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 OBJECTIONS TO PLAINTIFF'S SUMMARY JUDGMENT EVIDENCE AND MOTION TO STRIKE
[Related Docket Nos. 35, 36, and 37]

Omaha Public Power District ("**OPPD**"), by and through its undersigned counsel, hereby files *Defendant Omaha Public Power District's Objections to Plaintiff's Summary Judgment Evidence and Motion to Strike* (the "**Motion**") to the *Declaration of Tanya Bodell* [Docket No. 36] (the "**Bodell Declaration**") filed in support *of Reorganized Debtors' Motion for Partial Summary Judgment Re Liquidated Damages* [Docket Nos. 35, 37] (the "**MSJ**").[2] In support of this Motion, OPPD respectfully submits as follows:

[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 Motion filed at Docket No. 37 is indicated as a corrective filing of Docket No. 35.

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I. INTRODUCTION AND SUMMARY

Plaintiff Zachry Industrial, Inc.'s ("**Plaintiff**" or "**Zachry**") MSJ confirms that Zachary's claims are built on conclusory and speculative allegations unsupported by reliable information.

Zachry instituted this Adversary Proceeding barely three months ago; yet, without discovery or due process, now asks this Court to grant summary judgment in its favor as to the availability and enforceability of the Liquidated Damages Clause in the parties' Contract. Zachry bears the burden to establish that the Liquidated Damages Clause is unenforceable.[3] Zachry has not (and cannot) meet this burden, including because it is estopped from doing so and genuine issues of material fact remain.

Rather than provide contemporaneous evidence of the parties' intent—as it must to obtain summary judgment—Zachry relies on the post-hoc analysis of an "expert" named Tanya Bodell, contending: (i) the amounts provided in the Liquidated Damages Clause are not a reasonable estimate of the harm caused by Zachry's failure to meet the Guaranteed Substantial Completion Dates; (ii) the amount of OPPD's economic damages are significantly lower than the amounts provided in the Liquidated Damages Clause; and (iii) OPPD would have been able to anticipate at the time the parties entered into the Second Amendment the economic damages it would incur if Zachry failed to meet the Guaranteed Substantial Completion Dates. However, Ms. Bodell readily acknowledges that she has not been provided the information necessary for her opinions to be fulsome and correct. Instead, she depends on incomplete information, her speculation regarding "comparable" substitute data, and faulty assumptions. As such, Ms. Bodell's testimony is not reliable under the principles set forth in *Daubert*, and Zachry's improper expert analysis should be stricken from the summary judgment record.

[3] *Lund-Ross Constructors, Inc. v. Vecino Nat. Bridge, LLC*, No. 8:19CV550, 2023 WL 5607563, at *6 (D. Neb. Aug. 30, 2023).

II. FACTUAL BACKGROUND

OPPD incorporates by reference its factual background from its *Response to Reorganized Debtors' Motion for Partial Summary Judgment Re Liquidated Damages*, which is filed contemporaneously with this Motion.

III. PROCEDURAL HISTORY

Prior to any formal declaration of a breach by OPPD and the completion of the Projects, Zachry filed the *Debtors' Adversary Complaint for Declaratory Relief* [Docket No. 1] (the "**Complaint**") against OPPD in the above-captioned adversary proceeding on February 5, 2025 (the "**Adversary Proceeding**"), initially asserting three claims for declaratory relief.

A. Zachry's filing of the Adversary Proceeding and Plan forces OPPD to file its Admin Claim.

After Zachry filed this Adversary Proceeding, and to preserve its rights in accordance with the Plan, OPPD was forced to file its *Application for Allowance of Administrative Expense Claim* (the "**Admin Claim**") on February 14, 2025.[4] Through its Admin Claim, OPPD seeks the allowance of its contractual damages 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.[5]

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[4] Docket No. 2176 (Case No. 24-90377). Pursuant to the *Stipulation and Agreed Order Regarding Omaha Public Power District's Application for Allowance of Administrative Expense Claim and the Debtors' Related Adversary Proceeding*, which was entered by this Court on April 1, 2025 [*See* Docket No. 2685 (Case No. 24-90377)], the parties agreed to (i) abate the Admin Claim in its entirety "until such time as the Debtors' liability, if any, to OPPD in connection with the EPC Contract is determined on a final basis"; and (ii) set forth the procedure for determining the allowance or disallowance of the Admin Claim. An identical stipulation was filed in this proceeding at Docket No. 14. On April 21, 2025, this Court entered an Order mooting the stipulation filed in this proceeding, but no action has been taken on the stipulation that was filed and ultimately entered in the Debtors' Bankruptcy. *See* Docket No. 33.

[5] The Debtors have since filed the *Debtors' Objection to Omaha Public Power District's Application for Allowance of Administrative Expense Claim* [Docket No. 2176 (Case No. 24-90377)].

B. Zachry's attempt to forum shop necessitates the filing of the Transfer Motions.

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 "**Transfer Motions**"), both of which are fully incorporated herein by reference pursuant to Federal Rule of Civil Procedure 10(c).[6]

Zachry filed its *Omnibus Objection to Omaha Public Power District's (I) Motion to Withdraw the Reference and (II) Motion to Transfer Venue* [Docket No. 24] on April 11, 2025. Shortly thereafter, OPPD filed its *Reply to Zachry's Omnibus Objection to Omaha Public Power District's (I) Motion to Withdraw the Reference and (II) Motion to Transfer Venue* [Docket No. 31]. The Transfer Motions are set for hearing on June 2, 2025.

C. Zachry amends its Complaint after OPPD moves to dismiss Zachry's claims.

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

As further explained in OPPD's *Motion and Supporting Brief to Dismiss First Amended Adversary Complaint* [Docket No. 34] (the "**Motion to Dismiss**"), Zachry has transformed this alleged Adversary Proceeding into full-blown commercial litigation. Zachry now seeks declaratory judgment on three issues: (i) that the liquidated damages provision of the Contract and Second Amendment are unenforceable, (ii) that the Guaranteed Substantial Completion Dates have not yet

[6] 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 a ruling on this Motion. *See, e.g.*, *Andrade v. Chojnacki*, 934 F. Supp. 817, 825 (S.D. Tex. 1996) ("[A]n important element in the litigation, such as a motion for summary judgment, should not be decided by the transferor court but should be adjudicated by the court that has responsibility for ultimately deciding the case.").

occurred, and (iii) the reduction of OPPD's Admin Claim. Additionally, Zachry wants this Court to prematurely find that OPPD breached the Contract and Second Amendment as well as its duty of good faith and fair dealing, well before the accrual of any obligation or performance owed by OPPD. On May 16, 2025, Zachry filed its response to the Motion to Dismiss.[7]

D. The status conference, discovery, and Zachry's MSJ.

The Court held a status conference on April 14, 2025,[8] wherein the parties discussed the various gate-keeping issues and Zachry noted that it would like a tri-furcated scheduling order. Notably, Zachry represented at the Hearing that it wished to conduct "limited" and 'focused" discovery concerning the enforceability of the liquidated damages clause." Ex. 1, 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. 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.

On April 28, 2025, Zachry filed its MSJ and the Bodell Declaration. Zachry retained Ms. Bodell to serve as its expert in this matter. *See* Bodell Declaration at ¶¶ 4, 9. Although during the Status Conference, Zachry noted that it intended to attach an expert report to its summary judgment motion, Zachry never identified Ms. Bodell as an expert witness prior to filing Ms. Bodell's declaration in support of its MSJ. That failure alone should justify her exclusion.

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 56 allows a party to object to any evidence submitted to oppose a motion for summary judgment that "cannot be presented in a form that would be admissible in evidence." FED. R. CIV. P. 56(c)(2). A "court's decision to exclude evidence in

[7] *See* Docket No. 44.
[8] Attached hereto as **Exhibit 1** is a copy of the Hearing transcript.

connection with a summary judgment motion" is reviewed "under the abuse of discretion standard." *Warren v. Fed. Nat'l Mortg. Ass'n*, 932 F.3d 378, 383 (5th Cir. 2019).

In the Fifth Circuit, it is well settled that the admissibility of summary judgment evidence is subject to the same rules of admissibility applicable to a trial. FED. R. CIV. P. 56(c)(2); *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1024 (5th Cir. 1995); *Calderon v. Bank of Am. N.A.*, 941 F. Supp. 2d 753, 758 (W.D. Tex. 2013). At the summary judgment stage, courts may not consider inadmissible evidence. *See Fowler v. Smith*, 68 F.3d 124, 126 (5th Cir. 1995) ("Evidence on summary judgment may be considered to the extent not based on hearsay or other information excludable at trial."). Expert testimony is only admissible if it is both relevant and reliable. *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002) (citing *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993)).

V. ARGUMENT AND AUTHORITIES

Zachry relies heavily on the Bodell Declaration to support its MSJ arguments. *See generally* MSJ. Zachry's reliance is misplaced. "Rule 702 assigns the district judge a gatekeeping role to ensure that [expert] testimony is both reliable and relevant." *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012) (internal quotation marks omitted); *Daubert*, 509 U.S. at 592-93; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999) (applying *Daubert* to non-scientific experts). To be admissible, the expert's testimony must be helpful to the factfinder, which requires that the expert is (1) qualified and (2) that his or her testimony (a) has a reasonable factual basis, (b) is based on reliable methods; and (c) is relevant to facts in issue. FED. R. EVID. 702, 703; *General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Daubert*, 509 U.S. at 589. As discussed below, Ms. Bodell's testimony does not meet this standard because it has no reasonable factual basis and is based on an unreliable methodology. As such, Ms. Bodell's testimony is not reliable and should be stricken from the summary judgment record.

A. Ms. Bodell testimony relies on speculation and incomplete information.

Ms. Bodell's testimony is fatally flawed because, *inter alia*, she lacks much of the information that, by her own admission, is critical to reach accurate conclusions regarding (i) whether the amounts provided in the Liquidated Damages Clause reflect a reasonable estimate of the harm caused by Plaintiff's failure to meet the Guaranteed Substantial Completion Dates; (ii) the amount of OPPD's economic damages; and (iii) whether OPPD would have been able to anticipate at the time the parties entered into the Second Amendment the economic damages it would incur if Zachry failed to meet the Guaranteed Substantial Completion Dates. *See, e.g.,* Bodell Declaration at ¶¶ 42, n.54, 52-54, 60, 68, 71-72, 86, 91.[9]

Because Ms. Bodell lacks the actual information that exists and is necessary to reach accurate conclusions, she relies on her own speculation and information she assumes may serve as a comparable substitute for the actual, missing information. *Id.*; *see also id.* at ¶¶ 73-74, 78. Ms. Bodell's assumptions are wrong. For example, Ms. Bodell's analysis of OPPD's estimated economic damages relies on capacity pricing for a neighboring market, the Midcontinent Independent System Operation ("**MISO**") capacity market in Iowa ("**MISO Zone 3**"), not the capacity market in the Southwest Power Pool ("**SPP**"). *Id.* at ¶ 74. As an initial matter, OPPD is a member of SPP, not MISO. **Exhibit 2**, Expert Report of Kimberly Reome (the "**Reome Report**") at ¶ 4.1.12. Further, OPPD has the actual capacity pricing information for SPP that it can produce at the appropriate time. Therefore, it is inappropriate and unreliable to resort to using a comparable price from MISO Zone 3, when Ms. Bodell could rely on the actual pricing information, which is inherently more accurate. *See id.* at ¶¶ 4.1.12-4.1.14.

[9] Presumably, Ms. Bodell lacks this information because the parties have not engaged in formal discovery. However, that does not excuse Zachry's improper procedural gamesmanship in prematurely seeking summary judgment in its favor based exclusively on its own unsupported version of events.

Even if the capacity pricing for MISO Zone 3 were a fair substitute for SPP's capacity pricing—it is not—Ms. Bodell cherry-picked pricing information from a narrow window of time. Ms. Bodell's analysis used $0.75 per MW-day for winter 2024-2025 and $34 per MW-day in spring 2025. Bodell Declaration, Exhibit E. The same day that Ms. Bodell issued her declaration, MISO's annual auction results came out for the correct time period, and the new capacity pricing rose dramatically. Ex. 2 at ¶ 4.1.13. MISO explained that the capacity price increased in part because "[n]ew capacity additions did not keep pace with decreased accreditation, suspensions/retirements, and external resources," as well as "[d]elays of new resource additions [and] [m]ore frequent extreme weather," among other reasons. *Id*. The information published by MISO on the same day that Ms. Bodell issued her declaration disclosed rates of $667 per MW-day for summer 2025, $92 per MW-day for fall 2025, $33 per MW-day for winter 2025-2026, and $70 per MW-day for spring 2026. *Id*. Because Ms. Bodell limited her analysis to a five-month period, she only looked at a period of very low pricing. *Id*. If Ms. Bodell used the new MISO pricing in her damages model, her estimate of OPPD's economic damages would be dramatically higher. *Id.* at ¶ 4.1.14. "Expert testimony that ignores existing data and is based on speculation … is not helpful" and is not admissible. FED. R. EVID. 702 (Advisory Committee Notes, 2000 Amendments); *Paz v. Brush Engineered Materials, Inc.,* 555 F.3d 383, 389 (5th Cir. 2009) (holding that an opinion based on "insufficient, erroneous information," fails the reliability standard).

Notably, the very market that Ms. Bodell relied on for her analysis illustrates the inherent volatility in capacity prices. *See* Ex. 2 at ¶¶ 4.1.11, 4.1.14. When it was negotiating the Liquidated Damages Clause, OPPD necessarily had to take into consideration the volatility of the capacity market. *Id.* at ¶ 4.1.14. The volatility of the capacity market demonstrates, in part, why the Liquidated Damages Clause was necessary. *See id*. At the time the parties entered into the Second

Amendment, the actual damages OPPD would incur if Zachry failed to meet the Guaranteed Substantial Completion Dates would be difficult to ascertain or calculate because capacity pricing is volatile. *See id*. Ignoring this issue renders Ms. Bodell's opinion unreliable.

B. Ms. Bodell's testimony relies on unsubstantiated factual assertions.

Expert opinions based on flawed "facts" or assumptions are to be stopped by the Court in its role as gatekeeper: it is not enough that an opposing party has the opportunity to challenge the faulty foundation during cross examination. *See, e.g., Group Health Plan, Inc. v. Philip Morris Inc.*, 188 F. Supp. 2d 1122, 1134 (D. Minn. 2002) (unrealistic and speculative facts do not "merely affect the weight" that testimony should be given, but require exclusion); *Joy v. Bell Helicopter Textron, Inc.*, 999 F.2d 549, 569 (D.C. Cir. 1993) ("[I]n view of the patent flaws in [the expert's] testimony, we must resist 'the temptation to answer objections to receipt of expert testimony with the shorthand remark that the jury will give it the weight it deserves.'") (internal citation omitted). "[U]nsubstantiated factual assertions" are inadmissible because the "existence of sufficient facts [to support the opinion]... is in all instances mandatory." *Hathaway v. Bazany*, 507 F.3d 312, 318-19 and n. 4 (5th Cir. 2007).

Here, the Court must exclude Ms. Bodell's faulty opinion that there is a "disconnect" between OPPD's actual damages and the amount provided in the liquidated damages provision, Bodell Declaration at ¶ 45, from the summary judgment record because her baseline assumption contains an improper factual predicate. Specifically, Ms. Bodell states that OPPD expects the Projects to operate only 15 percent of the time. *Id.* at ¶ 62. Ms. Bodell's characterization of OPPD's expectation is based on a public statement from OPPD that is taken out of context. *See id*. at ¶ 16, n.10; *see also See* **Exhibit 3**, *Declaration of Joseph Lang in Support of Defendant Omaha Public Power District's Opposition to Zachry's Motion for Partial Summary Judgment re: Liquidated Damages* at ¶¶ 6. While OPPD's public statement is accurate from the standpoint of expectations

for producing electric **energy**, power plants (like the Projects) provide more than just energy. Ex. 3 at ¶¶ 4-6. For example, every load serving entity such as OPPD must have the capacity available to meet peak demand at any time, plus a margin above that demand. *Id.* at ¶ 4. This is required of OPPD as a member of the SPP. *Id.* This flawed assumption undercuts the central foundation of Ms. Bodell's opinion and methodology, enhancing again that her report is unreliable.

The Court should also exclude Ms. Bodell's conclusions regarding the amount of OPPD's actual economic damages because Ms. Bodell did not consider all categories of actual damages. In her Declaration, Ms. Bodell opined that the amounts provided in the Liquidated Damages Clause "significantly exceed estimated economic damages that OPPD incurred." Bodell Declaration at ¶ 21.1. Ms. Bodell based her opinion on calculations she performed of OPPD's damages relating to a narrow set of categories of actual damages (i.e., Capacity Purchases and Missed Market Energy Revenue). Ex. 2 at ¶ 4.1.8. However, Ms. Bodell's estimate of OPPD's actual damages does not take into consideration several other categories of damages. *Id.* at ¶¶ 4.1.2, 4.1.8. For example, Ms. Bodell did not take into consideration damages related to Firm Natural Gas Transport, Lost Retail Revenue, and Extended Project Costs. *Id.* at ¶ 4.1.8. Because Ms. Bodell did not include all of the categories of OPPD's actual damages, her estimate of OPPD's economic damages is understated and unreliable. *Id.* at ¶¶ 4.1.2, 4.1.8. Accordingly, this Court should sustain OPPD's objection to the Bodell Declaration and strike the declaration from the summary judgment record.

VI. CONCLUSION

For the foregoing reasons, OPPD respectfully asks that this Court enter an order (a) sustaining OPPD's objections to the Bodell Declaration; (b) striking the Bodell Declaration from the summary judgment record; and (c) granting OPPD such other and further relief as this Court finds just and proper.

Dated: May 19, 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 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

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 MOTION TO STRIKE

On this day the Court considered *Defendant Omaha Public Power District's* ("**OPPD**") *Objections to Plaintiff's Summary Judgment Evidence and Motion to Strike* (the "**Motion**"). After considering the Motion, the Court is of the opinion that the Motion should be GRANTED.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.

2. The Bodell Declaration is stricken from the summary judgment record.

[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.

Dated: _____

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

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

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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

Exhibit 2

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

In re:	§	Chapter 11
ZACHRY HOLDINGS, INC., *et al*	§	Case No. 24-90377 (MI)
Debtor.	§	(Jointly Administered)
ZACHRY HOLDINGS, INC.,	§	
Plaintiff,	§	
v.	§	Adversary No.: 25-03025 (MI)
OMAHA PUBLIC POWER DISTRICT,	§	
Defendant.	§	

DECLARATION OF KIMBERLY REOME

I, Kimberly Reome, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. I am over 21 years old. I am of sound mind and capable of submitting the testimony herein (including all exhibits and attachments incorporated herein). I submit this declaration in support of Omaha Public Power District's opposition to Zachry Holdings, Inc.'s Motion for Partial Summary Judgment on Liquidated Damages, filed in the above-referenced adversary proceeding.

2. I have prepared the *Expert Report of Kimberly Reome*, which is attached hereto and entirely incorporated herein as if set forth verbatim. I make the statements of fact herein (including all exhibits and attachments incorporated herein) from my own personal knowledge, research, and analyses. If called as a witness in this proceeding, I would testify competently to the contents set forth herein (including all exhibits and attachments incorporated herein).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of May, 2025.

Signed by:
Kimberly R Reome
8164930B8950452...

Kimberly Reome

CASE NO. 24-90377 AND 25-03025

IN THE MATTER OF A LITIGATION BETWEEN

ZACHRY HOLDINGS, INC — PLAINTIFF

AND

OMAHA PUBLIC POWER DISTRICT — DEFENDANT

EXPERT REPORT OF KIMBERLY REOME

May 19, 2025

ON BEHALF OF: Omaha Public Power District

PREPARED FOR: Foley & Lardner LLP

SUBJECT MATTER: Damages

Signed by:
8164930B8950452...

KIMBERLY REOME

May 19, 2025

HKA

HKA Global, LLC
300 South Wacker Drive
Suite 3300
Chicago, Illinois 60606

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1. EXECUTIVE SUMMARY

1.1 OVERVIEW

1.1.1 I have been requested to opine on the calculation of Omaha Public Power District's ("OPPD") damages resulting from Zachry's[1] failure to reach Guaranteed Substantial Completion on construction of two power plants. The issues which I have been requested to provide my opinion on are as follows:

a) Calculate OPPD's contractual Liquidated Damages.

b) As an alternate measure of damages, review OPPD's calculation of actual damages.

c) Determine if OPPD's Liquidated Damages are a reasonable approximation of OPPD's actual damages.

d) Review and respond to the opinions on damages expressed in the Declaration of Tanya Bodell, filed on behalf of Zachry.

1.2 SUMMARY OF OPINIONS

1.2.1 Based on my analysis of the information available to date, it is my opinion that:

a) OPPD's Liquidated Damages due to Zachry's delay of the Guaranteed Substantial Completion Date are approximately $64.3 million.

b) OPPD's Liquidated Damages are a reasonable approximation of actual damages.

c) Liquidated Damages are commonly used when actual losses are difficult to ascertain with precision, as is the case here.

d) OPPD's actual damages to date are substantial and ongoing, and based on available data, those damages are expected to ultimately exceed $64.3 million, and may be much higher. OPPD's damages are expected to continue through at least December 2025.[2]

[1] "Zachry" is defined in ¶ 2.6.1 below.

[2] I understand that Zachry promised multiple Substantial Completion dates at different times, and that OPPD is currently estimating damages through December 2025. If Substantial Completion is reached earlier or later, my opinion on damages may be updated based on the final date achieved.

e) Ms. Bodell has significantly understated OPPD's actual damages. Ms. Bodell only estimated certain categories of actual damages, and for those categories she did consider, OPPD's actual damages are greater than what she estimated. Ms. Bodell did not provide workpapers allowing a detailed review of her analysis. Ms. Bodell's analysis only considered a limited time period, used capacity pricing from a different location, failed to consider the volatility in capacity prices, and the pricing she used is already outdated. As a result, her opinion does not represent a reliable or comprehensive assessment of OPPD's economic loss.

f) I understand discovery has been limited to date. As a result, I reserve the right to amend my opinion as information becomes available.

2. INTRODUCTION

2.1 EXPERT QUALIFICATIONS

2.1.1 I, Kimberly R. Reome, am a Partner of HKA Global, LLC ("HKA"), based in the company's Chicago office. HKA is a consulting firm of accounting, financial, economic, and engineering professionals with expertise in the evaluation of economic damages and the determination of delays in the construction and electric power industries. HKA's professionals have substantial experience regarding financial, accounting, economic, business operations, and damages issues on complex commercial litigation.

2.1.2 I have a Bachelor of Arts in Finance from Michigan State University Honors College and a Master of Business Administration from Northwestern University Kellogg School of Management. I am a Certified Construction Industry Financial Professional and a Certified Fraud Examiner.

2.1.3 I have over 30 years of experience analyzing, quantifying, and developing damages analyses, with experience analyzing accounting, financial, and economic issues in various types of disputes, with a primary focus in the electric power and construction industries. I have provided expert testimony, authored expert reports, and assisted in the production of expert reports on numerous electric power and construction disputes. My experience includes calculating damages for matters relating to power plants, including calculation of replacement power and capacity costs during power plant shutdowns and derates.

2.1.4 My Curriculum Vitae and list of testimony experience are appended to this Report at Appendices A and B, respectively.

2.2 ASSISTANCE

2.2.1 I have been assisted by others in the preparation of this Report. I confirm that these individuals worked under my supervision and direction.[3]

2.2.2 The opinions expressed in this Report are mine and mine alone.

2.3 RETENTION

2.3.1 HKA has been retained by Foley & Lardner LLP ("Foley"), acting on behalf of OPPD, to provide expert opinion on OPPD's damages incurred for delay in substantial completion on two electric generating stations.

2.3.2 HKA billed for my services on this matter at a rate of $695 per hour. Rates of consultants working under my direction range from $175 to $595 per hour. No compensation to be paid to HKA is contingent on the outcome of this matter or the content of these opinions.

2.4 INFORMATION AND MATERIALS PROVIDED AND RELIED UPON

2.4.1 In connection with my analysis, I relied on information and documents provided by the parties to this litigation, various pleadings, discussions with client personnel and Counsel, publicly available information, and my own education, training and experience analyzing similar issues as those raised in this case. This report, which sets forth my qualified opinions and the basis for those qualified opinions, relies on the information available, reviewed, and analyzed as of May 19, 2025. See Appendix C for a list of documents and information considered.

2.4.2 Since discovery—including document production—has not yet commenced,[4] and I understand that no depositions have occurred, it is likely that additional information will be available for my review and consideration at a later date. I reserve the right to amend this Report if further information or documents are provided to me or otherwise become available to me. I reserve the right to respond to any additional information obtained through discovery or issues raised by experts retained by Zachry, if any.

2.4.3 In connection with my anticipated trial testimony in this action, I reserve the right to prepare additional exhibits, charts, graphs, tables, demonstratives, and diagrams to summarize or support

[3] As used herein, other than references to my education and experience, "I" and "We" shall mean either I personally or those HKA personnel under my supervision. Also, "My", "Our", and "Us" shall also refer to actions taken by me personally or by those HKA personnel under my supervision.
[4] *Joint Discovery/Case Management Plan Under Federal Rule of Civil Procedure 26(f)* dated April 7, 2025, ¶ 11.

the opinions and analyses set forth in this Report. If called as a witness at trial, I may testify to some or all of the opinions in this Report. I will notify Foley, in writing, if, for any reason, my existing report requires any correction or qualification that impacts my opinion(s). I have not yet created such exhibits as of this report's date.

