Docket #0051 Date Filed: 11/6/2024

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: ZACHRY INDUSTRIAL, INC., Debtor.	§ § § §	Case No. 24-90377 (MI) Chapter 11
FLNG LIQUEFACTION, LLC; FLNG LIQUEFACTION 2, LLC; and FLNG LIQUEFACTION 3, LLC, Plaintiffs, v. ZACHRY INDUSTRIAL, INC.; ZACHRY INDUSTRIES, INC.; JVIC DEMERGER FABRICATION, INC.; ZACHRY ENTERPRISE SOLUTIONS DEMERGER, INC.; CB&I LLC n/k/a; MCDERMOTT INTERNATIONAL LTD.; CHIYODA INTERNATIONAL CORPORATION; and PSRG, INC., Defendants.	§ § § § § § § § § § § § § § § § § § §	Adversary No. 24-03189 Ref. Adv. P. Docket Nos. 13, 31, 33, 38

ZACHRY'S REPLY IN SUPPORT OF MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012(b), Defendant Zachry Industrial, Inc. ("Zachry") files this Reply in Support of Zachry's Motion to Dismiss. Adv. P. Doc. No. 33 ("Motion").

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I. SUMMARY

The premise of Plaintiffs' sole argument in opposition to Zachry's motion is that the explosion at the FLNG facility occurred **after** the expiration of the Defect Correction Period. That premise rests on provisions of the EPC Contract defining the duration of the Defect Correction Period.[1] But the EPC Contract expressly provides that such period "shall be extended" under certain circumstances. In fact, an amendment to the EPC Contract was executed by FLNG, and the Defect Correction Period was extended well beyond the date of the explosion. Accordingly, Plaintiffs' claims must be dismissed with prejudice.

II. ARGUMENT AND AUTHORITIES

Zachry's Motion provides several independent reasons to dismiss Plaintiffs' complaint. One of those is that the "waiver of subrogation and release provisions in the EPC Contract bar any claim by FLNG [and, thus, by Plaintiffs] against Zachry Industrial and the other Contractors." Motion at 8. In those provisions, "FLNG 'waive[d] any and all claims' to the extent it received payment for the claims under any insurance policies 'required to be procured by, or on behalf of, [FLNG] pursuant to' the EPC Contract." *Id.*

Plaintiffs have a single response to this argument: FLNG is "required" to procure insurance policies **only** "from the date of 'Substantial Completion' until the end of the 'Defect Correction Period,'" because Section 2.A.4 of the EPC Contract provides that FLNG's obligation to procure insurance coverage "'shall expire upon the expiration of the

[1] "EPC Contract" as used by all parties refers to the EPC Contract governing Train 3 of the FLNG Facility. *See* Motion at 2 n.3.

Defect Correction Period.'" Adv. P. Doc. No. 38, at 3 ("Response"). But according to Plaintiffs, under "the terms of the EPC [Contract], the Defect Correction Period commences upon the Substantial Completion [May 1, 2020 for the relevant Train 3] and ends eighteen months thereafter." *Id.* Consequently, "FLNG's obligation to provide property damage insurance containing a contractual subrogation waiver also ended on November 1, 2021" (i.e., eighteen months after May 1, 2020). *Id.* at 3–4. Because the "loss in this case occurred on June 8, 2022, more than seven months after the end of the Defect Correction Period," Plaintiffs argue that FLNG's "contractual insurance and waiver obligations under [Section] 2.A.4" had expired, and therefore "neither Zachry nor any other contractors or their subcontractors are entitled to enforce the waiver provision of 2.A.4." *Id.* at 4.

Note the key premise of Plaintiffs' syllogism: in categorical terms, "the Defect Correction Period commences upon the Substantial Completion and ends eighteen months thereafter." That premise is demonstrably false, however. The EPC Contract expressly provides that, in certain circumstances, the Defect Correction Period will be extended beyond eighteen months after Substantial Completion:

> With respect to any Corrective Work performed, the Defect Correction Period for such Corrective Work **shall be extended for an additional twelve (12) months** from the date of the completion of such Corrective Work; *provided, however*, in no event shall the Defect Correction Period for such Corrective Work be less than the original Defect Correction Period or extend beyond thirty (30) months after Contractor's achievement of Substantial Completion.

Adv. P. Doc. No. 41, at 119–20, § 12.3(B) ("**Extended** Defect Correction Period for Corrective Work" (emphasis added)).

Here, as authorized by Section 21.2 of the EPC Contract (*see id.* at 139), the parties entered into an amendment of the contract that expressly extended the Defect Correction Period. Specifically, on October 20, 2021, Zachry and its fellow contractors and FLNG Liquefaction 3, LLC (the FLNG entity responsible for the relevant Train 3) executed a written letter agreement to amend the EPC Contract ("Letter Agreement"). *See* Exhibit 1.[2]

The Letter Agreement amended the EPC Contract to address various items of "Corrective Work" (a contractually defined term) to be completed **after** the expiration of what the Letter Agreement called — no fewer than fifteen times — the "**initial** Defect Correction Period." Exhibit 1, at 1, 2, 8 (emphasis added); *see also, e.g., id.* at 1 ("[C]ertain Defective Work items identified by [FLNG] under the [EPC Contract] are not anticipated to be completed until after the end of the initial Defect Correction Period."). The agreement defined "initial" with reference to the above-quoted Section 12.3(B) of the EPC Contract:

> As used herein, the term "initial" in relation to the defined term "Defect Correction Period" shall be used to distinguish between the period commencing upon Substantial Completion and ending eighteen (18) months thereafter on November 1, 2021, and any extension of such period in accordance with Section 12.3[B] of the [EPC Contract] with respect to any

[2] In deciding a motion to dismiss, a court may "consider a document attached to a response to a motion to dismiss when that document is sufficiently referenced in the complaint and its authenticity is unquestioned." *American Gen. Life Ins. Co. v. Mickelson*, 2012 WL 1355591, at *2 (S.D. Tex. Apr. 18, 2012) (citing *Walch v. Adjutant General's Dep't*, 533 F.3d 289, 293–94 (5th Cir. 2008)); *see also In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) ("[B]ecause the defendants attached the contracts to their motions to dismiss, the contracts were referred to in the complaints, and the contracts are central to the plaintiffs' claims, we may consider the terms of the contracts in assessing the motions to dismiss."). Here, **Plaintiffs** attached the EPC Contract to their Response, and the Court accordingly should consider the whole of that contract (including its amendments). *Cf.* Fed. R. Evid. 106 ("If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part — or any other statement — that in fairness ought to be considered at the same time.").

> Corrective Work performed. In that regard, it is synonymous with the use of the term "original" in the proviso of Section 12.3[B] . . . .

Exhibit 1, at 1 n.1. Thus, the Letter Agreement expressly recognized that the "Defect Correction Period" for the EPC Contract would (per Section 12.3(B)) "be extended for an additional twelve (12) months from the date of the completion of such Corrective Work."

The Letter Agreement lists dozens of items of Corrective Work — valued at more than $10 million — that remained outstanding. *See generally* Exhibit 1, at 7–9 (Exhibits A and B). Those items include "Train 3 PSVs" (i.e., pressure safety valves), which Plaintiffs allege in their complaint are a **component involved in the explosion** at the facility. *See* Adv. P. Doc. No. 1-2, at Pages 19–22 of 71 (Exhibit A). What was (again, in the words of Section 12.3(B)) "the date of the completion of such Corrective Work"? The precise date really does not matter: even if all of the $10 million-plus worth of Corrective Work were completed the **day that the letter was executed**, the "exten[sion] for an additional twelve (12) months" pursuant to Section 12.3(B) would extend the Defect Correction Period from October 20, 2021 (the day of execution) to October 20, 2022 (twelve months later).

