Docket #0032 Date Filed: 4/21/2025
United States Bankruptcy Court
Southern District of Texas
ENTERED
April 21, 2025
Nathan Ochsner, Clerk

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

In re:	Chapter 11
ZACHRY HOLDINGS, INC., *et al*[1]	Case No. 24-90377 (MI)
Debtors.	(Jointly Administered) **Re: Docket No. 2176**
ZACHRY HOLDINGS, INC.,	
Plaintiff,	Adv. Pro. No. 25-03025 (MI)
v.	
OMAHA PUBLIC POWER DISTRICT,	
Defendant.	

STIPULATION AND AGREED ORDER
REGARDING OMAHA PUBLIC POWER DISTRICT'S
APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE
CLAIM AND THE DEBTORS' RELATED ADVERSARY PROCEEDING

This stipulation and agreed order (this "**Stipulation and Agreed Order**") is made by and a

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Moot. Superceded by docket entry at April 14, 2025.

Signed: April 20, 2025

Marvin Isgur
United States Bankruptcy Judge

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(the "**Application**").

WHEREAS, on September 21, 2021, ZII and OPPD entered into an *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (as amended, the "**EPC Contract**") for ZII to engineer, procure, and construct two electric generating stations and associated substations, the Standing Bear Lake Station and the Turtle Creek Station (collectively, the "**Projects**"); and

WHEREAS, the EPC Contract included certain Guaranteed Substantial Completion Dates ("**GSCDs**") for the Projects; and

WHEREAS, on May 21, 2024, the Debtors commenced their chapter 11 cases (the "**Chapter 11 Cases**") in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"); and

WHEREAS, in August 2024, ZII and OPPD amended the EPC Contract to, among other things, extend, for the second time, the GSCDs for the Standing Bear Lake Station to December 30, 2024, and for the Turtle Creek Station to December 16, 2024 (the "**Second Amendment**"); and

WHEREAS, on September 17, 2024, the Court entered the *Order (I) Approving Settlement by and Among the Debtors and Omaha Public Power District, (II) Authorizing the Debtors to Amend and Assume (as Amended) the Omaha Public Power District Contract, and (III) Granting Related Relief* [Docket No. 961], authorizing ZII to assume the EPC Contract, as amended by the Second Amendment; and

WHEREAS, following the assumption of the EPC Contract, a dispute arose between the Parties regarding the cause for the delays in achieving the GSCDs and the Parties' remedies related thereto; and

WHEREAS, on February 5, 2025, the Debtors commenced an adversary proceeding (the "**Litigation**") by filing a complaint against OPPD seeking an order declaring that: (i) the Debtors are not liable for failing to meet the applicable GSCDs resulting in a breach of the EPC Contract; (ii) the liquidated damages provisions contained in the EPC Contract, as amended by the Second Amendment, are unenforceable as a penalty, regardless of the Debtors' alleged breach of the EPC Contract; and (iii) any administrative claim asserted by OPPD on account of the Debtors' purported breach of the EPC Contract should be valued at $0 as of the effective date of the Debtors' chapter 11 plan or at such reduced amount that reflects the actual damages incurred by OPPD from delays in meeting the GSCDs solely caused by the Debtors; and

WHEREAS, on February 14, 2025, OPPD filed the Application requesting that the Court allow it an administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code, with priority status under section 507(a)(2) of the Bankruptcy Code, for any and all damages (whether liquidated, actual, or otherwise) due and owing to OPPD arising from any and all breaches by the Debtors under the terms of the EPC Contract occurring after the Debtors' chapter 11 petition date and prior to the effective date of the Debtors' chapter 11 plan; and

WHEREAS, on February 27, 2025, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Debtors' Disclosure Statement on a Final Basis and (II) Confirming the Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates* [Docket No. 2431], which confirmed the *Further Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and its Debtor Affiliates* [Docket No. 2362] (the "**Plan**"); and

WHEREAS, on March 10, 2025, the Debtors filed their *Objection to Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2500]

asserting, among other things, that the Application was premature because ZII's liability, if any, for breach of the EPC Contract is the subject of the Litigation and has yet to be determined; and

WHEREAS, the Parties agree that the issues of the Debtors' purported liability to OPPD underlying OPPD's Application are the subject of the Debtors' Litigation and should be determined in the Litigation, subject to all available motions, defenses, and claims of the Parties; and

WHEREAS, the Parties have reached an agreement with respect to the Application and have agreed that the Application shall be abated as set forth in this Stipulation and Agreed Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

1. The Application shall be deemed abated until such time as the Debtors' liability, if any, to OPPD in connection with the EPC Contract is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise.

2. To the extent it is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise, that the Debtors have no liability to OPPD in connection with the EPC Contract, the Application shall automatically be deemed denied in its entirety without the need for any further action by the Court or any of the Parties.

3. To the extent it is determined on a final basis in the Litigation, whether by settlement, judgment, order, or otherwise, that the Debtors have any net liquidated, non-contingent monetary liability to OPPD in connection with the EPC Contract, the contested matter proceeding in respect of the Application shall resume in the Chapter 11 Cases before the Court for the sole purpose of determining whether such liability shall be treated under the Debtors' confirmed Plan as an administrative expense claim under section 503(b) of the Bankruptcy Code. Until the Court makes such a determination on a final basis, OPPD shall not be deemed to hold an administrative

expense claim in the Chapter 11 Cases against any of the Debtors, and the Debtors shall not be required to set aside funds or take any other measures in connection with the Plan or otherwise in response to OPPD's purported administrative expense claim.

4. For the avoidance of doubt, nothing contained in this Stipulation and Agreed Order shall prejudice the Debtors' right to object to any request by OPPD for allowance of an administrative expense claim, regardless of whether such request is based on the allegations set forth in the Application or otherwise.

5. The Debtors' discovery requests to OPPD in connection with the Application shall be deemed withdrawn without prejudice to the Debtors' ability to serve the same or similar discovery requests, in addition to any other discovery requests as may be appropriate, in the Litigation or otherwise.

6. The Debtors' third-party subpoenas issued to Wartsila North America, Inc. and Siemens Energy, Inc. in the Litigation shall be deemed withdrawn without prejudice to the Debtors' ability to serve the same or similar subpoenas, in addition to any other discovery requests as may be appropriate, at the appropriate time in the Litigation, but not sooner than the entry of a scheduling order in the Litigation.

7. The Litigation is immediately permitted to proceed in all respects, and the Parties' rights regarding all matters with respect to the Litigation are preserved.

8. Unless the Parties agree or the Court orders otherwise, the Litigation shall be governed by all applicable rules of procedure, including (without limitation) the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure (to the extent made applicable by the Federal Rules of Bankruptcy Procedure).

9. This Stipulation and Agreed Order is subject to the approval of the Court and shall be of no force and effect unless it is approved by the Court.

10. This Stipulation and Agreed Order shall be immediately effective and enforceable upon entry by the Court.

11. Each Party represents and warrants that it is duly authorized to enter into and be bound by this Stipulation and Agreed Order. Each of the undersigned counsel that executes this Stipulation and Agreed Order by or on behalf of each respective Party represents and warrants that such undersigned counsel has been duly authorized and empowered to execute and deliver this Stipulation and Agreed Order on behalf of such Party.

12. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

13. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto or by order of the Court.

14. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

Signed: _____, 2025

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THE HON. MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

STIPULATED AND AGREED THIS 27TH DAY OF MARCH, 2025:

/s/ Charles R. Koster

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Certificate of Service

I certify that on March 27, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster