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

In re

**WESTINGHOUSE ELECTRIC
COMPANY LLC, et al.,**

Debtors.

Chapter 11

Case No. 17-10751 (MEW)

(Jointly Administered)

**NOTICE OF U.S. NUCLEAR REGULATORY COMMISSION REQUIREMENTS
APPLICABLE TO DEBTOR WESTINGHOUSE ELECTRIC COMPANY LLC**

The United States of America, on behalf of the U.S. Nuclear Regulatory Commission (“NRC”), hereby provides notice that debtor Westinghouse Electric Company, LLC (“WEC”) is prohibited from transferring its NRC licenses without prior written approval from NRC. WEC is also subject to obligations as the holder of nuclear materials licenses, export licenses, certificates of compliance for nuclear materials packages, and other regulatory requirements. WEC is further subject to obligations as the applicant for the AP1000 reactor design certification and pursuant to the regulations at 10 C.F.R. Part 21 as an entity that provides designs, components, and services to the nuclear industry. Although a debtor in bankruptcy, WEC remains responsible for complying with all applicable statutory and regulatory requirements, including the

prohibition on transfer of its licenses without NRC's prior written approval and the requirement to provide and maintain adequate decommissioning financial assurance, as set forth herein.

1. On March 29, 2017, WEC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. WEC continues to operate its business and manage its properties as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

A. NRC Special Nuclear Material Licenses

2. WEC currently holds Special Nuclear Material License No. SNM-33 for the former Hematite Fuel Cycle Facility in Festus, Missouri (the "Hematite Facility"), which operated from 1956 to 2001. This facility produced high-enriched nuclear fuel for the U.S. Navy nuclear submarine program and low-enriched uranium fuel assemblies for commercial nuclear reactors. WEC is currently decommissioning this facility.

3. WEC currently holds Special Nuclear Material License No. SNM-1107 for the Columbia Fuel Fabrication Facility in Columbia, South Carolina (the "Columbia Facility"). The Columbia Facility fabricates low-enriched uranium fuel assemblies for commercial nuclear reactors. This facility commenced operation in 1969 and is currently operated by WEC.

4. NRC issued the licenses for the Hematite and Columbia Facilities pursuant to, and WEC as a licensee is subject to, regulatory requirements including but not limited to Sections 53, 57, 62, 63, and 81 of the Atomic Energy Act of 1954 (as amended) (the "Atomic Energy Act"), 42 U.S.C. §§ 2073, 2077, 2092, 2093, and 2111, and the regulations in 10 C.F.R. Parts 30, 40, and 70.

5. Section 184 of the Atomic Energy Act, 42 U.S.C. § 2234, and 10 C.F.R. § 70.36 prohibit the transfer, assignment, or disposal of a license or any right to possess or use special

nuclear material granted by a license, either voluntarily or involuntarily, directly or indirectly, through the transfer of control of a license to any person unless NRC provides prior written approval of the transfer. NRC will provide written approval only upon review of a license transfer application and a finding that the transfer is in accordance with the Atomic Energy Act. *See* 42 U.S.C. § 2234; 10 C.F.R. § 70.36(a). In order to approve a license transfer, NRC must find that the transferee is technically and financially qualified and that approval of the transfer would not be inimical to the common defense and security or constitute an unreasonable risk to the health and safety of the public. *See* 42 U.S.C. §§ 2073, 2234; 10 C.F.R. §§ 70.23(a), 70.36(a).

6. Section 184 of the Atomic Energy Act also provides that NRC may consent to the creation of a lien on special nuclear material held under an NRC license, and that the rights of the lienholder may thereafter be enforced by any court subject to agency rules and regulations established to protect public health and safety and promote the common defense and security. The NRC has provided its consent by regulation: Pursuant to 10 C.F.R. § 70.44, NRC consents to the creation of a lien on special nuclear material held under an NRC license provided that (1) the rights of the secured creditor may only be exercised in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the license, the Atomic Energy Act, and NRC regulations; and (2) the secured creditor may not take possession of the special nuclear material prior to either obtaining an NRC license or obtaining NRC's prior written approval of a license transfer, pursuant to 10 C.F.R. § 70.36. Therefore, NRC's review of and prior written consent to the creation of a lien on special nuclear material is not required insofar as the lienholder complies with the provisions of Section 70.44.

B. Financial Assurance and Decommissioning Funding Plans

7. Pursuant to 10 C.F.R. § 70.25, WEC is required to provide NRC with financial assurance for decommissioning both the Hematite and Columbia Facilities. Due to the amount of special nuclear material that is held at each licensed facility, WEC is required to submit, and has submitted, a decommissioning funding plan for each facility, which must include a detailed cost estimate for decommissioning. *See* 10 C.F.R. § 70.25(d), (e). This cost estimate must include the cost of performing all decommissioning activities necessary to meet NRC's site release criteria in 10 C.F.R. Part 20, Subpart E.

8. The decommissioning funding plan must also include a means to adjust the cost estimate periodically over the life of the facility. *See* 10 C.F.R. § 70.25(e)(1)(iii). The licensee must certify that it has provided financial assurance to NRC in an amount sufficient to cover the cost estimate. *See id.* § 70.25(e)(1)(iv). To ensure that the licensee adjusts the amount of financial assurance as necessary over the life of the facility, the licensee must update its decommissioning funding plan at least every three years, adjusting it to account for changes in cost and the extent of contamination at the site. *See id.* § 70.25(e)(2). NRC regulations specify the methods acceptable to the agency for a licensee to provide financial assurance for decommissioning. *See* 10 C.F.R. § 70.25(f).

9. WEC has provided decommissioning funding plans for both the Hematite and Columbia Facilities, and NRC has approved them. WEC has certified that it has provided financial assurance in the form of a standby letter of credit and a standby trust agreement in

satisfaction of 10 C.F.R. § 70.25(f). NRC is the beneficiary of both the standby letter of credit and the standby trust agreement.¹

C. Export Licenses

10. WEC currently holds twenty-five export licenses, pursuant to which it is authorized to export equipment and components for nuclear reactors, fuel fabrication equipment, nuclear fuel assemblies, and special nuclear material to nuclear facilities in certain countries. WEC's export licenses are identified by the following license numbers: XCOM1014, XCOM1047, XCOM1072, XCOM1082, XCOM1093, XCOM1094, XCOM1102, XCOM1113, XCOM1116, XCOM1170, XCOM1188, XCOM1219, XCOM1246, XCOM1249, XCOM1252, XCOM1255, XCOM1262, XCOM1298, XR176, XR178, XSNM3006, XSNM3163, XSNM3264, XSNM3461, and XSNM3769.

11. NRC issued these export licenses pursuant to, and WEC as a licensee is subject to, requirements including but not limited to Sections 53(a), 54(c), 57(a), 101, 103(a), and 109(b) of the Atomic Energy Act, 42 U.S.C. §§ 2073(a), 2074(c), 2077(a), 2131, 2133(a), and 2139(b), and the regulations at 10 C.F.R. Part 110.

12. Section 184 of the Atomic Energy Act, 42 U.S.C. § 2234, and 10 C.F.R. § 110.50(d) prohibit the transfer of these licenses, either voluntarily or involuntarily, directly or indirectly, without the prior written approval of NRC.

¹ The bank that holds the existing standby letter of credit on behalf of WEC has recently notified NRC that it will not renew this letter of credit when it expires on July 29, 2017. In the place of extending the letter of credit, WEC has proposed that NRC draw on the letter of credit before its expiration.

D. Certificates of Compliance

13. WEC holds and uses the following four Certificates of Compliance (“CoCs”) for packages for the transportation of special nuclear material: CoC No. 9239 for the Model Nos. MCC-3, MCC-4, and MCC-5 Packages; CoC No. 9274 for Model No. ABB-2901; CoC No. 9292 for Model No. PATRIOT; and CoC No. 9297 for Model Nos. Traveller STD, Traveller XL, and Traveller VVER. These CoCs contain NRC’s approval of and certain conditions for use of these types of transportation packages.

14. NRC issued these CoCs pursuant to, and WEC as a CoC holder and user is subject to, requirements including but not limited to Section 53 of the Atomic Energy Act, 42 U.S.C. § 2073, and the regulations at 10 C.F.R. Part 71.

E. AP1000 Design Certification

15. WEC is the applicant for the Design Certification for the AP1000 nuclear power reactor. NRC codified this Design Certification in its regulations at 10 C.F.R. Part 52, Appendix D.

16. As the applicant for this Design Certification, WEC is subject to regulatory requirements including but not limited to those at 10 C.F.R. Part 52, Appendix D, Sections X(A)(1) and X(A)(4)(a).

F. Defect and Noncompliance Reporting Requirements

17. WEC provides design and engineering services, decommissioning services, new plant construction services, and nuclear power plant components to NRC-licensed nuclear power plants.

18. As the provider of these services and basic components to NRC-licensed nuclear power plants and as the applicant for the AP1000 Design Certification, WEC and its directors

and responsible officers are required by Section 206 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5846, and the regulations at 10 C.F.R. Part 21 to report to NRC any defects in basic components that could create a substantial safety hazard and any failures to comply that affect the manufacture, construction, or operation of a nuclear facility or a licensed activity that could create a substantial safety hazard.

* * *

19. Therefore, the United States hereby provides notice that it is the responsibility of WEC, and any purchaser or transferee of WEC or its assets, to ascertain and comply with all terms of the licenses, applicable statutory requirements, and NRC rules and regulations, including those limiting license transfer. The fact that certain statutory, regulatory, licensing or contractual obligations are listed or described in this notice in no way diminishes WEC's (or other debtors') obligations to comply with all statutory, regulatory, licensing, or contractual obligations with respect to NRC.

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Respectfully submitted,

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