Plaintiffs allege that the explosion at the FLNG facility occurred on June 8, 2022. *See* Adv. P. Doc. No. 1-2, at Page 13 of 71, ¶ 23. well before the earliest possible expiration of the Defect Correction Period on October 20, 2022. Moreover, the explosion was well within the outer limit for extensions of the Defect Correction Period in the "proviso" at the end of Section 12.3(B) — "thirty (30) months after Contractor's achievement of Substantial Completion. Adv. P. Doc. No. 41, at 120. Plaintiffs themselves assert that Substantial Completion for Train 3 was May 1, 2020. *See* Response at 3. Thirty months following that

date is November 1, 2022, well after the explosion date of June 8, 2022. Therefore, the Defect Correction Period had not expired on the date of the explosion at the FLNG facility.

Plaintiffs do not contest that they are bound by the waiver of subrogation and release provisions of the EPC contract for the duration of the unexpired Defect Corrective Period. *See* Response at 3–4. Because the Defect Corrective Period had not expired on the date of the explosion, the waiver of subrogation and release provisions continued to bind Plaintiffs on that date. Plaintiffs' claims are barred by the waiver of subrogation and release provisions of the EPC contract. As a result, those claims must be dismissed with prejudice.[3]

WHEREFORE, PREMISES CONSIDERED, Zachry respectfully prays that the Court grant Zachry's Motion to Dismiss, and dismiss Plaintiffs' claims with prejudice. Zachry further prays for any other or further relief to which it may be justly entitled.

[3] Zachry's Motion joined in the motions to dismiss filed by Defendants CB&I LLC and Chiyoda International Corporation. Zachry hereby joins in the reply brief filed by those Defendants. *See* Adv. P. Doc. Nos. 20 and 50.

Respectfully submitted,

/s/ John B. Thomas
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Counsel for Defendants Zachry Industrial, Inc., Zachry Industries, Inc., JVIC Demerger Fabrication, Inc., and Zachry Enterprise Solutions Demerger, Inc.

CERTIFICATE OF SERVICE

I certify that on this 6th day of November, 2024, a copy of the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

/s/ John B. Thomas
John B. Thomas

EXHIBIT 1

Correspondence No.: 0809-FPT-CZJV-L-01261.0001

October 20, 2021

CB&I LLC
Zachry Industrial, Inc.
Chiyoda International Corp.
c/o Zachry Industrial, Inc.
527 Logwood Avenue
San Antonio, TX 78221
Attn: Mark Hunter

RE: Fixed Price Separated Turnkey Agreement for the Engineering, Procurement, and Construction of the Freeport Train 3 ("T3") Liquefaction Project by and between FLNG Liquefaction 3, LLC (FLIQ3), and CB&I LLC (formerly CB&I, Inc.), Zachry Industrial, Inc., and Chiyoda International Corp. (CB&I, Zachry, and Chiyoda collectively, "Contractor") (the "T3 EPC")

Subject: End of Train 3 Initial Defect Correction Period

Dear Mark,

This letter, once signed by FLIQ3 ("Owner") and accepted and acknowledged by Contractor, shall constitute the "Letter Agreement" as such term is used herein and shall constitute a binding agreement by the Parties addressing the remaining open Defects at the end of the initial[1] Defect Correction Period (November 1, 2021) pursuant to the T3 EPC. Capitalized terms not defined herein shall have the meaning set forth in the T3 EPC.

As Contractor is aware, certain Defective Work items identified by Freeport LNG Expansion, L.P. (on behalf of Owner) ("FLEX") under the T3 EPC are not anticipated to be completed until after the end of the initial Defect Correction Period. Currently known Defective Work items that may be completed after the initial Defect Correction Period are identified in Exhibits A and B attached hereto and incorporated herein. In addition, it is possible that Defective Work items may be identified by Owner after execution of this Letter Agreement but prior to the end of the initial Defect Correction Period (such Defective Work items, when combined with those identified in Exhibits A and B, being the "***T3 Defects***"). While FLEX appreciates Contractor's continued efforts to remedy the outstanding T3 Defects, FLEX requires that Owner retain adequate performance and payment security via (i) the Retention Letters of Credit, and (ii) Retainage to ensure that the remaining T3 Defects are successfully completed.

