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)
Debtor.	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.,	§	
Plaintiff,	§	Adversary No.: 25-03025 (MI)
v.	§	
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

DEFENDANT OMAHA PUBLIC POWER DISTRICT'S VERIFIED EMERGENCY MOTION FOR CONTINUANCE OF THE REORGANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES
[Related Docket No. 37]

Emergency relief has been requested.

If you object to the requested relief or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set or file a written response prior to the hearing date as set forth in the paragraph below. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on May 12, 2025, at 2:30 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "electronic appearance" link on Judge Isgur's home page. Select the case name, complete the required fields, and click "submit" to complete your appearance.

Omaha Public Power District ("**OPPD**"), by and through its undersigned counsel, hereby files *Defendant Omaha Public Power District's Response* (the "**Response**") to *Reorganized Debtors' Motion for Partial Summary Judgment Re Liquidated Damages* [Docket No. 37] (the "**Motion for Partial Summary Judgment**"). Pursuant to Federal Rule of Civil Procedure 56(d), attached hereto as **Exhibit 1** is the *Declaration of J. Michael Thomas in Support of Defendant Omaha Public Power District's Verified Emergency Motion for Continuance of the Reorganized Debtors' Motion for Partial Summary Judgement Re Liquidated Damages*. In support of the Response, OPPD respectfully submits as follows:

I. PRELIMINARY STATEMENT

1. OPPD has asked this Court to enforce the forum selection clause in the parties' Contract and transfer this proceeding to the Nebraska Court.[2] Despite the pendency of OPPD's Motion to Transfer, Debtors ask this Court to grant summary judgment—before an Answer in this case has even been filed—in their favor on their claim for declaratory judgment regarding the enforceability of the liquidated damages provision in the parties' Contract.

[2] Capitalized terms used herein are defined below.

2. The Court should deny Debtors' Motion for Partial Summary Judgment because it is premature and would require this Court to grant summary judgment in Debtors' favor without allowing OPPD the opportunity to conduct written discovery, depose witnesses, and obtain rebuttal experts necessary to fully address Debtors' arguments.

3. The Court should first determine whether this is the appropriate forum for the parties' dispute. If it is, the Court should enter a scheduling order that permits OPPD to file an Answer asserting its affirmative defenses and counterclaims, followed by a discovery period to address the issues raised in the Motion for Partial Summary Judgment—issues that even the Debtors acknowledge require further factual development. Only after these things have occurred should this Court consider the Debtors' request for partial summary judgment.

II. BACKGROUND

A. Undisputed Facts

4. OPPD is a public corporation and political subdivision of the State of Nebraska that provides electricity to the Omaha, Nebraska metropolitan area and other areas in eastern Nebraska. OPPD's revenues are reinvested back into the utility and its electric system. OPPD serves approximately one million people in Omaha and thirteen surrounding counties in southeastern Nebraska.

5. Prior to the Petition Date (defined below), OPPD and Debtor Zachry Industrial, Inc. ("**Zachry**", or the "**Debtor**") entered into that certain *Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations*

(Contract No. 263406) dated September 21, 2021 (together with all exhibits, schedules, and ancillary agreements and documents thereto, the "**Contract**").[3]

6. Under the terms of the Contract, OPPD contracted with Zachry to provide services for all activities associated with designing, procuring, installing, starting up, and testing two power plant sites: (i) the Standing Bear Lake Station ("**SBLS**"); and (ii) the Turtle Creek Generating Station ("**TCS**", and together with SBLS, the "**Projects**"). SBLS and TCS are both located in the Omaha metropolitan area.

7. The Contract was first amended in October 2023 and further amended in August 2024 pursuant to the terms of that certain *Amendment No. 2 to Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) dated August 13, 2024 (together with the original and continuing binding terms of the Contract, herein the "**Second Amendment**" or "**Second Amended Contract**").

8. Notably, OPPD provided significant financial accommodations to Zachry in the Second Amendment as Zachry attempted to work through its financial distress. Specifically, OPPD released $20,220,446.00 in retainage that it was not obligated to release, so that Zachry could pay subcontractors for the Projects, and OPPD modified payment terms to a "Net 15" basis versus a "Net 30" basis. OPPD agreed to both actions to support Zachry's timely completion of the Projects.

9. Relevant here is the Contract's (i) forum selection clause; and (ii) the liquidated damages clause.

[3] The Contract is voluminous. A true and correct copy of the Contract will be made available upon any reasonable and appropriate request, subject to OPPD's rights to redact any terms therein and/or rights to seek a protective order and/or nondisclosure agreement to ensure any proprietary terms of the Contract remain confidential.

10. Pursuant to Article XIII of the Contract, the parties agreed that the laws of the State of Nebraska would govern the Contract and any disputes arising thereunder. Further, Zachry, as Contractor, expressly agreed that any dispute would be adjudicated solely in Nebraska and waived any objection based on venue (the "**Forum Selection Clause**"):

> This EPC Contract shall be governed by the laws of the State of Nebraska without reference to, or application of, its conflict of laws principles. Contractor hereby consents and submits to the exclusive jurisdiction of the District Court of Douglas County, Nebraska and the United States District Court for the State of Nebraska (or, if such courts do not have subject matter jurisdiction over such dispute, in any other state or federal court located in the State of Nebraska), and hereby waives any objection based on venue or forum non conveniens with respect to any legal action or proceeding instituted in connection with or related to this Agreement. WAIVER OF JURY TRIAL: THE PARTIES TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, OPPD, CONTRACTOR AND THE INDEMNIFIED PARTIES, EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY OF ANY CLAIMS DIRECTLY OR INDIRECTLY ARISING OUT OF THIS CONTRACT.

11. Further, the Contract, as amended, includes a liquidated damages clause, which Zachry and OPPD agreed to be bound by (the "**Liquidated Damages Clause**").