2.4.4 My opinion is based on the assumptions that: My understanding of the EPC Contract is not intended to represent a legal opinion about the interpretation of the contract. I have been asked to assume liability. I am not opining on the causes of schedule delay, as I understand that issue is addressed by others.

2.5 THE PROJECTS

2.5.1 On September 21, 2021, OPPD entered into an Engineer, Procure, and Construct contract with Zachry to construct two power plants ("EPC Contract"): Standing Bear Lake Station ("Standing Bear") and Turtle Creek Station ("Turtle Creek") (collectively, the "Projects").[5]

2.5.2 Standing Bear is a 150-megawatt ("MW") station, and Turtle Creek is a 450-MW station. Both stations are powered by natural gas and fuel oil. Standing Bear is located in Omaha, Nebraska, and Turtle Creek in Springfield, Nebraska.[6]

2.6 BACKGROUND TO THE DISPUTE AND THE ISSUES

2.6.1 The Parties to this dispute are as follows:

a) Plaintiff Zachry Holdings, Inc. is a prominent company in North America, specializing in turnkey engineering, construction, maintenance, turnaround, and fabrication services for the energy, chemicals, power, manufacturing, and industrial sectors.[7]

b) Plaintiff Zachry Industrial, Inc. ("Zachry" or "Contractor") is a subsidiary of Zachary Group, headquartered in San Antonio, Texas.[8] The company specialized in heavy and civil

[5] Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations, Contract No. 263406 ("EPC Contract") dated September 21, 2021, p.1.
[6] "Standing Bear Lake Station," OPPD, last updated April 8, 2025, https://www.oppdcommunityconnect.com/standing-bear-lake-station; "Turtle Creek Station," OPPD, last updated May 16, 2025, https://www.oppdcommunityconnect.com/turtle-creek-station.
[7] Zachry Group website, https://zachrygroup.com/; and "Zachry Holdings, Inc. Receives Court Approval For Restructuring Plan," Zachry, February 26, 2025, https://zachrygroup.com/newsandstories#press-releases.
[8] "Zachry Industrial, Inc.," Dun & Bradstreet Business Directory, https://www.dnb.com/business-directory/company-profiles.zachry_industrial_inc.81b945ea3ce2b060d13669d1a358e401.html.

engineering construction, providing services such as engineering, procurement, construction ("EPC"), and maintenance for energy and industrial sectors.[9,10]

c) Plaintiffs Zachry Holdings, Inc. and Zachry and their affiliated debtors (collectively referred to as the "Reorganized Debtors")[11] filed a lawsuit against Omaha Public Power District, a Nebraska public electric utility.[12]

d) Defendant Omaha Public Power District ("OPPD") is a publicly owned electric utility serving the Omaha metropolitan area and surrounding regions in Nebraska.[13]

2.6.2 Relevant non-party Siemens Energy, Inc. ("Siemens") is a leading global energy technology company. The company focuses on providing innovative solutions across the energy landscape, including gas turbines, power plants, digital grids, and renewable energy technologies.[14]

2.6.3 Relevant non-party Wartsila North America, Inc. ("Wartsila") is a subsidiary of Wartsila Corporation, headquartered in Houston, Texas.[15] The company is a leader in innovative technologies and lifecycle solutions for the marine and energy markets. Wartsila provides flexible power plants, marine propulsion systems, and supports customers throughout the lifecycle of their installations.[16]

2.6.4 Wartsila and Siemens are the Owner Furnished Equipment contractors responsible for providing the engines and generators that will power Standing Bear and Turtle Creek, respectively.[17]

2.6.5 On May 21, 2024, Zachry filed for Chapter 11 bankruptcy.[18]

2.6.6 I understand that OPPD's position is that Zachry has yet to complete the Projects and has not met the Guaranteed Substantial Completion Date. The parties dispute whether Substantial

[9] Zachry Group website, https://zachrygroup.com/.
[10] For the purpose of this report, Zachry Holdings, Inc. and Zachry Industrial, Inc. are referred to interchangeably as Zachry.
[11] The Reorganized Debtors include Zachry Holdings, Inc.; Zachry EPC Holdings, LLC; Zachry Engineering Corporation; ZEC New York, Inc.; Zachry High Voltage Solutions, LLC; UE Properties, Inc.; ZEC Michigan, Inc.; Zachry Constructors, LLC; Zachry Industrial, Inc.; Zachry Enterprise Solutions, LLC; Moss Point Properties, LLC; Zachry Nuclear Construction, Inc.; Zachry Nuclear, Inc.; Zachry Nuclear Engineering, Inc.; Computer Simulation & Analysis, Inc.; Zachry Plant Services Holdings, Inc.; JVIC Fabrication, LLC; Zachry Industrial Americas, Inc.; Zachry Maintenance Services, LLC; J.V. Industrial Companies, LLC; and Madison Industrial Services Team, LLC. (See Zachry Holdings, Inc., et al., Verita, https://www.veritaglobal.net/ZHI).
[12] The Reorganized Debtors' First Amended Adversary Complaint ("First Amended Complaint") dated April 11, 2025.
[13] OPPD website, https://www.oppd.com/, and "Quick Facts," OPPD, December 31, 2024, https://www.oppd.com/media/204897/quick-facts.pdf.
[14] Siemens Energy website, https://www.siemens-energy.com/us/en/home.html.
[15] "Wartsila North America, Inc." Dun & Bradstreet Business Directory, https://www.dnb.com/business-directory/company-profiles.wartsila_north_america_inc.cebf621ddbcbf6905b19e949b4f8b67f.html.
[16] Wartsila website, https://www.wartsila.com/usa.
[17] *Order Granting Complex Chapter 11 Bankruptcy Cases Treatment* dated May 21, 2024.
[18] First Amended Complaint, ¶ 15.

Completion has been reached.[19] I understand Certificates of Substantial Completion have not been issued. OPPD assessed Liquidated Damages of not less than $38 million against Zachry as of February 14, 2025.[20] Zachry filed suit against OPPD in the U.S. Bankruptcy Court for the Southern District of Texas, Case No. 24-90377 and Adversary Proceeding No. 25-03025. Zachry disputes owing Liquidated Damages.[21]

3. METHODOLOGY

3.1.1 Damages are generally calculated as the difference between the actual costs incurred and the costs that would have been incurred.[22] Damages are recoverable if they represent financial loss suffered and if they would place the injured party in the same position as it would have been had there been no breach of contract.[23] In this case, I calculated OPPD's damages caused by Zachry's delays.

3.1.2 Parties generally use liquidated damages clauses in contracts to stipulate an amount for damages in the event of a particular breach.[24]

3.1.3 Liquidated damages are generally explained as follows:

> "[A] liquidated damage provision . . . is a contractual instrument fixing compensatory damages in the event of late completion of a defined scope of work. Regardless of the milestone or event to which the damage rate applies (that is, substantial completion, a defined portion of the work, the submission of shop drawings, or the delivery of equipment), ***it must represent a reasonable estimate, at the time of contracting, of the damages*** a party will incur in the event of failure to achieve the defined milestone on schedule. In other words, ***liquidated damages must compensate rather than punish*** for a delay or breach." [emphasis added][25]

3.1.4 Liquidated damages may also be an appropriate measure of damages when losses would be difficult, or even impossible, to estimate with any accuracy when the parties enter into a contract.[26]

---

[19] First Amended Complaint, ¶ 104.

[20] *Omaha Public Power District's Application for Allowance of Administrative Expense Claim* dated February 14, 2025, ¶ 17-18; *Order Granting Omaha Public Power District's Application for Allowance of Administrative Expense Claim* dated February 14, 2025, ¶ 2. Because Zachry had not yet achieved Substantial Completion as of February 14, 2025, liquidated damages continue to accrue.

[21] First Amended Complaint, ¶ 109.

[22] "Damages for breach of contract should seek to place the party alleging breach in the same position it would have been in, had the contract been fully performed." William Schwartzkopf, *Calculating Construction Damages* § 1.03 General Methods of Damage Calculation (Fourth Edition, 2025-2 Supp. 2021).

[23] William Schwartzkopf, *Calculating Construction Damages* § 1.01 Introduction to General Principles of Damage Calculation (Fourth Edition, 2025-2 Supp. 2021).