With respect to the T3 Defects that are listed in Exhibit B, Contractor has requested to close out those

[1] As used herein, the term "initial" in relation to the defined term "Defect Correction Period" shall be used to distinguish between the period commencing upon Substantial Completion and ending eighteen (18) months thereafter on November 1, 2021, and any extension of such period in accordance with Section 12.3B of the T3 EPC with respect to any Corrective Work performed. In that regard, it is synonymous with the use of the term "original" in the proviso of Section 12.3B of the T3 EPC.

T3 Defects via payment to Owner in the amount set forth in item no. 5 below for Owner's self-performance of the Corrective Work to address these items (such T3 Defects to be addressed by Owner after such payment being the "***T3 Liquidated Defects***"). The T3 Defects listed in Exhibit A, or otherwise identified prior to the end of the initial Defect Correction Period, are to be completed by Contractor in accordance with the T3 EPC. Each of Exhibit A and Exhibit B identifies the warranty claim number and provides a brief summary of the applicable T3 Defects listed therein. Exhibit A also includes the estimated cost of the Corrective Work that is anticipated as being required to correct the applicable T3 Defects listed in Exhibit A.

Given the foregoing, Owner and Contractor agree as follows:

1. In lieu of Owner drawing upon the Retention Letters of Credit at the end of the initial Defect Correction Period in order to obtain adequate performance and payment security for the T3 Defects, Contractor will (i) continue to maintain (or replace, if necessary) the current Retention Letters of Credit in the amounts set forth herein and (ii) allow Owner to continue to withhold a portion of the Retainage in the amounts set forth herein to ensure that Owner may retain an overall amount of security, the aggregate amounts of which (i.e. both (i) and (ii)) are equal to the total sum of the Corrective Work estimated cost amounts set forth in Exhibit A, plus the estimated cost to perform any additional Corrective Work identified prior to the end of the initial Defect Correction Period and not included in Exhibit A (such cost shall be the amount reasonably required to provide security for the completion of such additional Corrective Work, as agreed upon by the Parties or, failing mutual agreement, in an amount determined by FLEX as permitted under the T3 EPC Section 7.6). Accordingly, Owner agrees not to issue any notice regarding the expiration of the initial Defect Correction Period in the form of Annex IV to the Retention Letters of Credit. Within five (5) days after the end of the initial Defect Correction Period, Owner will submit reduction notices to each issuing bank of the Retention Letters of Credit notifying the banks of a reduction in the amount of the Retention Letters of Credit (with the aggregate amount of all Retention Letters of Credit, plus continued Retainage, totaling the amount determined by the foregoing sentence). Each Retention Letter of Credit will be reduced by the same amount, which shall be equal to the amount of Retainage to be released back to Contractor pursuant to this item no. 1. Owner will release the Retainage to Contractor within thirty (30) Days after the end of the initial Defect Correction Period, based upon receipt of an invoice from Contractor for the amount to be released.

2. In the event any issuing bank provides Owner with a notice that it is not renewing its Retention Letter of Credit, Contractor shall timely replace[2] any such expiring Retention Letter of Credit and thereafter maintain the replacement Retention letter of Credit in accordance with this Letter Agreement.

3. If, at any time throughout and after the end of the initial Defect Correction Period, Contractor fails to provide Owner with satisfactory Retention Letters of Credit, or if Contractor otherwise does not complete the remaining Corrective Work in a timely manner pursuant to the T3 EPC Section 12.3, FLEX retains the right (throughout and after the end of the initial Defect Correction Period)

[2] With respect to any replacement Retention Letters of Credit, such replacements shall be provided in accordance with the format and timing requirements set forth in the T3 EPC Section 9.3.

to draw down on or collect against the Retention Letters of Credit or Contractor's Retainage in accordance with its rights under the T3 EPC Sections 7.6 and 9.3 to ensure the satisfactory completion of the remaining Corrective Work.

4. On a quarterly basis (beginning on December 1, 2021, and continuing each quarter thereafter until all T3 Defects are resolved), Owner shall review the then-outstanding T3 Defects remaining to be corrected and use reasonable efforts to agree with Contractor on an estimated cost to complete the remaining T3 Defects. If Owner and Contractor fail to agree upon any estimated cost to complete a remaining T3 Defect, a reasonable cost estimate shall be calculated by FLEX. Notwithstanding the foregoing, unless Owner and Contractor agree in writing, the aggregate, estimated cost of the then-outstanding T3 Defects shall not exceed the aggregate, estimated cost of outstanding T3 Defects from the prior quarter's assessment. (In other words, the total estimated cost to correct all of the remaining T3 Defects will not increase in a subsequent quarterly assessment unless Owner and Contractor agree to an increase.) As part of the quarterly review of the estimated costs of the then-outstanding T3 Defects, FLEX and Contractor may agree to liquidate any outstanding T3 Defects for an amount to be agreed upon between Contractor and FLEX, and upon payment by Contractor to Owner of such amount, the liquidated T3 Defects will be removed from the list of T3 Defects, Owner will not retain any cost security for such items and such liquidated T3 Defects shall be addressed by FLEX in accordance with item no. 5 below. Upon the quarterly determination of the total cost estimate of all then-outstanding T3 Defects, taking into account any T3 Defects which are agreed to be liquidated in that quarterly assessment as well as any amounts owed to Owner for self-performed Corrective Work on the T3 Defects pursuant to the T3 EPC Section 12.3A (which Owner shall retain security for in the form of Contractor's Retention Letters of Credit and previously withheld Retainage until such amounts are paid to Owner), Owner shall notify the applicable issuing banks that the Retention Letters of Credit are to be reduced so that the amount of security withheld by Owner in the aggregate (across all Retention Letters of Credit issued to Owner plus any Retainage maintained by Owner for correction of the T3 Defects) equals the total cost estimate of the then-outstanding T3 Defects (including any amounts owed to Owner for self-performed Corrective Work). Each Retention Letter of Credit will be reduced by the same amount, which shall be equal to the amount of Retainage to be released back to Contractor as determined pursuant to this item no. 4. Upon Contractor's successful completion of the remaining Corrective Work (including Contractor's notice to FLEX of the completion of its Corrective Work and FLEX's agreement with same), Owner shall release the Retention Letters of Credit and all remaining Retainage within thirty (30) Days after such event as provided in T3 EPC Section 9.3.

5. Upon Contractor's payment to Owner of Two Hundred Seventy-Two Thousand Thirty-Five U.S. Dollars (U.S.$272,035) (which shall be paid to Owner no later than seven (7) Days after execution of this Letter Agreement),[3] FLEX agrees to self-perform, at its expense, the Corrective Work required to address the T3 Liquidated Defects. Upon such payment, Contractor shall have no further obligation to perform any Corrective Work on the T3 Liquidated Defects, nor shall Contractor be obligated to reimburse or continue to provide security to Owner for any costs

[3] The T3 Liquidated Defects described as "Corrective Work Invoice" in Exhibit B will be paid for by Contractor on the invoices previously submitted for these items.

incurred by Owner in its performance of any Corrective Work to address the T3 Liquidated Defects.

6. Any Defects not identified in Exhibit B shall remain Contractor's responsibility in accordance with its obligations under the T3 EPC Section 12.3 (including with respect to any extended Defect Correction Periods under the T3 EPC Section 12.3B). With the exception of the close out of the T3 Liquidated Defects as further discussed in item no. 5, this Letter Agreement shall not limit, supersede, or modify Contractor's or Owner's obligations, liabilities, or remedies under the T3 EPC Section 12.3, T3 EPC Article 17, or any other provisions under the T3 EPC.

FLEX requests that Contractor confirm its acceptance of the aforementioned terms by signing the signature blocks below.

Thank You,

Mark W. Mallett

Mark W. Mallett, P.E.
Sr. Vice President & Chief Operating Officer
Freeport LNG
333 Clay Street, #5050
Houston, Texas 77002
(713) 333-4271 Office

ACKNOWLEDGED AND AGREED:

ZACHRY INDUSTRIAL, INC.