12. Under the Liquidated Damages Clause, the parties agreed that "[i]f [Zachry] fails to complete the Work on or before the Guaranteed Substantial Completion Date . . . , *as a predetermined reasonable and sole and exclusive remedy* for such delay, [Zachry] shall be subject to liquidated damages as follows:

> (i) For each calendar day beyond the Guaranteed Substantial Completion Date for SBLS that the Work is not completed***, $350,000 per calendar day through January 29, 2025, and $500,000 per calendar day until the Work is accepted as complete***. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 28, 2025, then on March 1, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to SBLS.
>
> (ii) For each calendar day beyond the Guaranteed Substantial Completion Date for TCS that the Work is not completed, ***$250,000 per calendar day, through January 15, 2025, and $400,000 per calendar day until the Work is accepted as complete***. There shall be an overall sub-cap on this liability equal to ten percent (10%) of the Contract Price. If Substantial Completion has not been achieved by February 14, 2025, then on February 15, 2025, Contractor shall pay the remainder of such maximum liquidated damages applicable to TCS.

[*See* Docket No. 961 (Case No. 24-90377-MI), at Ex. A, § 7(1)(i)–(ii) (emphasis added)].

13. Notably, although the Second Amendment amended certain portions of the Liquidated Damages Clause in the original Contract, it did not change Article XI(a) of the Contract. The Second Amendment states that "[e]xcept as provided in Amendment No. 1 and this Amendment No. 2, all other terms and conditions of the EPC Contract shall remain the same and in full force and effect." *See* [*See* Docket No. 961 (Case No. 24-90377-MI), at Ex. A, § 12]. The first amendment to the Contract likewise did not alter Article XI(a).

14. Article XI(a) of the Contract provides that "[t]he Contractor and the District acknowledge that ***actual damages incurred*** by the District as a result of the Contractor's failure to meet the Guaranteed Substantial Completion Dates and Performance Guarantees ***would be difficult to determine*** and that ***both parties agree that the liquidated damages*** provisions in this Article XI ***are reasonable and appropriate measures of the damages*** for such completion and performance shortfalls, ***and are not a penalty***. Total liquidated damages in the aggregate for both sites shall not exceed Fifteen percent (15%) of the Contract Price." *See* Contract, at art. XI(a) (emphasis added).

15. Throughout the relevant time frame, the parties met (and continue to meet) onsite weekly to discuss scheduling updates on the status of the Projects. At these weekly meetings, the parties reviewed completed, active, and upcoming activities that support the completion of the Projects prior to the respective Guaranteed Substantial Completion Dates. When Zachry did not meet the Guaranteed Substantial Completion Dates, the weekly meetings continued with the intention of keeping operations on track so that Substantial Completion of the Projects could be achieved at the earliest possible date. OPPD's participation in these weekly meetings clearly

signals OPPD's good faith intentions to keep the Projects moving forward as close to schedule as possible, which serves as the primary purpose for executing the amendments to the EPC.

B. The Debtors' Bankruptcy Cases

16. On May 21, 2024 (the "**Petition Date**"), the above-captioned debtors (each, a "**Debtor**" and collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Bankruptcy Cases**"). Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of the Bankruptcy Cases is set forth in the *Declaration of Mohsin Y. Meghji in Support of the Debtors' Petitions and Requests for First Day Relief* [Docket No. 7 (Case No. 24-90377-MI)] (the "**First Day Declaration**").

17. On September 17, 2024, the Court entered its *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 (Case No. 24-90377-MI)] (the "**Assumption Order**"), whereby the Debtors assumed the Second Amended Contract and the terms thereof were approved by the Court. *See* Assumption Order at ¶ 6, p. 3.

18. On January 23, 2025, the Debtors filed their (1) *Disclosure Statement for the Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1986] (the "**Disclosure Statement**") and (2) *Modified First Amended Joint Chapter 11 Plan of Reorganization of Zachry Holdings, Inc. and Its Debtor Affiliates* [Docket No. 1978] (as amended, supplemented, or otherwise modified from time to time, the "**Plan**"). On February 26, 2025, the Debtors filed their *Notice of Filing of the Fifth Plan Supplement* [Docket No. 2417] (the "**Plan Supplement**").

19. On February 14, 2025, OPPD filed its *Application for Allowance of Administrative Expense Claim* [Docket No. 2176] (the "**Admin. Claim**"), seeking allowance of certain contractual damages, discussed in more detail below, as an administrative expense claim pursuant to section 503(b)(1)(A) 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 Zachry under the terms of the Second Amended Contract occurring after the Petition Date and prior to the Plan's Effective Date.[4]

20. During the Plan confirmation hearing held on February 26, 2025 (the "**Confirmation Hearing**"), the Bankruptcy Court confirmed the Plan and subsequently entered its *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] on February 27, 2025 (the "**Confirmation Order**").

C. <u>The Adversary Proceeding</u>

21. On February 5, 2025, Zachry filed the *Debtors' Adversary Complaint for Declaratory Relief* [Docket No. 1] (the "**Complaint**") against OPPD in the above-captioned adversary proceeding (the "**Adversary Proceeding**").

22. On March 31, 2025, OPPD filed *Defendant Omaha Power District's Motion to Withdraw the Reference* [Docket No. 12] (the "**Motion to Withdraw**") and *Motion to Transfer Venue* [Docket No. 13] (the "**Motion to Transfer**," and together with the Motion to Withdraw, the

[4] The Debtors have since filed the *Debtors' Objection to Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2176].

"**Transfer Motions**"), both of which are fully incorporated herein by reference pursuant to Federal Rule of Civil Procedure 10(c).[5]

23. As detailed in the Transfer Motions, OPPD ultimately seeks to transfer this litigation to the parties' contractually agreed-upon forum in Nebraska. Pursuant to the Contract, which was assumed by the Debtors under this Court's Assumption Order, the parties agreed that any disputes arising under the Contract are governed by the laws of the State of Nebraska and that the ***exclusive*** venue for any disputes arising under the Contract was either the Federal District Court of Nebraska or District Court of Douglas County, Nebraska (the "**Nebraska Court**"). Further, the Forum Selection Clause contained in Article XIII of the Contract explicitly provides, in relevant part, that Zachry "hereby waives any objection based on venue or forum non conveniens with respect to any legal action or proceeding instituted in connection with or related to this Agreement."

24. On March 31, 2025, OPPD moved to dismiss the Complaint [*See* Docket No. 11], but before the Court could issue a ruling, Zachry filed *The Reorganized Debtors' First Amended Adversary Complaint* [*See* Docket No. 22] (the "**Amended Complaint**").

25. In the Amended Complaint, Zachry has transformed this alleged adversary bankruptcy proceeding into full blown commercial litigation. Zachry seeks declaratory judgment on three issues: (i) that the liquidated damages provision of the Contract and Second Amendment are unenforceable, (ii) that the GSCDs have not yet occurred, and (iii) the reduction of any administrative claim filed by OPPD in the bankruptcy. Additionally, Zachry wants this Court to prematurely find that OPPD breached the Contract and Second Amendment as well as its duty of

[5] The Transfer Motions remain pending as of the date of this filing and the significant gate-keeping issues addressed therein (*i.e.*, core v. non-core status) should be resolved prior to consideration of Debtors' Motion for Partial Summary Judgment.

good faith and fair dealing well prior to the accrual of any obligation or performance owed by OPPD.

26. The Court held a Status Conference on April 14, 2025 (the "**Hearing**"),[6] wherein the parties discussed the various gate-keeping issues and Zachry noted that it would like a tri-furcated scheduling order. Notably, Zachry represented that at the Hearing that it wished to conduct "limited" and 'focused" discovery concerning the enforceability of the liquidated damages clause." Ex., Hearing Tr. at 5:6-18. Zachry also mentioned that it believed the parties would need expert discovery on the foreseeability of actual damages. *Id.* at 5:20-6:2.

27. Ultimately, the Court informed Zachry that it was free to file a summary judgment motion if it wished, but, critically, did not open discovery as there were pending Rule 12 Motions before the Court. *Id.* at 12:24-13:8; 14:14-15:3; 17:20-18:17.

28. A few days following the Hearing, on April 18, 2025, counsel for Zachry sent an email to counsel for OPPD attaching ten requests for production. These discovery requests sought a significant range of documents, communications, and other relevant information from OPPD concerning issues such as the hourly spot rates and daily natural gas prices for other power plants for the last year.

29. OPPD declined Zachry's invitation to engage in voluntary discovery, explaining that the Court did not authorize discovery during the April 14, 2025 Status Conference. OPPD further stated that, if Zachry had a valid legal basis for seeking summary judgment, discovery should not be necessary. In addition, OPPD noted that its pending Motions to Transfer Venue remained unresolved, and participating in discovery could be construed as a waiver of its objection to forum and venue

[6] Attached hereto as **Exhibit 2** is a copy of the Hearing transcript.

30. On April 28, 2025, Zachry filed the Motion for Partial Summary Judgment. On that same day, Zachry also filed the *Declaration of Tanya Bodell* [Docket Number 36] in support of its Motion for Partial Summary Judgment. The Debtors retained Ms. Bodell to serve as their expert witness in this matter. *See* Bodell Dec. at ¶¶ 4 and 9. Although during the Status Conference, Zachry noted that they intended to attach an expert report to their summary judgment motion, Zachry never provided a Federal Rule of Civil Procedure 26 disclosure for Ms. Bodell or identified Ms. Bodell as an expert witness prior to filing Ms. Bodell's declaration in support of their Motion for Partial Summary Judgment.

III. LEGAL STANDARD

31. "[J]udges are to be permitted 'wide discretion' in exercising their power to control federal trials." *In re Perry*, 345 F.3d 303, 309–10 (5th Cir. 2003). However, courts should not grant motions for summary judgment that are filed before the service of an answer, unless it appears certain that no answer by the responding party could present a genuine issue of fact. *Watkins v. Monroe*, No. 6:18-CV-347, 2019 WL 1869864, at *1 (E.D. Tex. Mar. 27, 2019), *report and recommendation adopted*, No. 6:18-CV-347, 2019 WL 1858100 (E.D. Tex. Apr. 25, 2019) (quoting *Stuart Inv. Co. v. Westinghouse Elec. Corp.*, 11 F.R.D. 277, 280 (D. Neb. 1951).

32. Further, "[s]ummary judgment assumes some discovery" has been conducted, and such motions should not "ordinarily be granted before discovery has been completed." *Dunn v. Sucsy*, Civil Action No. 5:22-CV-190-M-BQ, 2022 WL 17408005, at *2 (N.D. Tex. Nov. 9, 2022) (quoting *Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002) and *Ala. Farm Bureau Mut. Cas. Co., Inc. v. Am. Fid. Life Ins. Co.*, 606 F.2d 602, 609 (5th Cir. 1979)).

33. Under Federal Rule of Civil Procedure 56(d), a continuance is justified when the party seeking a continuance demonstrates (a) that it needs additional discovery; and (b) how the additional discovery will likely create a genuine issue of material fact. *Stearns Airport Equip. Co.*

v. FMC Corp., 170 F.3d 518, 534-35 (5th Cir. 1999). "Motions for a continuance under Rule 56(d) are 'generally favored, and should be liberally granted.'" *Coffin v. Blessey Marine Servs., Inc.*, Civil Action No. H-11-0214, 2011 WL 2837609, at *2 (quoting *Stearns Airport Equip.*, 170 F.3d at 534).

IV. ARGUMENT

34. Debtors' Motion for Partial Summary Judgment is premature. OPPD's Transfer Motions raise fundamental preliminary issues (i.e., whether this Court should even hear this Adversary Proceeding) that must be resolved before this Court can dispose of the merits of Debtors' claim for declaratory judgment on the enforceability of the liquidated damages provision in the Contract.

35. Additionally, Debtors' Motion for Partial Summary Judgment implicates numerous issues warranting both fact and expert discovery. However, the parties have not engaged in any discovery in this matter. Debtors essentially seek summary judgment exclusively on their witnesses' version of events and expert's opinions, none of whom OPPD has had an opportunity to cross examine in depositions. OPPD also has not had an opportunity to engage in formal discovery with Debtors or obtain a rebuttal expert to respond to Ms. Bodell's opinions.

36. This Court should defer consideration of Debtors' Motion for Partial Summary Judgment until it first determines whether this Court is the appropriate forum for the parties' dispute and, if it is, after the parties have an opportunity to engage in discovery that OPPD is entitled to under the Rules.

A. Debtors' Motion for Partial Summary Judgment is premature.

37. As detailed in OPPD's Motion to Transfer, the Second Amended Contract contains a valid and enforceable Forum Selection Clause requiring the parties to litigate this dispute in the Nebraska Court. Motion to Transfer at 11-14.

38. Rather than giving this Court the opportunity to consider the Motion to Transfer, Debtors ask this Court to rush its decision on the merits of the Motion to Transfer, deprive OPPD of the discovery it is entitled to under the Rules, and grant summary judgment on the merits of the primary issue in dispute between the parties. This is wholly improper as claims should be adjudicated on the merits after a full and fair opportunity for discovery. *See Bradley v. Rupert*, Civil Action No. 5:05-cv-74, 2007 WL 962938, at *1 (E.D. Tex. Mar. 7, 2007). And, these claims should be adjudicated in the Nebraska Court, where the parties agreed to resolve them.

39. As discussed below, Debtors' Motion for Partial Summary Judgment raises numerous issues that require fact and expert discovery. *See* Section IV(b) *infra*. OPPD is entitled to obtain the discovery necessary to defend itself against Debtors claims; however, it must do so in the proper forum (i.e., the Nebraska Court). *See PaineWebber Inc. v. Chase Manhattan Private Bank (Switzerland)*, 260 F.3d 453, 459 (5th Cir. 2001) (acknowledging the "well-established rule that parties who choose to litigate actively on the merits thereby surrender any jurisdictional objections").

B. <u>OPPD is entitled to discovery before the Court considers Debtors' Motion for Partial Summary Judgment.</u>

40. In their Motion for Partial Summary Judgment, Debtors argue that (a) OPPD's actual damages were easily ascertainable at the time the parties executed the Second Amended Contract; (b) the liquidated damages provision is not a reasonable forecast of OPPD's actual damages; and (c) the amounts provided for in the liquidated damages provision are grossly disproportionate to OPPD's actual damages. Motion for Partial Summary Judgment at 10-20.

41. As Debtors even recognized during the Hearing, all of their arguments raise numerous issues warranting both fact and expert discovery. Ex. 2 at 5:6-6:2. Contrary to Debtors' representations during the Hearing, however, the issues are not "limited."

42. To properly respond to Debtors' Motion for Partial Summary Judgment, OPPD needs written discovery related to:

- Zachry's internal analyses and communications regarding (a) the likelihood, scope, or consequences of delays in the Projects; (b) estimates or forecasts of OPPD's potential damages from delays in the Projects; (c) negotiations of the Second Amended Contract, including any opposition or concerns raised about the increase in the liquidated damages amounts; and (d) project schedules, risk assessments, or delay analyses from 2023-2025. Ex. 1, Declaration of J. Michael Thomas at ¶ 5(a).

- Zachry's expert reports, modeling, and backup data (a) used to estimate OPPD's "actual purchase costs" and "estimated generation costs"; and (b) concerning the calculation that Zachry claims shows damages were "only" $8.7 million. *Id.* at ¶ 5(b).

- The methodology and assumptions used in calculating the "actual purchase costs" and "estimated generation costs" in Zachry's expert analysis. *Id.* at ¶ 5(c).

- The documents and data used to create or support the financial models Zachry used to support its Motion for Partial Summary Judgment. *Id.* at ¶ 5(d).

- Communications with suppliers, subcontractors, or consultants regarding the causes of the delays in the Projects and Zachry's ability (or inability) to meet the adjusted Substantial Completion Dates. *Id.* at ¶ 5(e).

- The identity of the individuals involved in negotiating or drafting the Second Amended Contract and, specifically, the liquidated damages provision so that those individuals could be deposed. *Id.* at ¶ 5(f).

- Zachry's understanding in August 2024 of the risks to OPPD from late completion of the Projects and OPPD's market position and dependency on timely generation at SBLS and TCS. *Id.* at ¶ 5(g).

43. All of the foregoing written discovery is needed to show that OPPD's actual damages were not easily ascertainable at the time the parties executed the Second Amended Contract, that the liquidated damages provision is reasonable, the parties' intentions when they agreed to the liquidated damages provision and executed the Second Amended Contract, the cause(s) of the delays at the Projects, and the flaws in Ms. Bodell's expert report. *Id.* at ¶ 6. The

discovery will demonstrate the numerous genuine issues of material fact that are in dispute and prohibit this Court from granting Debtors' Motion for Partial Summary Judgment.

44. OPPD is also entitled to an opportunity to retain its own expert(s) and/or rebuttal expert(s) to address the issues raised in Debtors' Motion for Partial Summary Judgment and Ms. Bodell's expert report. The above written discovery is necessary for OPPD's experts to perform their own analyses and develop their opinions. *Id.* at ¶ 7. OPPD has worked diligently to identify the experts it believes are needed to address Debtors' claims. *Id.* at ¶ 8. However, more time is needed for these individuals to complete their analyses and prepare their reports. *Id.*

45. OPPD also needs to depose Zachry's representatives who negotiated the Second Amended Contract, including those who discussed or drafted the liquidated damages provision; Zachry's project managers; and Zachry's designated expert(s). *Id.* at ¶ 9. As with the written discovery identified above, these depositions will demonstrate the numerous fact issues raised by Debtors' Motion for Partial Summary Judgment, including that OPPD's actual damages were not easily ascertainable at the time the parties executed the Second Amended Contract, that the liquidated damages provision is reasonable, the parties' intentions when they agreed to the liquidated damages provision and executed the Second Amended Contract, the cause(s) of the delays at the Projects, and the flaws in Ms. Bodell's expert report. *Id.* at ¶ 10.

46. OPPD has not failed to diligently pursue discovery in this matter. This Court ruled that it would not open formal discovery in this matter. Ex. 2 at 12:24-13:8; 18:12-17. Further, this Court has not entered a scheduling order in this matter.

47. OPPD expects Debtors to argue that OPPD has not been diligent in pursuing discovery in this matter because OPPD did not agree to engage in the informal discovery sought by Debtors. However, as detailed in OPPD's letter to Debtors, OPPD has yet to file an Answer

because there are pending Rule 12 motions that the Court must rule on before any further action can be taken. Moreover, OPPD could not engage in discovery without risking waiving its arguments raised in the Transfer Motions. *See PaineWebber*, 260 F.3d at 459.

V. RELIEF REQUESTED

For the foregoing reasons, OPPD respectfully requests that the Court enter the Proposed Order (a) continuing the June 2, 2025 hearing on Debtors' Motion for Partial Summary Judgment, and (b) granting OPPD such other and further relief as this Court finds just and proper.

Dated: May 8, 2025

Respectfully submitted by:

/s/ Thomas C. Scannell

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ATTORNEYS FOR OMAHA PUBLIC POWER DISTRICT

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be filed on May 8, 2025, using the Court's CM/ECF System which caused it to be served upon those parties registered in the system to receive such service.

/s/ Zachary C. Zahn
Zachary C. Zahn

CERTIFICATE OF CONFERENCE

I hereby certify that on May 8, 2025, I conferred with John Thomas, counsel for Zachry, regarding the relief requested in this Motion, and Mr. Thomas stated that Zachry is opposed to such relief.

/s/ Thomas C. Scannell
Thomas C. Scannell

EXHIBIT 1

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)
Debtor.	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.,	§	
Plaintiff,	§	Adversary No.: 25-03025 (MI)
v.	§	
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

DECLARATION OF J. MICHAEL THOMAS IN SUPPORT OF DEFENDANT OMAHA PUBLIC POWER DISTRICT'S VERIFIED EMERGENCY MOTION FOR CONTINUANCE OF THE REOGRANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES
[Related Docket No. 37]

Pursuant to 28 U.S.C. § 1746, J. Michael Thomas hereby declares under the penalty of perjury that the following is true and correct:

1. My name is J. Michael Thomas. I am of sound mind, over the age of twenty-one, competent to make this Declaration, and have personal knowledge of the facts stated herein, which are true and correct. If called upon to do so, I could and would competently testify to the matters stated herein.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

2. I am a Partner at the law firm of Foley & Lardner LLP and counsel for Omaha Public Power District ("**OPPD**").

3. I submit this Declaration in support of *Defendant Omaha Public Power District's Response to Reorganized Debtors' Motion for Partial Summary Judgment Re Liquidated Damages* (the "**Response**").

4. *Reorganized Debtors' Motion for Partial Summary Judgment Re Liquidated Damages* [Docket No. 37] (the "**Motion**") raises numerous issues that necessitate both fact and expert discovery in order for OPPD to properly respond to the Motion.

5. Specifically OPPD needs written discovery related to:

a. Debtors' internal analyses and communications regarding (a) the likelihood, scope, or consequences of delays in the Projects; (b) estimates or forecasts of OPPD's potential damages from delays in the Projects; (c) negotiations of the Second Amended Contract, including any opposition or concerns raised about the increase in the liquidated damages amounts; and (d) project schedules, risk assessments, or delay analyses from 2023-2025.

b. Debtors' expert reports, modeling, and backup data (a) used to estimate OPPD's "actual purchase costs" and "estimated generation costs"; and (b) concerning the calculation that Debtors claim shows damages were "only" $8.7 million.

c. The methodology and assumptions used in calculating the "actual purchase costs" and "estimated generation costs" in Debtors' expert analysis.

d. The documents and data used to create or support the financial models Debtors used to support their Motion.

e. Communications with suppliers, subcontractors, or consultants regarding the causes of the delays in the Projects and Debtors' ability (or inability) to meet the adjusted Substantial Completion Dates.

f. The identity of the individuals involved in negotiating or drafting the Second Amended Contract and, specifically, the liquidated damages provision so that those individuals could be deposed.

g. Debtors' understanding in August 2024 of the risks to OPPD from late completion of the Projects and OPPD's market position and dependency on timely generation at SBLS and TCS.

6. All of the foregoing written discovery is needed to show that OPPD's actual damages were not easily ascertainable at the time the parties executed the Second Amended Contract, that the liquidated damages provision is reasonable, the parties' intentions when they agreed to the liquidated damages provision and executed the Second Amended Contract, the cause(s) of the delays at the Projects, and the flaws in Debtors' expert report.

7. OPPD also needs the opportunity to retain its own expert(s) and/or rebuttal expert(s) to address the issues raised in the Motion and Debtors' expert report. And the above written discovery is necessary for OPPD's experts to perform their own analyses and develop their opinions.

8. OPPD has worked diligently to identify the experts it believes are needed to address Debtors' claims. However, more time is needed for these individuals to complete their analyses and prepare their reports.

9. OPPD also needs to depose Debtors' representatives who negotiated the Second Amended Contract, including those who discussed or drafted the liquidated damages provision; Debtors' project managers; and Debtors' designated expert(s).

10. As with the written discovery identified above, these depositions will demonstrate the numerous fact issues raised by Debtors' Motion, including that OPPD's actual damages were not easily ascertainable at the time the parties executed the Second Amended Contract, that the liquidated damages provision is reasonable, the parties' intentions when they agreed to the liquidated damages provision and executed the Second Amended Contract, the cause(s) of the delays at the Projects, and the flaws in Debtors' expert report.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 6th day of May, 2025 in Dallas, Texas.