[24] Neal J. Sweeney, Chad V. Theriot, Christopher D. Cazenave, Tiffany C. Raush & Lauren Lesueur, *Construction Law Update* § 2.01 Introduction (2024 Edition 2021).

[25] William Schwartzkopf, *Calculating Construction Damages* § 18.02 Purpose of Liquidated Damages (Fourth Edition, 2025-2 Supp. 2021) Fourth Edition, 2025-2 Supp. See also Barry B. Bramble & Michael T. Callahan, *Construction Delay Claims* § 2.15 Liquidated Damages (Seventh Edition, 2025-1 Supp. 2020).

[26] Barry B. Bramble & Michael T. Callahan, *Construction Delay Claims* § 2.15 Liquidated Damages (Seventh Edition, 2025-1 Supp. 2020).

3.1.5 In addition to the methodology described in this section, my more specific methodology for each opinion is discussed in Sections 4 through 6 below.

4. RESPONSE TO BODELL DECLARATION

4.1.1 Tanya Bodell of StoneTurn issued a declaration on April 28, 2025 ("Bodell Declaration"). The Bodell Declaration was intended to support Zachry's Motion for Partial Summary Judgment on Liquidated Damages and was included as Exhibit I.[27]

4.1.2 In my opinion, Ms. Bodell's analysis is understated. Ms. Bodell only estimated certain categories of actual damages, and for those categories she did consider, OPPD's actual damages are greater than what she estimated. Ms. Bodell did not provide any workpapers for HKA to perform a detailed review of Ms. Bodell's analysis. Ms. Bodell's analysis only considered a limited time period, used capacity pricing from a different location, and failed to consider the volatility in capacity prices. Each of these points is further discussed in the following paragraphs. As a result, Ms. Bodell's opinion does not represent a reliable or comprehensive assessment of OPPD's economic loss.

4.1.3 In summary, the Bodell Declaration opined on an estimate of OPPD's economic damages and compared to the contracted-for liquidated damages.[28]

4.1.4 The Bodell Declaration calculated that the Liquidated Damages cap of 15% was reached on February 20, 2025.[29]

4.1.5 Ms. Bodell performed her own calculations of what she believes are appropriate actual OPPD damages, to support her opinion that "Liquidated Damages significantly exceed estimated economic damages that OPPD incurred."[30] Ms. Bodell performed her calculation of OPPD's damages by using market prices for electricity.[31]

4.1.6 The Bodell Declaration notes that discovery in this matter has not yet occurred:

> "I understand that Zachry has requested, but not received, information from OPPD concerning its electricity purchases and other actions taken to address peak demand during the delay in Substantial Completion of the Facilities. If and as additional information becomes available, I reserve the right to modify or supplement my opinion and this declaration accordingly."[32]

[27] *Reorganized Debtors' Motion For Partial Summary Judgment Re: Liquidated Damages* dated April 28, 2025, Exhibit I - Bodell Declaration, ¶ 1.
[28] Bodell Declaration, ¶ 9.
[29] Bodell Declaration, ¶ 20.
[30] Bodell Declaration, ¶ 21.1.
[31] Bodell Declaration, ¶ 21.5.
[32] Bodell Declaration, ¶ 11.

4.1.7 Similarly, OPPD and HKA have received no information from Zachry to quantify damages because there has been no discovery.

4.1.8 In my opinion, Ms. Bodell's analysis results in an estimate of OPPD's actual damages that is understated. Ms. Bodell only estimated certain categories of actual damages, and for those categories she did consider, OPPD's actual damages are greater than what she estimated. Ms. Bodell only estimates certain categories of damages (energy and capacity). OPPD estimated its actual damages, which I have reviewed. OPPD's actual damages include categories of damages that Ms. Bodell did not consider (Firm Natural Gas Transport, Lost Retail Capacity Revenue, and Extended Project Costs). For the categories she did consider, OPPD's actual damages are greater than what Ms. Bodell estimated (these categories are Capacity Purchases and Missed Market Energy Net Revenue).

4.1.9 Ms. Bodell's analysis only considered a limited time period. Ms. Bodell estimated her damages calculation for the period December 17, 2024 to April 15, 2025.[33] Because Zachry has not yet met Substantial Completion, OPPD's damages continue to accrue. OPPD estimated its damages through December 2025.[34] The amounts presented for OPPD's actual damages in Section 6 below are subject to change because the Projects themselves are not complete. Because Ms. Bodell cut off her damages analysis on April 15, 2025, she has greatly underestimated OPPD's actual damages.

4.1.10 HKA has not received any workpapers supporting Ms. Bodell's analysis. The Bodell Declaration provides summary-level tables and charts, that must be supported by detailed calculations, which have not been provided to HKA to review. Without Ms. Bodell's supporting calculations and analyses, HKA is not able to review her calculations in detail to respond accordingly. For example, Ms. Bodell describes, "Key inputs used to calculate damages using the ex-post approach and actual pries that occurred include the following" and then lists "Damages Period, Plant Heat Rate, Variable O&M, Quantity, Energy Price, Ancillary Services Price, and Capacity Price" as inputs.[35] For HKA to respond fully to Ms. Bodell's calculations, we would need to be provided the details behind her assumptions and calculations for review.

4.1.11 Ms. Bodell's analysis used capacity pricing from a different location and failed to consider the volatility in capacity prices.

[33] Bodell Declaration, ¶ 21.6.
[34] See Section 6 and Table 2 below.
[35] Bodell Declaration, Exhibit E – Assumptions, Section E.1 – Ex-Post Historical Analysis.

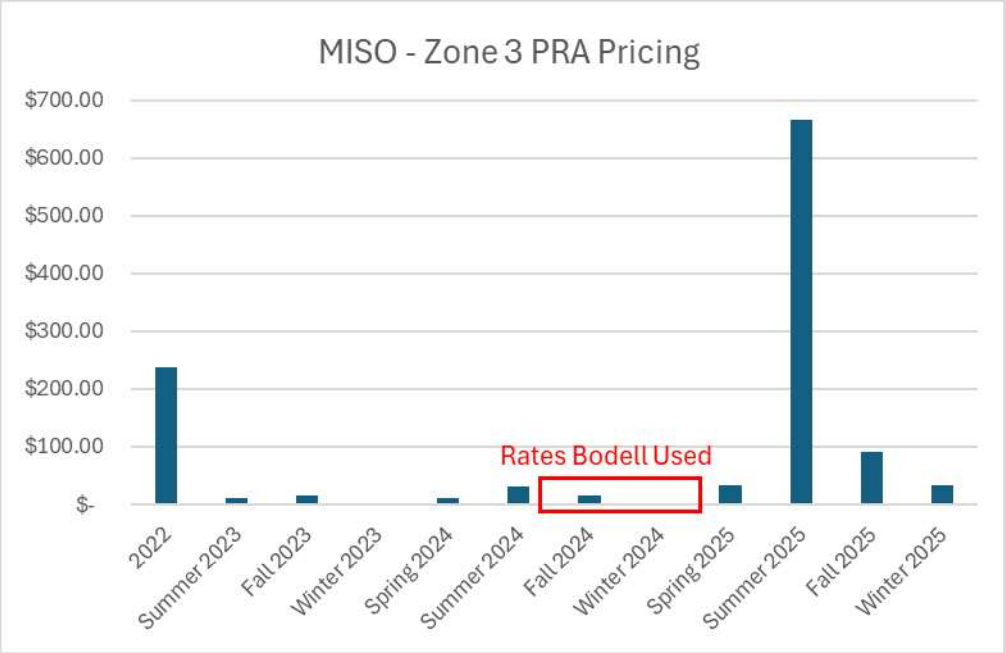
4.1.12 Ms. Bodell stated that Southwest Power Pool ("SPP") does not operate a centralized market for capacity, and therefore she used capacity pricing for a neighboring market, Midcontinent Independent System Operator ("MISO") capacity market in Iowa (MISO Zone 3).[36] In my opinion, Ms. Bodell used the wrong market: OPPD operates in the SPP market, not the MISO market that Ms. Bodell used.

