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.	§	

MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEFENDANT OMAHA PUBLIC POWER DISTRICT TO FILE UNDER SEAL CERTAIN INFORMATION RELATED TO DEFENDANT OMAHA PUBLIC POWER DISTRICT'S RESPONSE TO THE REORGANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Omaha Public Power District ("**OPPD**"), by and through its undersigned counsel, hereby files this *Motion for Entry of an Order Authorizing Defendant Omaha Public Power District to*

[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.

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File Under Seal Certain Information Related to Defendant Omaha Public Power District's Response to the Reorganized Debtors' Motion for Partial Summary Judgment re Liquidated Damages (this "**Motion**"). In support of the Motion, OPPD states as follows:

I. RELIEF REQUESTED

1. OPPD seeks entry of an order, substantially in the form attached hereto (the "Order"), authorizing OPPD to redact and file under seal the Exhibits to *Defendant Omaha Public Power District's Response to the Reorganized Debtors' Motion for Partial Summary Judgment re Liquidated Damages* (the "**Response**"), filed concurrently herewith.[2]

2. The predicates for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), rules 2002 and 9018 of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**"), and rule 9013-1(d) and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**").

II. BACKGROUND

3. Prior to the Petition Date, 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]

4. The Contract was first amended on November 9, 2023, pursuant to that certain *Amendment No. 1 to Engineer, Procure, and Construct Contract for Omaha Public Power District*

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Response.

[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.

Standing Bear Lake and Turtle Creek Generating Stations (Contract No. 263406) (the "**First Amendment**").

5. On August 13, 2024, the parties further amended the Contract pursuant to the terms of that certain *Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations* (Contract No. 263406) (hereinafter the "**Second Amendment**" and together with the First Amendment and Original Contract, the "**Contract**").

6. The Contract includes a confidentiality provision that binds both parties to strict non-disclosure obligations with respect to certain confidential information. The Exhibits OPPD has attached to the Response contain confidential and proprietary information of both Zachry and OPPD. As such, OPPD requests authorization to file the Exhibits attached to the Response under seal.

7. Zachry has been provided with a copy of the Exhibits contemporaneously with this filing and thus will not be prejudiced by this request.

III. BASIS FOR RELIEF

8. Pursuant to section 107(b) of the Bankruptcy Code, the Court is authorized to issue orders to protect entities with respect to certain confidential information. *See* 11 U.S.C. § 107(b). Additionally, section 105(a) of the Bankruptcy Code, which codifies the bankruptcy court's inherent equitable powers, empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

9. Bankruptcy Rule 9018 implements section 107(b) of the Bankruptcy Code, which provides, in relevant part: "On Motion or on its own, the court may, with or without notice, issue any order that justice requires to . . . protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information." FED. R. BANKR. P. 9018(a)(1); 11 U.S.C. § 107(b).

10. Further, Local Rule 9037-1(c) provides, in relevant part, that "[a] motion, reply, or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal." BLR 9037-1(c).

11. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, "the court is *required* to protect a requesting party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); *see also In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) ("The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter."); *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) ("The statute, on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.") (emphasis in original).

12. Although there is a strong presumption in favor of public access to court records, such access is not without limit. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Sections 105(a) and 107(b) and Bankruptcy Rule 9018 authorize this Court to limit public access under the circumstances present in these cases.

13. Here, the Exhibits contain confidential and proprietary information of Zachry and OPPD. Zachry has been provided with a copy of the Exhibits contemporaneously with this filing and thus will not be prejudiced by this request. Moreover, the Contract contains a confidentiality provision that binds both parties to strict non-disclosure obligations with respect to certain confidential information. Out of an abundance of caution, OPPD requests authorization to file all Exhibits attached to the Response under seal.

14. Accordingly, OPPD requests that the Court permit OPPD to redact and file under seal the Exhibits to the Response. OPPD submits that the proposed redaction is necessary and appropriate under section 107 of the Bankruptcy Code. OPPD, therefore, requests that the Court grant the requested relief.

Dated: May 19, 2025

Respectfully submitted by:

/s/ Thomas C. Scannell

Thomas C. Scannell (TX 24070559)
Robert T. Slovak (TX 24013523)
J. Michael Thomas (TX 24066812)
Zachary C. Zahn (TX 24137675)
FOLEY & LARDNER LLP
2021 McKinney Avenue, Ste. 1600
Dallas, Texas 75201
Telephone: (214) 999.3000
Facsimile: (214) 999.4667
tscannell@foley.com
rslovak@foley.com
jmthomas@foley.com
zzahn@foley.com

ATTORNEYS FOR OMAHA PUBLIC POWER DISTRICT

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be filed on May 19, 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 certify that on May 19, 2025, I conferred with counsel for Zachry regarding the relief sought in this Motion. Based on counsel's response, counsel for OPPD is treating the Motion as opposed.

/s/ Thomas C. Scannell
Thomas C. Scannell

UNITED STATES BANKRUPTCY COURT
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Plaintiff,	§	Adversary No.: 25-03025 (MI)
v.	§	
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

ORDER AUTHORIZING DEFENDANT OMAHA PUBLIC POWER DISTRICT TO FILE UNDER SEAL CERTAIN INFORMATION RELATED TO DEFENDANT OMAHA PUBLIC POWER DISTRICT'S RESPONSE TO THE REORGANIZED DEBTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES

Upon the motion (the "**Motion**") of defendant Omaha Public Power District's ("**OPPD**") for entry of an order (this "**Order**") authorizing OPPD to redact and file under seal the Exhibits to *Defendant Omaha Public Power District's Response to the Reorganized Debtors' Motion for Partial Summary Judgment re Liquidated Damages* (the "**Response**"), all as more fully set forth in the Motion; and this Court having found that the relief requested in the Motion is appropriate; and this Court having found that OPPD's notice of the Motion and opportunity for a hearing on

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the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if applicable (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. Pursuant to sections 105(a) and 107(c) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rule 9037-1, OPPD is authorized to file the Exhibits to the Response under seal.

2. The Exhibits shall remain confidential, shall remain under seal, and shall not be made available to anyone other than this Court, without further order of this Court. The Clerk of the Court shall treat the Exhibits as confidential.

3. To the extent that the Exhibits are attached or referred to in any further pleadings or documents filed with this Court related to this adversary proceeding, this Order shall apply to such pleading or document.

4. Any party who receives the Exhibits in accordance with this Order shall not disclose or otherwise the Exhibits to any other person or entity, without the consent of OPPD or further order of this Court.

5. Nothing in this Order prejudices the rights of any party in interest, including the Debtors, to seek, on appropriate motion, the unsealing of the Exhibits or any part thereof.

6. OPPD is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE