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

In re:	:	Chapter 11
	:	
WESTINGHOUSE ELECTRIC COMPANY LLC, <i>et al.</i> ,	:	Case No. 17-10751 (MEW)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	:	Related to Docket No. 1021
		Objection Deadline: August 14, 2017 at 4:00 p.m.
		Hearing Date and Time: September 7, 2017 at 11:00 a.m.

**OBJECTION AND RESERVATION OF RIGHTS OF R-V INDUSTRIES, INC. TO  
OMNIBUS MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 365(a) AND 105(a)  
FOR ENTRY OF ORDER AUTHORIZING DEBTORS TO (I) ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS TO VOGTLE OWNERS, AND  
(II) ASSUME AND AMEND CERTAIN EXECUTORY CONTRACTS**

<sup>1</sup> 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 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 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). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

R-V Industries, Inc. (“R-V”), by its undersigned counsel, hereby objects and reserves its rights (the “Objection”) to the *Omnibus Motion of Debtors Pursuant to 11 U.S.C. §§ 365(a) and 105(a) for Entry of Order Authorizing Debtors to (i) Assume and Assign Certain Executory Contracts to Vogtle Owners and (ii) Assume and Amend Certain Executory Contracts* (D.I. 1021) (the “Motion”) and in support thereof, respectfully states as follows:

### I. BACKGROUND

1. On March 29, 2017 (the “Petition Date”), Westinghouse Electric Company LLC (“WEC”), along with several of its affiliates (together with WEC, the “Debtors”), filed voluntary petitions for relief under chapter 11 of the title 11 of the U.S. Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”).
2. On June 23, 2017, the Debtors filed the *Motion Of Debtors Pursuant To 11 U.S.C. §§ 363(b), 365(a), And 105(a) For Entry Of Order Authorizing Debtors To (I) Enter Into Services Agreement With Vogtle Owners, (II) Assume And Assign Certain Executory Contracts To Vogtle Owners, (III) Assume And Amend Certain Executory Contracts, And (IV) Reject The Vogtle EPC Contract* (D.I. 769) (the “Initial Motion”).
3. On July 14, 2017, the Debtors filed the *Omnibus Motion Of Debtors Pursuant To 11 U.S.C. §§ 365(a) and 105(a) For Authority To Reject Certain Non-Assumed Executory Contracts Related To Vogtle Project* (D.I. 916) (the “Rejection Motion”). The Rejection Motion sought to reject certain executory contracts listed on Exhibit A thereto, including the R-V Vogtle Contracts, as hereinafter defined.
4. On July 20, 2017, the Court entered the *Order Pursuant To 11 U.S.C. §§ 363(b), 365(a), And 105(a) Authorizing Debtors To (I) Enter Into Services Agreement With Vogtle Owners, (II) Assume And Assign Certain Executory Contracts To Vogtle Owners, (III) Assume And Amend*

*Certain Executory Contracts, And (IV) Reject The Vogtle EPC Contract* (D.I. 954) (the “Initial Order”).

5. On July 27, 2017, the Debtors filed the *Notice Of Amendment To Omnibus Motion Of Debtors Pursuant To 11 U.S.C. §§ 365(a) and 105(a) For Entry Of Order Authorizing Debtors To Reject Certain Non-Assumed Executory Contracts Related To The Vogtle Project* (D.I. 1018) (the “Rejection Motion Amendment”). Pursuant to the Rejection Motion Amendment, the Debtors amended the Motion to remove from Exhibit A thereto, the contracts listed on Exhibit 1 to the Rejection Motion Amendment, including the R-V Vogtle Contracts, as hereinafter defined.

6. On July 27, 2017, the Debtors filed the Motion.

7. Pursuant to the Motion, the Debtors seek to assume and amend, *inter alia*, two (2) executory contracts with R-V: (i) Westinghouse PO 4500628411 with respect to AP1000® PCS Water Distribution Weirs System & Bucket for Vogtle Units 3 & 4 located in Waynesboro, GA (the “Vogtle Weirs Contract”), and (ii) Westinghouse PO 4500650540 with respect to AP1000® Core Cooling System (PXS) In Containment Refueling Water Storage Tank (IRWST) Gutter System for Vogtle Units 3 & 4, located in Waynesboro, GA (the “Vogtle Gutters Contract” and together with the Vogtle Weirs Contract, the “R-V Vogtle Contracts”).

8. Exhibit C to the Motion identifies the Assumed Subcontracts<sup>2</sup> and includes the R-V Vogtle Contracts as follows:

<b>Contracts Schedule Line #</b>	<b>PO/Subcontract</b>	<b>SAP PO</b>	<b>Debtor</b>	<b>Contract Description</b>	<b>Cure Costs</b>
13	4500628411	4500628411	Westinghouse Electric Company LLC	PCS Water Distribution Bucket and Weir Components	\$ -
14	4500650540	4500650540	Westinghouse Electric Company LLC	IRWST Return Gutter	\$ -

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion and/or the exhibits thereto, as applicable.

9. The Debtors indicate on Exhibit C to the Motion that the cure amount for each of the R-V Vogtle Contracts is “\$-”. This does not provide any information as to the cure amount that the Debtors believe is correct.

10. As of this writing, the cure amount with respect to the Vogtle Weirs Contract is not less than \$165,662 and the cure amount with respect to the Vogtle Gutters Contract is not less than \$242,289. A summary of the current cure costs with respect to the R-V Vogtle Contracts is attached hereto as Exhibit A.

11. Additionally, the Debtors seek to amend the R-V Vogtle Contracts in accordance with new terms as set forth in Exhibit D to the Motion (the “Proposed Amendments”). Among other things, the Proposed Amendments would require R-V to first pursue Georgia Power Company, Ogelthorpe Power Corporation, Municipal Electric Authority of Georgia, MEAG Power SPVJ, LLC., MEAG Power SPVM, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (together, the “Owners”), on a several, but not joint, basis, for amounts due and owing under the R-V Vogtle Contracts before taking any action against the Debtors.

12. Prior to the Petition Date, R-V and WEC entered into (A) the R-V Vogtle Contracts with respect to a nuclear power plant in Waynesboro, GA and (B) two executory contracts with respect to a nuclear power plant in South Carolina (collectively, the “South Carolina Contracts”): (i) PO 4500650562, MT73 PXS/IRWST Gutter System; VC Summer Units 2 & 3, and (ii) PO 4500628418, MTO5 Weirs; VC Summer Units 2 & 3.

## II. OBJECTION

13. Section 365(b)(1) of the Bankruptcy Code provides, in pertinent part:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee (A) cures, or provides adequate assurance that the trustee will promptly cure, such

default...; (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease.

14. Here, in order for WEC to assume the R-V Vogtle Contracts, WEC must cure all outstanding defaults. Further, WEC must assume the R-V Vogtle Contracts in their entirety and without amendment. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984); *see also In re Yonkers Hamilton Sanitarium, Inc.*, 22 B.R. 427 (Bankr. S.D.N.Y. 1982). WEC fails on both counts. First, the proposed cure amounts for the R-V Vogtle Contracts are not stated and if zero then the cure amount is for less than that which R-V is entitled. Second, the Proposed Amendments to the R-V Vogtle Contracts results in further risk and cost for R-V in enforcing its rights—R-V is not agreeable to such amendment. For either reason, the Motion should be denied as to the R-V Vogtle Contracts.

**A. The Proposed Cure Amount Is Incorrect.**

15. The proposed cure amount for the R-V Contracts of \$- is incorrect. As of this writing, the cure amount with respect to the Vogtle Weirs Contract is not less than \$165,662 and the cure amount with respect to the Vogtle Gutters Contract is not less than \$242,289. A summary of the current cure costs with respect to the R-V Vogtle Contracts is attached hereto as Exhibit A.<sup>3</sup> This should be the correct cure amount if the contracts are assumed now, and WEC should promptly pay such amounts before the R-V Vogtle Contracts may be assumed pursuant to 11 U.S.C. § 365(b)(1).

16. Further, any order approving the Motion must provide that all cure amounts,

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<sup>3</sup> R-V and the Debtors have had discussions in the past concerning the amount due and owing with respect to the R-V Vogtle Contracts and the South Carolina Contracts and R-V hopes to work with the Debtors in good faith to reconcile the parties' respective calculations and to seek to resolve any disputes.

including those relating to the R-V Vogtle Contracts, be subject to later adjustment for further accrued charges and costs based on the date when the R-V Vogtle Contracts are actually assumed.

**B. The Proposed Amendments to the R-V Vogtle Contracts Creates Additional Risk for R-V.**

17. Beyond the incorrect cure amount, in proposing to assume the R-V Vogtle Contracts, the Debtors propose to amend the R-V Vogtle Contracts by, *inter alia*, requiring R-V to pursue collection against the Owners, on a several but not joint basis, before seeking to collect any amounts from WEC. The result is that R-V would first need to pursue multiple parties. Thereafter, and only thereafter, can R-V then pursue WEC for amounts that WEC owes. Adding another layer of enforcement and requiring pursuit of the Owners, each individually, is unwarranted. It simply makes recovery of amounts due and owing to R-V more costly and difficult. R-V does not consent to this. If WEC wants to assume the R-V Vogtle Contracts, WEC must assume the R-V Vogtle Contracts as is without any amendment that negatively affects R-V's rights. R-V intends to work with the Debtors and Owners in good faith to seek to reach agreement on the terms of any proposed amendments to the R-V Vogtle Contracts.