4.1.13 Ms. Bodell's capacity pricing analysis only considered a five-month period, from December 2024 to April 2025.[37] Ms. Bodell used an April 2024 MISO document for her capacity pricing.[38] The same day Ms. Bodell issued her declaration, MISO's annual auction results came out for the next year and the new capacity pricing went up dramatically.[39] MISO explained this capacity price increase was caused in part by "[n]ew capacity additions did not keep pace with decreased accreditation, suspensions/retirements and external resources," as well as "[d]elays of new resource additions" and "[m]ore frequent extreme weather," among other reasons.[40] Ms. Bodell's analysis used $0.75 per MW-day for winter 2024-2025 and $34 per MW-day in spring 2025.[41] MISO's newly published rates are $667 per MW-day for summer 2025, $92 per MW-day for fall 2025, $33 per MW-day for winter 2025-2026, and $70 per MW-day for spring 2026.[42]

4.1.14 The new MISO auction results show the extreme volatility in the market pricing for the "proxy market" that Ms. Bodell chose. OPPD necessarily had to consider capacity market volatility in its Liquidated Damages amounts, and the volatility of the capacity market makes it difficult to measure damages in advance of the Substantial Completion date, as Ms. Bodell has done. Figure 1 below shows the MISO capacity pricing for the last four years—of note, because Ms. Bodell limited her analysis to a five-month period, she only looked at a period of very low pricing. If Ms. Bodell had used the new MISO pricing in her damages model, her damages numbers would be dramatically higher. Similarly, if Ms. Bodell had used an average of historical prices, her damages estimate would be higher. The EPC Contract was originally entered into in 2021; I have included data back to 2022 which is currently available on MISO's website.

[36] Bodell Declaration, ¶ 71-74 and Exhibit E – Assumptions, Section E.1.8 – Capacity Price.
[37] Bodell Declaration, Figure 10 – Economic Damages from Delayed Capacity.
[38] Bodell Declaration, Exhibit E – Assumptions, Section E.1.8 – Capacity Price, footnote 105; "Planning Resource Auction Results for Planning Year 2024-25," MISO, April 25, 2024, slide 2, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf.
[39] "Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, slide 2, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.
[40] "Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, slides 6-7, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.
[41] Bodell Declaration, Exhibit E – Assumptions, Section E.1.8 – Capacity Price.
[42] "Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, slide 2, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.

Figure 1: MISO Capacity Pricing[43]



5. OPPD'S LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF ACTUAL DAMAGES

5.1.1 The EPC Contract specified the Guaranteed Substantial Completion Date for Standing Bear and Turtle Creek as May 1, 2023, and August 18, 2023, respectively.[44]

5.1.2 EPC Contract Article XI – Liquidated Damages states that should Zachry fail to comply with the agreed-upon Guaranteed Substantial Completion Date, Zachry is liable for a daily rate of Liquidated Damages until the work is complete.[45]

5.1.3 The Liquidated Damages clause states that actual damages would be difficult to determine, and that both parties agreed the Liquidated Damages amounts were reasonable and appropriate

[43] "2022/2023 Planning Resource Auction (PRA) Results," MISO, April 14, 2022, slide 4, https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf.; "Planning Resource Auction Results for Planning Year 2023-24," MISO, May 19, 2023, slide 4, https://cdn.misoenergy.org/2023%20Planning%20Resource%20Auction%20(PRA)%20Results628925.pdf; "Planning Resource Auction Results for Planning Year 2024-25," MISO, April 25, 2024, slide 2, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf; "Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, slide 2, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.

[44] First Amended Complaint ¶ 20; EPC Contract, Exhibit E – Guaranteed Completion Dates And Project Schedules.

[45] EPC Contract, Article XI(c)(1) – Delay in Completion of Work.

measures of damages and not a penalty. The total Liquidated Damages were not to exceed 15% of the Contract Price:

> "(a) The 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**." [emphasis added][46]

5.1.4 On November 9, 2023, the EPC Contract was amended ("First Amended EPC") to adjust the Guaranteed Substantial Completion Date for the Projects. The parties agreed to extend the Guaranteed Substantial Completion Date for Standing Bear from May 1, 2023, to August 8, 2024, and for Turtle Creek from August 18, 2023, to August 30, 2024.[47] The First Amended EPC also increased the Liquidated Damages daily amount due to the increased costs caused by the delay.[48] Finally, the First Amended EPC also adjusted the total contract price to $428,741,118.[49]

5.1.5 On August 13, 2024, the parties again amended the EPC Contract due to further delays ("Second Amended EPC").[50] Among other changes, the Second Amended EPC extended the Guaranteed Substantial Completion Dates and revised portions of the Liquidated Damages provision under EPC Contract Article XI. The revised Guaranteed Substantial Completion Dates for Standing Bear and Turtle Creek were set for December 30, 2024, and December 16, 2024, respectively.[51]

5.1.6 See Table 1 below for a summary of the Guaranteed Substantial Completion Dates and Liquidated Damages daily rates from the Liquidated Damages clauses from the original EPC Contract and the two amendments.

[46] EPC Contract, Article XI(a) – Liquidated Damages.
[47] Amendment No. 1 to Contract No. 263406 ("First Amended EPC") dated November 9, 2023, Exhibit E – Guaranteed Completion Dates and Project Schedules.
[48] First Amended EPC, Amendment of Article XI(c)(1) – Liquidated Damages.
[49] First Amended EPC, Exhibit G – Revised Milestone Payment Schedule and Payment Table, Change Order 1.
[50] 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 ("Second Amended EPC").
[51] Second Amended EPC, Amendment of Article XI – Liquidated Damages and Revised Schedule.

Table 1: Liquidated Damages Provisions In EPC Contract and Amendments[52]

	Standing Bear		Turtle Creek	
	Guaranteed Substantial Completion Date	Liquidated Damages	Guaranteed Substantial Completion Date	Liquidated Damages
Original EPC (September 21, 2021)	May 1, 2023	- $125,000 per calendar day through May 15, 2023 - $250,000 per calendar day, from May 16, 2023, until the Work is accepted as complete	August 18, 2023	- $50,000 per calendar day, through September 1, 2023 - $100,000 per calendar day, from September 2, 2023, until the Work is accepted as complete
First Amended EPC (November 9, 2023)	August 8, 2024	- $225,000 per calendar day through August 23, 2024 - $350,000 per calendar day, from August 24, 2024, until the earlier of (a) Substantial Completion, or (b) December 19, 2024	August 30, 2024	- $150,000 per calendar day through September 14, 2024 - $200,000 per calendar day, from September 15, 2024, until the earlier of (a) Substantial Completion, or (b) December 19, 2024
Second Amended EPC (August 13, 2024)	December 30, 2024	- $350,000 per calendar day through January 29, 2025 - $500,000 per calendar day, from January 30, 2025, until the Work is accepted as complete	December 16, 2024	- $250,000 per calendar day, through January 15, 2025 - $400,000 per calendar day, from January 16, 2025, until the Work is accepted as complete

5.1.7 As previously stated, the amended EPC Contract value is $428,741,118.[53] EPC Contract Article XI states total Liquidated Damages "in the aggregate for both sites shall not exceed Fifteen percent (15%) of the Contract Price."[54] Therefore, the maximum Liquidated Damages value is 15% of $428,741,118, or $64,311,168.[55] The daily Liquidated Damages rates applied by the days of delay exceeds the maximum; therefore, the maximum applies.

5.1.8 Liquidated damages should generally be a reasonable estimate of actual damages and not a penalty. The reasonableness of the damages estimate is often determined by what is known at the time of contracting. When constructing the liquidated damages provisions in a contract, the drafter should determine the types of damages it wants to cover with the clause and then make a reasonable estimate of the costs of those damages.[56]

[52] EPC Contract, Article XI – Liquidated Damages and Exhibit E – Guaranteed Completion Dates and Project Schedules; First Amended EPC, Amendment of Article XI(c)(1) – Liquidated Damages and Exhibit E – Guaranteed Completion Dates and Project Schedules; Second Amended EPC, Amendment of Article XI – Liquidated Damages and Revised Schedule.
[53] First Amended EPC, Exhibit G – Revised Milestone Payment Schedule and Payment Table, Change Order 1.
[54] EPC Contract, Article XI – Liquidated Damages.
[55] HKA Exhibit 1 – Liquidated Damages 15% Cap.
[56] William Schwartzkopf, *Calculating Construction Damages* § 18.03 – Developing an Enforceable Clause (Fourth Edition, 2025-2 Supp. 2021) Fourth Edition, 2025-2 Supp.

5.1.9 Industry guidance suggests the following on determining liquidated damages:

> "When setting the amount of the daily liquidated damages the owner should evaluate the potential losses that would result from late completion. The factors include loss of revenue, interest costs, financing fees, replacement rental, moving costs, holdover penalties, impact on wages, and labor productivity of the owner's forces."[57]

5.1.10 The damages inputs that the parties considered at the time of contract negotiations necessarily included various assumptions (e.g., capacity prices, energy prices, and natural gas prices). Some of these inputs may have later turned out to be higher or lower depending on actual market conditions.