_____
Signature

Ralph Biediger
_____
Name

October 21, 2021
_____
Date

CB&I, LLC

_____
Signature

_____
Name

_____
Date

CHIYODA INTERNTIONAL CORP.

_____
Signature

_____
Name

_____
Date

incurred by Owner in its performance of any Corrective Work to address the T3 Liquidated Defects.

6. Any Defects not identified in Exhibit B shall remain Contractor's responsibility in accordance with its obligations under the T3 EPC Section 12.3 (including with respect to any extended Defect Correction Periods under the T3 EPC Section 12.3B). With the exception of the close out of the T3 Liquidated Defects as further discussed in item no. 5, this Letter Agreement shall not limit, supersede, or modify Contractor's or Owner's obligations, liabilities, or remedies under the T3 EPC Section 12.3, T3 EPC Article 17, or any other provisions under the T3 EPC.

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Thank You,

Mark W. Mallett

Mark W. Mallett, P.E.
Sr. Vice President & Chief Operating Officer
Freeport LNG
333 Clay Street, #5050
Houston, Texas 77002
(713) 333-4271 Office

ACKNOWLEDGED AND AGREED:

ZACHRY INDUSTRIAL, INC.

_____
Signature

_____
Name

_____
Date

CB&I, LLC

Wayne Nixon
Signature

Wayne Nixon
Name

10-20-21
Date

CHIYODA INTERNTIONAL CORP.

_____
Signature

_____
Name

_____
Date

incurred by Owner in its performance of any Corrective Work to address the T3 Liquidated Defects.

6. Any Defects not identified in Exhibit B shall remain Contractor's responsibility in accordance with its obligations under the T3 EPC Section 12.3 (including with respect to any extended Defect Correction Periods under the T3 EPC Section 12.3B). With the exception of the close out of the T3 Liquidated Defects as further discussed in item no. 5, this Letter Agreement shall not limit, supersede, or modify Contractor's or Owner's obligations, liabilities, or remedies under the T3 EPC Section 12.3, T3 EPC Article 17, or any other provisions under the T3 EPC.

FLEX requests that Contractor confirm its acceptance of the aforementioned terms by signing the signature blocks below.

Thank You,

Mark W. Mallett

Mark W. Mallett, P.E.
Sr. Vice President & Chief Operating Officer
Freeport LNG
333 Clay Street, #5050
Houston, Texas 77002
(713) 333-4271 Office

ACKNOWLEDGED AND AGREED:

ZACHRY INDUSTRIAL, INC.

_____
Signature

_____
Name

_____
Date

CB&I, LLC

_____
Signature

_____
Name

_____
Date

CHIYODA INTERNTIONAL CORP.


Signature

Nobuyuki Uchida
Name

Oct. 22, 2021
Date

FREEPORT LNG™

Exhibit A

Defective Work No.	Description	Agreed Amount
793	Defective RTD (13TE-2126) on 13K-32 MP/HP	$50,000
1280	Cooler leaks on 67Z-85D	$12,051
1450	Defective Instrument Air system	$2,000,000
1452	LQF Storm Flipping	$25,000
1476	Outstanding Borrowed Material	$27,930
1629	Defective thyristor stack	$7,800
1835	Purge panels 13K-32	$12,000
1976	Train 3 Bus Duct	$2,200,000
2040	LQF 700 relays	$50,000
2053	Surface drainage deficiencies	$85,000
2091	Defective 18FV-3041	$10,176
2102	Train 3 PSVs	$137,528.60
2163	Defective valve 63XV-1632	$31,800
2196	Defective anti-rotation device	$20,000
2261	Oil leak on 67Z-85D	$87,630.16
2339	Leak on crankshaft seal of BOG compressor 18K-9E	$26,766.37
2346	Defective batteries 63UPSB-001	$40,000
2348	Defective valve 60PV-3218	$13,290.82
2359	Broken fan blades 63K-43B-E1-B1-F2	$10,000
2365	Crane recertification	$15,000
2367	PTF 700 relays	$50,000
2371	Defective refractory on 65B-81E	$271,355.85
2376	Defective batteries 13UPS-30	$6,360
2377	Defective batteries 13UPS-002	$6,360
2379	Defective Thermal Oxidizer grounding to transformer	$38,160
2382	Babbit spalling on BOG E	$110,000
2403	Defective fan shaft bearing 13K-33-E1A-M3	$20,000
2406	Defective Flowmeter 13FT-3552	$4,000
2407	Defective APCI MCHE Transition joints*	$ -
2409	Type B FBM Hudson Fin Fans	$225,000
2410	HVAC alarms 13EB-01	$10,176
2413	Oil leak on 13K-32 main electric motor	$100,000
2414	Defective HMI screen 63K-30	$5,000
2428	Defective 63TT-3150B	$3,180
2432	Defective Booster Compressor 60K-11C	$12,500
2436	Defective crane 13K-32-ENC1	$10,000

2438	Defective gas detector 60AI0213	$7,500
2441	Defective bearing temperature on 13K-32 motor	$25,000
2444	Defective crane 60J-41	$5,000
2445	Train 3 ASVs	$234,000
2448	Train 3 Flowserve P23 pumps	$198,203
Corrective Work Invoices	Unpaid Train 3 Corrective Work invoices	$241,960.13
Corrective Work Invoices	October 2021 Corrective Work Invoice	$66,071.89
2225	Harmonic distortion on SEL 735 relays**	$4,000,000
1432	PTF Admin Building Roof leak***	$8,000
2305	LQF Flare non-compliance***	$50,000
2364	12J-31 ACE Overhead Cranes***	$180,000
	Total	**$10,749,800**

* Due to uncertainty regarding the extent of the Corrective Work to be performed and the associated costs, no monies are being withheld for Defective Work Notification No. 2407 at this time.

** Per the End of Train 1 Initial Defect Correction Period letter, dated May 13, 2021, estimated cost of Corrective Work to be withheld as part of Train 3 security.

*** Per the End of Train 2 Initial Defect Correction Period letter, dated June 28, 2021, estimated cost of Corrective Work to be withheld as part of Train 3 security.

Exhibit B

T3 Liquidated Defects

Defective Work No.	Description
1340	Defective Flowmeter 18FT-3019A
1342	Defective Flowmeter 18FT-3020A
1351	Heat Trace Panel alarms in Unit 13
1633	Defective Flowmeter 18FT-3018A
1846	High nitrogen consumption in Train 3 PSVs
2019	Alarms in 63E-42A (Bay 2, Fan 1)
2048	Defective Flowmeter F3FT-294
2247	Wiring deficiencies in Unit 63 flow switches
2263	Transformer 63TR-MV-001A
2301	63B-20 DCS and PMCS alarms
2401	Two Defective cards for NB Thyristor for 13K-32
2426	Alarms in 63E-42A (Bay 1, Fan 1)
2430	Defective main oil vapor separator fan 13K-30-Z1-KM1A
2443	1/2" PSV value failure on 63TV-1818
330	Corrective Work Invoice - 1800001503
1330	Corrective Work Invoice - 1800001482
958	Corrective Work Invoice - 1800001483
963	Corrective Work Invoice - 1800001483
953	Corrective Work Invoice - 1800001534
1590	Corrective Work Invoice - 1800001564
1684	Corrective Work Invoice - 1800001564
1704	Corrective Work Invoice - 1800001564
1530	Corrective Work Invoice - 1800001616
1976	Corrective Work Invoices - 1800001616, 1800001634, 1800001689
Service Markup	Corrective Work Invoice - 1800001534
Admin Markup	Corrective Work Invoices - 1800001564, 1800001616, 1800001634
2001	Corrective Work Invoice - 1800001712
2199	Corrective Work Invoice - 1800001712
2021	Corrective Work Invoice - 1800001689

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