**III. RESERVATION OF RIGHTS**

18. R-V reserves the right to amend or supplement this Objection, including, without limitation, to revise the amount of the cure costs with respect to the R-V Vogtle Contracts due to the failure to assume the South Carolina Contracts.

*[Remainder of page intentionally left blank]*

WHEREFORE, for the foregoing reasons, R-V respectfully requests that the Court (i) deny the Motion with respect to the R-V Vogtle Contracts and (ii) grant R-V such other and further relief as may be just and proper.

Dated: August 14, 2017

**MORRIS JAMES LLP**

*/s/ Brett D. Fallon*

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*Counsel for R-V Industries, Inc.*

## EXHIBIT A

## PO#4500650540 -- MT73 Gutters

<u>RVI Letter / Item / Description</u>	<u>RVI Cure Amount</u>
Cost Letter, 7/22/16	
Ref. letters of 7/15/16 (delays), 3/7/16 (CN#1)	
Part A, Cost for CN#1 implementation	\$ 55,940
Part B, delay & restart costs	\$ 23,932
Part C, Mfg. release delay costs	\$ 22,175
Sub-total, CN#1, etc.	\$ 102,047
CN#2 Cost Letter, 9/12/16	
Part A, Eng & PM for CN Implementation	\$ 35,120
Part B, Mfg cost for scope changes	
Item B1, CB Hinges	\$ 15,860
Item B2, New CB Design	\$ 15,469
Item B3, cleanliness requirements	included in part A
Item B4, CB Supports	\$ 58,475
Part C, Delay costs	\$ 6,318
Sub-Total, CN#2	\$ 131,242
Material Storage Cost through 8/31/17	\$ 9,000
<b>GRAND TOTAL, PO #4500650540 MT73 - GUTTERS</b>	<b>\$ 242,289</b>

## PO#4500628411 -- MT05 Weirs

<u>RVI Letter / Item / Description</u>	<u>RVI Cure Amount</u>
Cost Letter, 7/22/16	
Ref. letters of 7/15/16 (delays), 3/7/16 (CN#1)	
Part A, Cost for CN#1 implementation	\$ 35,350
Part B, delay & restart costs	\$ 45,948
Part C, Mfg. release delay costs	\$ 52,790
Sub-total, CN#1, etc.	\$ 134,088
CN#2 Cost Letter, 9/12/16	
Part A, Eng & PM for CN Implementation	\$ 7,690
Part B, Mfg cost for scope changes	\$ -
Part C, Delay costs	\$ 14,884
Sub-Total, CN#2	\$ 22,574
Material Storage Cost through 8/31/17	\$ 9,000
<b>GRAND TOTAL, PO # 4500628411 MT05 - WEIRS</b>	<b>\$ 165,662</b>

<b>PROJECT TOTALS</b>	<b>\$ 407,951</b>
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IN THE 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: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-10751 (MEW)</p> <p>(Jointly Administered)</p>
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**AFFIDAVIT OF JAMIE L. DAWSON, PARALEGAL**

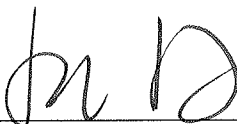
STATE OF DELAWARE :  
: SS:  
NEW CASTLE COUNTY :

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 August 14, 2017, I caused to be served:

**OBJECTION AND RESERVATION OF RIGHTS OF R-V INDUSTRIES, INC. TO  
OMNIBUS MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 365(a) AND 105(a)  
FOR ENTRY OF ORDER AUTHORIZING DEBTORS TO (I) ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS TO VOGTLE OWNERS, AND  
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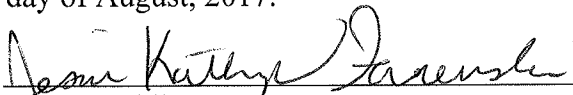
Service was completed upon the following parties listed below in the manner indicated thereon.

Date: August 14, 2017

  
\_\_\_\_\_  
Jamie L. Dawson

SWORN AND SUBSCRIBED before me this 14th day of August, 2017.



  
\_\_\_\_\_  
Notary Public

**VIA FIRST CLASS MAIL**

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