project under contracts and purchase orders with one or more of the Debtors on credit, in the ordinary course of RSCC’s business and for which they have yet to receive payment.

4. RSCC’s claim for unpaid Goods delivered to the Vogtle Project prior to the Petition Date under contract with the Debtors is \$4,792,628.61. RSCC’s claim for unpaid Goods delivered to the VC Summer Project prior to the Petition Date under contract with the Debtors is \$3,211,749.04.

5. On the Petition Date, RSCC was in the process of manufacturing cable under Contract Number 4500690255 (the “Contract”). The Goods have not yet been delivered to the Debtors. The

Notice states that Debtors are seeking to certain assume and assign the Contract with RSCC. See the Notice, Exhibit A, page 14, Line 5733.

6. The Notice states that the cure amount for the RSCC's Contract is zero. The correct cure amount under the Contract with RSCC is \$133,403.19.

### **Jurisdiction and Venue**

7. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 365.

8. This matter is a "core" proceeding pursuant to 28 U.S.C. §§ 157(b).

9. Venue is proper in pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Objection to Assumption of RSCC's Subcontract**

10. Section 365(a) of the Bankruptcy Code states that, "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Bankruptcy Code does not define the term "executory contract." *In re Riodizio, Inc.*, 204 B.R. 417, 420 (Bankr. S.D.N.Y. 1997). The legislative history regarding this section states that "[t]hough there no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides." *Id.*, citing H.R.Rep. N. 95-595, at 347 (1977); S.Rep. No. 05-989, at 58 (1978) , U.S.Code Cong. & Admin. News 1978, pp 5787, 58844, 5844, 6303. Ordinarily, executoriness is determined as of the petition date. *In re Riodizio, Inc., supra.*, 204 B.R. at 421.

11. A Chapter 11 debtor may assume an executory contract subject to court approval and only if, at the time of assumption, the debtor-in-possession "cures, or provides adequate assurance that [it] will promptly cure" any default on the contract. 11 U.S.C. § 365(b)(1)(A).

12. On the Petition Date, RSCC was in the process of manufacturing the Goods under Contract Number 4500690255. The Notice identifies the Contract with RSCC under Line Number 5733, as having a cure amount of zero. Notice, Exhibit A, page 14, Line 5733.

13. The cure amount of zero in the Notice is incorrect. The correct cure amount under Contract Number 4500690255 is \$133,403.19.

14. In order to “assume and assign” the Contract, the Debtors must cure the amount of the default, or offer adequate assurance of payment. The Notice has attached to it, as Exhibit B, the planned sale of the Debtors’ assets to Brookfield WEC Holdings LLC.

15. RSCC must receive adequate assurance that 1) the amount of \$133,403.19 is the correct cure amount and not zero, and 2) that RSCC will be paid in the event the Goods are delivered.

16. RSCC reserves the right to amend, modify or supplement the Objection in the event additional information becomes available. RSCC reserves its rights, claims and defenses in any manner, in any other forum or in these cases, with respect to the assumption and assignment of Contract, and to file a proof of claim for any amounts due and owing.

WHEREFORE, RSCC Wire & Cable, LLC, respectfully requests that the Court sustain the Objection under Section 365(a) of the Bankruptcy Code, disallow the assumption and assignment unless and until the correct cure amount is acknowledged by the Debtors, and any such further relief as may be just and proper.

Dated: April 3, 2018

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 3d day of April, 2018, a true and accurate copy of the foregoing is being served electronically through the Court's ECF System on all parties receiving notices in this case through said System.

*/s/ Vincent Roldan*

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