J. Michael Thomas

EXHIBIT 2

THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

* * * * *

IN RE:	*	
	*	
ZACHRY HOLDINGS, INC.,	*	NO. 24-BK-90377
	*	
DEBTOR	*	

****

ZACHRY HOLDINGS, INC.,	*	NO. 25-AP-03025
	*	Houston, Texas
vs.	*	
	*	10:04 a.m. - 10:24 a.m.
OMAHA PUBLIC POWER DISTRICT	*	April 14, 2025

* * * * *

MOTION HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

* * * * *

Proceedings recorded by electronic sound recording
Transcript produced by transcription service

APPEARANCES:

For Zachry Holdings, Inc.:

MR. CHARLES R. KOSTER (Houston Office)
MR. JASON ZAKIA (Chicago Office)
MS. LAURA GARR (New York Office)
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Houston, TX 77002

MR. JOHN B. THOMAS
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For Omaha Public Power District:

MR. THOMAS C. SCANNELL, JR.
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2021 McKinney Avenue
Suite 1600
Dallas, TX 75201

Courtroom Deputy:

AARON JACKSON

P R O C E E D I N G S

10:04 A.M. - APRIL 14, 2025

THE COURT: Next case we have is Zachry Holdings. It is 24-90377.

MR. KOSTER: Good morning. Charles Koster, White & Case, for the Reorganized Debtors. Very short agenda today, just one item going forward, a Status Conference in the Adversary Proceeding filed against OPPD with respect to the liquidated damages dispute.

The other matters on the agenda have come off given the current status of the case. We filed a notice of effective date last week mooting the cash collateral motion and a further extension of that relief, and with respect to Encino's request to file a late proof of claim. That has been adjourned to the May 12th hearing.

I have no heavy lifting to do, fortunately. I'm joined by my colleagues, Mr. Zakia and Ms. Garr and Mr. Thomas from the Hicks Thomas Firm. They will be addressing the status of this matter.

THE COURT: All right. Let's move then directly into that matter.

Mr. Zakia.

MR. ZAKIA: Good morning, Your Honor. Jason Zakia for the Debtors.

Your Honor, as you will have seen from the pre-conference report, the principal area of -- there are several areas of disagreement, but the principle one for today, I would submit, is a schedule. The parties have proposed starkly different ways for Your Honor to approach this case. And I'm happy to talk about whatever you'd like, but I was going to propose starting with that.

THE COURT: I was wondering, though, in that report it doesn't really say what to do about the semi-dispositive motions that are here, either to dismiss or to withdraw the reference or to transfer it somewhere else. What are y'all proposing we do? What are both parties proposing we do about those in conjunction with opening discovery and things of that nature?

MR. ZAKIA: So I think, Your Honor, our view would be those can proceed in parallel. There is no reason to stop progression of the case while those motions are pending. As Your Honor may have seen, we did file an Amended Complaint, so that would moot --

THE COURT: I saw an Amended Complaint. I also saw that on Friday you filed the answers to those, and y'all identified that they haven't had the chance to deal with --

MR. ZAKIA: Right. So I think that if they choose, after they see the Amended Complaint, they can move to dismiss that. That's their choice.

And with regards, we did file a response on the Motion to Transfer and the Motion to Withdraw Reference. We do not believe there's any reason that if Your Honor were to adopt our phase approach, Phase I, which would tee up the issue of the enforceability and availability of liquidating damages, which we think could substantially narrow this dispute and set us up for favorable conditions for potential mediation, we don't think there's any reason for that not to go forward now while Your Honor considers the pending motion.

THE COURT: So what discovery do you need, if any, to tee that question up?

MR. ZAKIA: So I think there would be far more limited discovery and more focused discovery, but some discovery with regard to the liquidated damage issue, specifically concerning -- I think we'd have some expert discovery on why the actual damages to be incurred were foreseeable and far, far, far different than the liquidated damage amounts set forth in the contract; and I think some targeted fact discovery potentially, for example, as to what arrangements OPPD

had made to mitigate their damages early on in the process, possibly before they even signed the contract.

THE COURT: So let's say you get all that discovery that you want.

MR. ZAKIA: Yes, Your Honor.

THE COURT: And they don't agree with you and I end up with a disputed factual question at that hearing, which I think I will. I'd be pretty shocked if there isn't a factual disagreement about that.

MR. ZAKIA: Yeah.

THE COURT: What good does it do to take it up first if I can't rule on it without bifurcating into a separate trial?

MR. ZAKIA: So, I think, Your Honor, you could rule on it notwithstanding -- we think that any factual disputes with regard to Phase I would be far, far more limited and easier to manage than what we propose for Phase III.

THE COURT: Okay. But are you proposing an actual bifurcation or trifurcation of the trial?

MR. ZAKIA: Bifurcation.

THE COURT: Because I thought this was only sort of a discovery issue, not a trial issue.

MR. ZAKIA: No, Your Honor, I think -- well, obviously, Your Honor is the judge and will decide how

we do it, but what we were proposing is that the end of Phase I we could have, to the extent there are factual issues, which I agree there might be -- they would be very narrow, but we could have an evidentiary hearing on Phase I and Your Honor could dispose of Phase I even if there were some limited factual issues at that point. That's what we were proposing --

THE COURT: So why do you need to take any discovery to bring your motion?

MR. ZAKIA: So, Your Honor, because I do think it is -- the reason we didn't just, for example -- well, I think that while there are certainly important legal issues with regard to Phase I, the enforceability of liquidated damages, it is necessarily going to turn on two factors:

One, the ability of the parties to foresee and determine what damages were likely to be --

THE COURT: Right. So you have your person saying you win; right? You've already got them lined up. You don't need to take your own versions discovery to say you win.

MR. ZAKIA: Sure. Although I do think, Your Honor -- and I'm not going to pre-argue the case and they will tell me I'm wrong. I think if we do discovery, you are going to see that what actually

happened on their side matches much more to what our expert is going to say that they could have done. They may have actually done it -- and I do think the factual discovery issues, while real, will be pretty targeted and pretty limited, which is why we think it could be done in a fairly streamlined manner.

THE COURT: So I guess what I'm wondering -- and I'm fixing to stop talking to you and talk to them for a minute about this same issue -- is why you can't file a dispositive motion on that question next week, let them oppose it under, among other things, probably 54(g), and we let things progress without deciding today whether we're going to have that bifurcated trial. I mean, we're all going to be speculating about what these factual disputes are until it's joined. So I don't see why you aren't in a position immediately to file your Motion for Summary Judgment on that.

MR. ZAKIA: Certainly, Your Honor. What we were trying to set up was how we saw it playing out. If Your Honor is not inclined to do that today, I certainly agree we could. If Your Honor were to set a schedule for the whole case, we could focus on that issue first and tee that up with a partial summary judgment motion, if that's what Your Honor is suggesting.

THE COURT: I guess I'm thinking I should be doing that as well as taking up the Motion to Dismiss and Transfer Venue, and then see where we are before I decide whether to bifurcate things, and probably not open discovery until we figure out the dismissal and the transfer matter.

In the meantime, you can be filing -- I wouldn't prevent you from filing your Summary Judgment Motion, make them answer it. We're then going to know what discovery we need and we come back for discovery in the context of the other pending motions. I know that's a different approach than what y'all have talked about, but I think it puts you where you need to be and I think it puts them where they need to be, which is they don't want me hearing this for -- I don't mean that pejoratively. They just want somebody --

MR. ZAKIA: They don't even want to start until next year.

THE COURT: They think it ought to be heard somewhere else.

MR. ZAKIA: I actually thought that was a typo when I first saw it.

So, Your Honor, certainly, what you are suggesting would work far better than the schedule they proposed. I certainly agree with that. And the only

issue I was trying to moot with our proposal is I do think it is very possible there will be a couple of discovery issues that might be needed for Phase I, and if we could get started on that, it would expedite the ability to resolve that issue. But we'll obviously proceed how Your Honor wants.

THE COURT: Yeah, how long will it take you to file your Motion for Summary Judgment, thought? Are we literally talking next week?

MR. ZAKIA: I'm getting the sign of two weeks, Your Honor.

THE COURT: Two weeks.

MR. ZAKIA: There's probably some cushion baked into it. But we could move, we could do that quickly.

THE COURT: But if you did that by the 28th and then they would have, if my calendar is right, until the 19th of May to file their response -- which would indicate, I'm assuming, a 54(g) in part response -- and then if we were to set their Motions to Dismiss and to Transfer and to Withdraw the Reference on the same day as we had the first hearing on the Motion for Summary Judgment, I'd say around June 2nd or so -- and I'm not opening my calendar to see what I really have free -- I think that puts you where you

want to be and where they want to be. And I'm not suggesting we delay things at all, but why don't you talk to your team and let me hear from them a little bit about this kind of an issue, too.

MR. ZAKIA: Thank you, Your Honor.

THE COURT: Thank you.

MR. SCANNELL: Thank you, Judge. Good morning. Tom Scannell for OPPD.

THE COURT: Good morning.

MR. SCANNELL: What Your Honor is proposing is what OPPD would support. What we're seeking is a traditional scheduling order that may be entered after the motions have been decided because we'll know where we are, we'll know where we're going to be, which direction the case is going. We do think it would be premature to trifurcate or bifurcate the schedule. It's too early in the case to even know what we don't know yet.

THE COURT: But, if I do that, I might very well set -- once I can read their motion and read your answer, if that will get rid of the dominant issue in the case, I'm not -- I would normally be inclined to bifurcate and I want you to be aware of that. So I'm not trying to terminate that as a concept. I just want to get it a little riper before we go there.

MR. SCANNELL: And I believe ripeness is the issue. We don't even know yet, but there may be other issues in the case that are going to come to light that could impact the liquidate damages issue. It's too soon for us to put that in a vacuum.

Essentially, I think it would be inequitable for them to sue us and then dictate to us how we get to defend our case. We need to be able to look at everything and decide whether or not it's appropriate to limit the issue to liquidate damages up front. We would not support that at this point in case.

To Your Honor's point, they are free to move for summary judgment as early as they want to, subject to any response we have that gets them where they want to be without any prejudice to us, and that's why we're opposing that.

THE COURT: So they filed their responses to your motions Friday. So, if I set you for a trial -- not for a trial, for a hearing on your motions the first week of June, does that work for you timing-wise?

MR. SCANNELL: It does, Your Honor. I believe it does.

THE COURT: And I make discovery open on a voluntary -- but full disclosures have to be made, of

course, under Rule 26, but then discovery would be open by both parties, but only on a voluntary basis so y'all can voluntarily decide to do some discovery. But at that hearing that we held in that first week of June, I will take up and then sort of the competing idea of whether we ought to bifurcate or not depending about what's in dispute. And I don't know what's going to be in dispute.

Are you okay with that whole concept?

MR. SCANNELL: That's fair, Your Honor.

THE COURT: So let me -- why don't you confer with your team and I'll let them confer with their team and we'll come back out.

MR. SCANNELL: Thank you, Judge.

THE COURT: In the meantime, I'll find a date for all this.

MR. ZAKIA: We just ask it not be June 5th, Your Honor.

THE COURT: Not be when?

MR. ZAKIA: June 5th.

THE COURT: It will not be June 5th, then.

MR. ZAKIA: Thank you.

THE COURT: Mr. Jackson, am I free the 2nd? It looks like I'm totally open the 2nd. Is that right? If I'm not misreading the calendar.

Yeah, I happen to be free on June 2nd. I have no idea why. It's the first I've looked at my calendar. That's the day we're targeting anyway. So that would avoid the 5th.

MR. ZAKIA: Thank you, Your Honor. And from our perspective, what Your Honor proposes works. It may be we're talking about limited discovery issues at that point, but then Your Honor will be more -- had the ability to read more about this and can adjudicate those issues at that time.

THE COURT: Yeah.

MR. ZAKIA: I assume when you say voluntary discovery. You mean both sides need to volunteer?

THE COURT: Yeah. Look, they want to move faster than you want to move, probably. And so them agreeing to do a little bit of discovery so that we're more prepared for the arguments on June 2nd may make a lot of sense to them. I don't know. It may not make sense to them. I'm not going to mandate that. I'm just saying I don't want to really open discovery, but that allows people to agree. These are some targeted areas where counsel knows it will be helpful for that hearing. Y'all can agree to do that. If you don't, you don't. I'm not going to make people agree to it, but I want to hear the Motion to Dismiss, I want to

hear whether I ought to be hearing it, I want to hear whether I ought to transfer it to Nebraska, all that stuff.

MR. SCANNELL: Understood. And we would file our motion with the expert report attached and can go from there.

THE COURT: So you're okay with June 2nd, 9:00?

MR. ZAKIA: I am.

THE COURT: Counsel?

MR. KOSTER: Thank you, Your Honor. That early date in June works for us. I would be remiss if I didn't at least mention to the Court that it's a bit of a moving target here because both of these projects are still ongoing. So whatever discovery we're doing, it's likely going to change, it's going to be hard to pin down because this whole dispute really centers on the cause for delays on projects that are still ongoing. So material facts that are relevant to really the heart of this dispute are still developing each day. So we'll have to see what the motion looks like when it gets filed. It's hard to tell what things are going to look like on June 2nd, but there's a very good chance that there's going to be a fact issue because things have come to light between now and the

beginning of June that we didn't know then or we don't know now.

THE COURT: Well, you're telling me there may be fact issues, he's telling me there may be fact issues. If I can get rid of any dominant issue in the case, then maybe we can resolve those at a mini trial.

On the other hand, I may leave that up to the judge in Nebraska; right?

MR. KOSTER: Correct.

THE COURT: So these will all be up on the table for that day.

MR. KOSTER: That's right.

THE COURT: But I don't want to take it off the table and I don't want your client thinking that we're not going to do that. I want your client knowing that that is a normal event for me to do, to bifurcate or trifurcate a case to try and get rid of dominant issues.

That does not mean that it's appropriate to you. That just means you may have told your client. Most of you have gone through a whole lot of bifurcations. It's something I do a lot as part of my case management. It has to make sense. I don't do it every time it's asked for, but I do it some. And that's why I want to hear that argument.

MR. KOSTER: I've been in front of you for 16 years. I've seen you do it.

THE COURT: I know. Thank you.

MR. KOSTER: Thank you, Judge.

MR. ZAKIA: One last point, Your Honor. I don't think it changes anything as to how we're going to proceed. But the good news with regard to what counsel just mentioned is the projects are already largely complete and both should be completed well before June 2nd. It should be in the next couple of weeks.

THE COURT: You know, full completion of a project also has to have people sit down and talk about their problems, so that's a good thing.

MR. ZAKIA: Thank you, Your Honor.

THE COURT: Can I do all this by documentary or do y'all want to have a formal order? I don't care.

MR. KOSTER: Documentary will be fine, Your Honor.

THE COURT: All right. So what we're talking about is Adversary Proceeding 25-3025. On June 2nd, at 9:00, we will hear ECF No. 11, the Motion to Dismiss this proceeding. We will hear ECF No. 12, the Motion to Withdraw the Reference or Transfer Venue of this issue. We will hear a Motion for Summary Judgment to

be filed by Zachry not later than April 28th at 5:00 p.m.. The response to the Motion for Summary Judgment will be due on May 19th, not later than 5:00 p.m.. Any response to that will be due not later than May 28th at 5:00 p.m.. The hearing, again, will start at 9:00 on June 2nd.

We will also hear at 9:00 on June 2nd whether to issue a Scheduling Order that bifurcates the proceeding or to issue a more traditional Scheduling Order. That will be part of what we take up on the 2nd.

Finally, discovery is not yet open. Disclosures must me made in accordance with the rules. The parties may engage in discovery by consent if they wish to target narrow areas that they think would be helpful. I'm not requiring the parties to do that, but allowing that to occur.

I think that's what all we ordered. If y'all continue that as well, you let me know. But I wanted Mr. Jackson to have good notes of what we're doing.

So, if we could, I'm going to get Mr. Koster back up to be sure we have a good record of what we've done on the balance of the agenda.

So the Encino matter, which is ECF 2120,

is continued by agreement to May 12th at 10:00 in the morning?

MR. KOSTER: Correct.

THE COURT: The Status Conference has been held. The Cash Collateral Motion is moot.

I think that's it.

MR. KOSTER: That's correct, Your Honor.

THE COURT: Is there anything else anyone here or on the phone believes we ought to be covering at this morning's hearing?

[No response]

Okay, thank you.

[10:24 a.m. - Proceedings adjourned.]

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Gwen Reed

4-16-25

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)
Debtor.	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.,	§	
Plaintiff,	§	Adversary No.: 25-03025 (MI)
v.	§	
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

ORDER GRANTING DEFENDANT OMAHA PUBLIC POWER DISTRICT'S VERIFIED EMERGENCY MOTION FOR CONTINUANCE OF THE REORGANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES

On this day the Court considered *Defendant Omaha Public Power District's* ("**OPPD**") *Verified Emergency Motion for Continuance of the Reorganized Debtors' Motion for Partial Summary Judgment Re: Liquidated Damages* (the "**Emergency Motion**"). After considering the Emergency Motion, the Court is of the opinion that the Emergency Motion should be GRANTED.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Emergency Motion is GRANTED.

[1] The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ZHI. The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

2. The June 2, 2025 hearing on *Reorganized Debtors' Motion for Partial Summary Judgement Re Liquidated Damages* [Docket No. 37] will be continued to a later date.

Dated: _____

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE