IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re MAXUS ENERGY CORPORATION, *et al*., Debtors.	Chapter 11 Case No. 16-11501 (CSS) **Re: D.I. 1058**

OBJECTION OF WE ENERGIES TO DEBTORS' AMENDED DISCLOSURE STATEMENT FOR THE AMENDED CHAPTER 11 PLAN OF LIQUIDATION

Wisconsin Electric Power Company and Wisconsin Gas, LLC (collectively, "We Energies") hereby object to the Debtors' Amended Disclosure Statement dated March 28, 2017 (Docket No. 1058) (the "Amended Disclosure Statement"), which describes the Debtors' Amended Plan of Liquidation dated March 28, 2017 (Docket No. 1056) (the "Amended Plan"). In support of this objection, We Energies states as follows:

BACKGROUND

We Energies and Maxus Energy Corporation ("Maxus"), among others, have been identified as potentially responsible parties ("PRPs") under the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. Section 9601 et. seq. ("CERCLA") for the costs of response to releases of hazardous substances at or from property commonly referred to as the Milwaukee Solvay Coke and Gas site, located at 311 East Greenfield Avenue in the City of Milwaukee, County of Milwaukee, State of Wisconsin (the "Site"). In January 2007, the U.S. EPA entered into an Administrative Settlement Agreement and Order on Consent (AOC) with certain PRPs, including We Energies and Maxus for the conduct of a Remedial Investigation/Feasibility Study (“RI/FS”) covering portions of the Site.

Pursuant to the Former Milwaukee Solvay Coke & Gas Site Confidential Joint Participation and Defense Agreement - RI/FS (2006) ("Participation Agreement"), Maxus is

responsible for a substantial portion[1] of the costs associated with the RI/FS. The RI/FS process is not yet complete. It is expected that upon completion, state and federal agencies will require additional environmental response/remedial action at the Site, the cost of which will likely be the responsibility of the PRPs, including Maxus.

The Wisconsin Department of Natural Resources "estimates the response action, waste removal and demolition expenses at…[the Site]…together with the response costs at affected off-site areas, to be $6,900,000 as to the land-based response, and $12,000,000 to $20,000,000 as to the response actions required for contaminated sediments, for a total response cost of $18,900,00 to $26,900,000." *See* Proof of Claim No. 80. The Federal EPA's proof of claim states that it has incurred "$1,740,903 in unreimbursed response cost related to the Milwaukee Solvay Site" and it "has estimated the costs of a remedy that will address both upland and sediment contamination" to be $32 million. *See* Proof of Claim No. 473, Section III.

On October 31, 2016, We Energies filed a general unsecured proof of claim (Proof of Claim No. 302) in an unliquidated amount for: (i) ongoing and past work costs related to the RI/FS study, (ii) future costs to be incurred in connection with investigation, remedial and/or other environmental response activities to be performed at the Site, (iii) unreimbursed costs of the EPA, and (iv) natural resource damages.

OBJECTION

As with the previous disclosure statement, the Amended Disclosure Statement does not contain adequate information under Bankruptcy Code § 1125(b). It appears that the Debtors do not intend to fund any of Maxus' future financial obligations at the Site and will not transition

[1] The Participation Agreement is confidential; although Maxus breaks this confidentiality in the Amended Disclosure Statement, We Energies will not disseminate the information without appropriate assurances of confidentiality.

the Site to Occidental Chemical Corporation ("OCC"). Amended Disclosure Statement, p. 56 ("After the conclusion of the Chapter 11 Cases…the Debtors will not be in a position to continue their participation at the Solvay Site"). The Debtors' recitation regarding the status and terms of a termination agreement are not accurate. The PRP Group and the Debtors have not "tentatively agreed to a termination agreement" (Disclosure Statement, p. 56), but rather are in the early stages of discussing a possible agreed termination. Moreover, the PRP Group has not committed to reimburse Maxus upon completion of the RI/FS for the funds it contributed to a financial assurance trust. In any event, such termination, if agreed upon, would only address work under the Participation Agreement. The remainder of We Energies' claim remains fully intact.

Moreover, We Energies believes the following issues/questions are unclear or unanswered in the Amended Disclosure Statement:

- Which claims qualify as "Environmental Claims for the Diamond Alkali Site that are not Class 4 Environmental Claims" such that they are categorized as Class 5 Claims? Disclosure Statement, p. 64.
- What are the terms of the settlement of OCC's claim, the CPG's claim and the DOJ's claim? Disclosure Statement, p. 96.
- To the extent the settlement of OCC's claim and the CPG's claim includes allowance of contingent, unliquidated claim amounts, what is the basis for allowing those amounts? Disclosure Statement, p. 8, fn. 2 and p. 96.
- To the extent the settlement of OCC's claim and the CPG's claim includes allowance of contingent, unliquidated claim amounts, will all claims with contingent, unliquidated

amounts be allowed and if not, what is the basis for differential treatment of claims in the same class (Class 4)?

- Why did the value of Alter Ego Litigation claims increase from $0 to $584 million in the Motion to Approve Settlement with YPF (D.I. 3000, p. 30, ¶ 8) to "between $500 million to $2.5 billion" in the Amended Disclosure Statement (Exhibit D)?

Until the Debtors revise the Disclosure Statement to address the inadequate disclosures and unanswered questions stated above, the Disclosure Statement cannot be approved pursuant to Bankruptcy Code §1125(a) because it lacks adequate information upon which creditors, including We Energies, can make an informed voting decision.

Moreover, Debtors have reserved their rights to object to contingent and unliquidated claims under 11 U.S.C. §502; accordingly, We Energies may vote on the Amended Plan only to find out that the Debtors have subsequently filed an objection to its claim. Therefore, We Energies seeks a carve out for contingent and unliquidated claims and a waiver of 11 U.S.C. § 502 objections should the Amended Plan be confirmed.

WHEREFORE, We Energies respectfully requests that this Court deny approval of the Amended Disclosure Statement and require the Debtors to disclose the additional information requested herein and grant We Energies such other relief as the Court deems appropriate.

Dated: April 12, 2017

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CERTIFICATE OF SERVICE

I, Kevin S. Mann, hereby certify that on this 12th day of April, 2017, I caused copies of the *Objection of WE Energies to Debtors' Amended Disclosure Statement for the Amended Chapter 11 Plan of Liquidation* to be served on the below parties via first class mail:

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