5.1.11 I compared the Liquidated Damages I calculated in paragraph 5.1.7 above ($64.3 million), to the actual damages presented in Section 5.1.8 below. I concluded the actual damages are expected to ultimately exceed $64.3 million, and may be much higher.

5.1.12 In my opinion, based on my analysis, the Liquidated Damages are a reasonable approximation of OPPD's actual damages.

6. OPPD'S ACTUAL DAMAGES

6.1 SUMMARY OF ACTUAL DAMAGES

6.1.1 OPPD's actual damages to date are substantial and ongoing. Based on available data, those damages are expected to ultimately exceed $64.3 million, and may be much higher. OPPD's damages are expected to continue through at least December 2025.

6.1.2 OPPD has incurred and will continue to incur actual damages caused by Zachry's delay in Substantial Completion of the Projects. OPPD incurred costs and will continue to incur costs for capacity purchases, missed market energy revenue, firm natural gas transport, lost retail revenue and extended construction costs. Each of these categories of damages is described in the following Sections 6.2 through 6.6.

6.1.3 I was asked to review OPPD's actual damages for the time period January 2025[58] (after the Guaranteed Substantial Completion Dates detailed in the Second Amended EPC Contract Amendment 2) through December 2025. OPPD also provided information on its actual damages

[57] Barry B. Bramble & Michael T. Callahan, *Construction Delay Claims* § 2.15 – Liquidated Damages (Seventh Edition, 2025-1 Supp. 2020).
[58] For a more precise damages calculation, damages incurred in December 2024 would be apportioned to before and after the Guaranteed Substantial Completion Date for each facility. I have not yet performed that analysis, as it does not affect my conclusion that actual damages exceed the $64.3 million Liquidated Damages.

incurred for delays from May 2023 through December 2024; however, the parties agreed to extend the Guaranteed Substantial Completion Dates to December 2024 in the Second Amended EPC. In my opinion, the information on the actual damages incurred in the earlier time period is relevant to the issue at hand of establishing reasonable Liquidated Damages rates (as the Liquidated Damages rates were originally established in the original EPC Contract and then revised twice).

6.1.4 In total, OPPD's actual damages for January 2025 through December 2025 exceed the $64.3 million of Liquidated Damages, as summarized in Table 2 below. The damages presented in this table do not currently include all damages considered: for example, as described in Section 6.5 below, potential damages for additional lost retail revenue customers is not currently quantified.

Table 2: Summary of OPPD Actual Damages[59]

Damages Period	Capacity Purchases	Missed Market Energy Net Revenue	Natural Gas Damages	Lost Retail Capacity Revenue	Extended Project Costs	Total
May 2023 - Aug. 2024	$ 13,058,000	$ 5,140,000	$ 1,685,000	$ 76,686,000	*N/A*	**$ 96,569,000**
Sep. 2024 - Dec. 2024	6,226,000	115,000	3,217,000	16,036,000	*N/A*	**25,594,000**
Jan. 2025 - Dec. 2025	20,481,000	5,870,000	11,771,000	14,479,000	18,096,000	**70,697,000**
	$ 39,765,000	**$ 11,125,000**	**$ 16,673,000**	**$ 107,201,000**	**$ 18,096,000**	**$ 192,860,000**

6.2 CAPACITY PURCHASES

6.2.1 OPPD is a transmission-owning member of SPP. OPPD must meet Resource Adequacy Requirements established by SPP through several key steps:

a) Capacity Planning: OPPD ensures it has enough capacity to meet the highest peak demand plus a margin during both summer and winter months.[60]

b) Accredited Capacity: SPP must accredit the capacity, meaning the capacity meets specific standards and criteria set by SPP.[61]

c) Compliance with SPP Policies: OPPD follows policies and processes developed by SPP and the Supply Adequacy Working Group to ensure reliable supply and compliance with

[59] HKA Exhibit 2 - Summary Of Damages.
[60] "2024 SPP Resource Adequacy Report," Southwest Power Pool, June 14, 2024, 2. Executive Summary, https://www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf. See also "Peak load trend likely to continue," *The Wire*, OPPD, March 21, 2023, https://oppdthewire.com/peak-load-trend-likely-to-continue/.
[61] "Resource Adequacy," Southwest Power Pool, https://www.spp.org/engineering/resource-adequacy/.

North American Electric Reliability Corporation ("NERC") Reliability Standards.[62] For example, NERC recently published its 2025 Summer Reliability Assessment, which stated that SPP remains at risk for energy shortfall and faces transmission system congestion and scarcity conditions.[63]

d) Resource Adequacy Requirements: OPPD, as a Load Responsible Entity, maintains adequate capacity to meet its Resource Adequacy Requirements for the upcoming seasons.[64]

6.2.2 When OPPD determined the Turtle Creek and Standing Bear facilities would not reach commercial operation on time, OPPD was required to cover Resource Adequacy by purchasing capacity on the open market.

6.2.3 OPPD provided a summary of the capacity purchased, and contracted to be purchased, from May 2023 through December 2025.[65] OPPD's capacity purchases damages are supported by transaction confirmations and agreements documenting these purchases. These documents are identified in HKA Exhibit 3.

6.2.4 Table 3 below summarizes the preliminary calculation of OPPD's incurred costs for capacity purchases due to the Projects' delays.

Table 3: Capacity Purchases[66]

Time Period	Capacity Purchases
May 2023 through August 2024	$13,058,000
September 2024 through December 2024	6,226,000
January 2025 through December 2025	20,481,000
Total	$39,765,000

[62] "Resource Adequacy," Southwest Power Pool, https://www.spp.org/engineering/resource-adequacy/.
[63] "2025 Summer Reliability Assessment," North American Electric Reliability Corporation, May 2025, p. 6, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2025.pdf.
[64] "2024 SPP Resource Adequacy Report," Southwest Power Pool, June 14, 2024, 5 – Load Responsible Entities, https://www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf.
[65] "Capacity Purchase Contracts – TCS and SBL Delay May 2023-Dec 2025(OPPD-EXPERT-01118).xlsx." The capacity OPPD purchased currently runs through December 2025 because OPPD was required to enter contracts for that duration to obtain the capacity needed. I understand that OPPD trades capacity on a full calendar year or seasonal basis, which does not allow for market pricing on a daily or monthly basis.
[66] HKA Exhibit 3 - Capacity Purchases Summary.

6.2.5 If OPPD had not established its Resource Adequacy requirements by making the capacity purchases identified in Table 3, OPPD would have been subject to Cost of New Entry ("CONE") penalties. The CONE penalties are designed to incentivize participants to ensure adequate capacity in the market. The Open Access Transmission Tariff explains the calculation of CONE penalties.[67] I understand that OPPD has estimated the amount of CONE penalties that it would have occurred had it not purchased capacity on the market. OPPD estimated CONE penalties of approximately $13 million for 2023 and approximately $34 million for 2024.

6.3 MISSED MARKET ENERGY NET REVENUE

6.3.1 As previously mentioned, OPPD participates in the SPP energy markets. Selling power in the SPP provides OPPD with revenue to hedge the market price of energy to serve load. Because the Projects have not reached Substantial Completion and have not provided power, OPPD has missed market energy net revenue.

6.3.2 OPPD's energy market team performed an analysis of the missed market energy net revenue by using the Aurora Production Cost model, which OPPD uses in the normal course of business.[68] I understand from discussions with OPPD personnel that the model considers the production capability of the entire SPP and the OPPD portfolio. OPPD ran the model under the scenarios of Turtle Creek and Standing Bear operating, compared to not operating, the model outputs the difference in revenue and costs. The missed market energy revenue is netted against variable generation costs (e.g., fuel and variable operations and maintenance costs). The model inputs include, but are not limited to, 2023 and 2024 historical values for locational marginal price, SPP load, natural gas prices, and SPP wind generation.

6.3.3 In my experience, it is typical to use models such as these for estimating power generation, costs and revenues in the power industry. I have used models such as these to calculate replacement power costs on other projects. When a power plant is not generating electricity as expected, the electricity normally produced by that plant generally needs to be replaced by other sources to meet customer demand. Replacement power can be obtained in several ways, including increasing production at another plant in the utility's generating system, operating a standby generation plant in the utility's system, purchasing power from another producer, or forgoing sales to customers. Models such as the one OPPD used analyze actual and estimated operation and other data to perform economic analyses. Replacement power costs are quantified by comparing the economic

[67] "Cost of New Entry" and "Resource Adequacy Assurance," Southwest Power Pool, *Open Access Transmission Tarriff*, Sixth Revised Volume No. 1 – Attachment AA Resource Adequacy, Sections 13 and 14, available at https://sppviewer.etariff.biz/tariff.
[68] "Aurora Energy Forecasting Software," Energy Exemplar, https://www.energyexemplar.com/aurora.

results of meeting system demand with and without generation from Turtle Creek and Standing Bear during the period of study.

6.3.4 OPPD provided summary-level output from the model analysis.[69] The missed energy market net revenue is summarized in Table 4 below:

Table 4: Missed Energy Market Net Revenue[70]

Time Period	Turtle Creek Station	Standing Bear Lake Station	Total
May 2023 through August 2024	$5,949,000	$(809,000)	$5,140,000
September 2024 through December 2024	115,000	0	115,000
January 2025 through December 2025	5,691,000	179,000	5,870,000
Total	$11,755,000	$(630,000)	$11,125,000

6.3.5 I understand from discussions with OPPD personnel that, due to Zachry's delay, OPPD has missed out on other ancillary revenues opportunities, like spinning reserves and supplemental reserves.[71] At this time, OPPD has not calculated these missed ancillary revenues.

6.4 NATURAL GAS DAMAGES

Turtle Creek Station – Firm Natural Gas Transport

6.4.1 As previously stated, Turtle Creek is a natural gas-powered plant. Turtle Creek is located in an area where natural gas is supplied by Northern Natural Gas Company ("NNG").[72]

6.4.2 I understand Turtle Creek is located on one of NNG's branch lines and not the main line. This is important as branch lines are prone to constraint due to only having a limited amount of capacity. Main lines have several parallelled pipes and move multiple billion cubic feet of natural gas in a

[69] "Summary Table – TCS and SBL Energy Revenue Impact Amendment 2 CONFIDENTIAL (OPPD-EXPERT-000482).xlsx."
[70] HKA Exhibit 4 - Missed Energy Market Net Revenue – Turtle Creek Station; HKA Exhibit 4.1 – Missed Energy Market Net Revenue – Standing Bear Lake Station.
[71] "Spinning, Non-Spinning, and Supplemental Reserves," https://mypdh.engineer/lessons/spinning-non-spinning-and-supplemental-reserves/.
[72] "About Us / Overview," Northern Natural Gas, May 19, 2025, https://www.northernnaturalgas.com/aboutus/Pages/Overview.aspx.

day. The main lines provide a lot of flexibility and virtually no transport concerns. Firm transport allows a shipper to reserve space on the pipeline.[73]

6.4.3 OPPD reasonably assumed that Turtle Creek would be available to operate beginning in December 2024 (the Guaranteed Substantial Completion Date per the Second Amended EPC). I understand that in November 2024, OPPD contracted with NNG to reserve firm natural gas transport for Turtle Creek. It was therefore reasonable for OPPD to lock in natural gas supply shortly before the Guaranteed Substantial Completion Date.[74] OPPD has incurred the cost of having firm natural gas transport for Turtle Creek even though it is not operating.[75] The costs in Table 5 below reflect the firm natural gas transport costs and do not include any costs for purchasing natural gas.

Table 5: Turtle Creek Firm Natural Gas Transport Cost[76]

Time Period	Firm Natural Gas Transport Costs
May 2023 through August 2024	$0
September 2024 through December 2024	$2,125,000
January 2025 through December 2025	$10,126,000
Total	$12,251,000

Standing Bear Lake Station – Natural Gas and Propane Service Costs

6.4.4 In October 2021, OPPD entered into an agreement with Metropolitan Utilities District of Omaha, Nebraska ("MUD") to supply natural gas and/or propane to Standing Bear.[77] For each month,

[73] "About Us / Our Services," Northern Natural Gas, May 19, 2025, https://www.northernnaturalgas.com/aboutus/ourservices/Pages/OurServices.aspx.
[74] If OPPD did not enter the natural gas contract at the time, NNG had declared "open season" and OPPD could have missed chance for firm transport ("West Leg 2024," Northern Natural Gas, May 16, 2025, https://www.northernnaturalgas.com/expansionprojects/Pages/West_Leg_2024.aspx).
[75] I understand OPPD also incurred a small amount of costs for System Management Services (or balancing services for NNG) that are not included here. Additionally, OPPD participates in a profit-sharing program selling excess natural gas. The dollar amounts are minimal and also not included in this analysis.
[76] HKA Exhibit 5 - Turtle Creek Firm Natural Gas Station Transport Summary.
[77] Firm Deferred Delivery Supply Agreement dated October 18, 2021 with MUD and OPPD ("MUD Agreement") (OPPD-EXPERT-001243 – OPPD-EXPERT-001259). I understand that MUD supplies natural gas to Standing Bear. The propane is used to "peak shave" MUD's system and decrease their take from NNG. This NNG natural gas capacity is then redirected to Standing Bear. (See for example explanation of peak shaving, "Propane-Air Peak Shaving Plants Custom & Turnkey Packages," TransTech Energy LLC, https://www.transtechenergy.com/peak-shaving-systems.)

whether gas is supplied or not, OPPD is charged a demand charge from October through April of each year.[78] OPPD also pays MUD a monthly service fee.[79]

6.4.5 Per the agreement with MUD, OPPD also pays an annual storage charge in November of each year.[80]

6.4.6 OPPD provided the agreement with MUD and invoices supporting the costs incurred.

Table 6: Standing Bear Natural Gas and Propane Service Costs[81]

Time Period	Standing Bear Lake Natural Gas and Propane Service Costs
May 2023 through August 2024	$1,685,000
September 2024 through December 2024	1,092,000
January 2025 through December 2025	1,645,000
Total	$4,422,000

6.5 LOST RETAIL CAPACITY REVENUE

6.5.1 In addition to missing energy market revenue, OPPD has also lost retail revenue from Zachry's missed Substantial Completion dates for Turtle Creek and Standing Bear. OPPD has a "customer queue" which has entities that either wanted to expand their services with OPPD or become a new customer. Large customers in OPPD's "customer queue" were either delayed or lost.

6.5.2 For example, OPPD contracted with a large company in the area for OPPD to supply capacity for the customer's data centers.[82] Due to the delay in Substantial Completion for the Projects, OPPD had to delay the capacity supply due to Resource Adequacy concerns. The energy supply

[78] MUD Agreement (OPPD-EXPERT-001243 – OPPD-EXPERT-001259, at OPPD-EXPERT-001252).
[79] I understand OPPD has also incurred approximately $2.5 million for propane purchases. Those costs are not included in this report.
[80] MUD Agreement (OPPD-EXPERT-001243 – OPPD-EXPERT-001259, at OPPD-EXPERT-001252).
[81] HKA Exhibit 5.1 – Standing Bear Lake Station National Gas and Propane Services Costs.
[82] Accredited Generation Capacity & Energy Supply Agreement, March 27, 2019 (OPPD-EXPERT-000483- OPPD-EXPERT-000513).

agreement with the large company is capped until Standing Bear and Turtle Creek accredited capacity comes online.[83]

6.5.3 OPPD's customer service group compared the monthly anticipated MW load capacity schedule from the energy supply contract with the large company against the monthly actual historical MWs the company used from OPPD.[84] The difference (anticipated MWs less the actual load MW) was then multiplied by the demand charge rates ($ per kilowatt) from the contract to determine the demand revenue difference.[85] The calculation is supported by supply agreements and rate manuals. These source documents are listed on HKA Exhibit 6.

6.5.4 The lost retail capacity revenue damages are summarized in Table 7 below:[86]

Table 7: Lost Retail Capacity Revenue

Time Period	Lost Retail Capacity Revenue
May 2023 through August 2024	$76,686,000
September 2024 through December 2024	16,036,000
January 2025 through December 2025	14,479,000
Total	$107,201,000

6.5.5 I understand that in January 2023, OPPD contacted customers seeking to expand greater than five MW of new load, notifying them OPPD would have to limit load growth until the Standing Bear and Turtle Creek generation facilities came online.

6.5.6 I understand from discussions with OPPD personnel that OPPD was working on obtaining four potential additional customer projects. When the potential customers learned about the Turtle Creek and Standing Bear delays, they decided to move to other locations outside OPPD's service territory. Because the capacity was not available, OPPD missed out on additional lost retail revenue. These lost retail amounts have not yet been quantified and are not included in the

[83] Amended & Restated Accredited Generation Capacity & Energy Supply Agreement, June 1, 2023 (OPPD-EXPERT-000376-OPPD-EXPERT-000423).
[84] "Standing Bear and Turtle Creek Lost Revenue – Confidential (OPPD-EXPERT-000424).xlsx."
[85] "Standing Bear and Turtle Creek Lost Revenue – Confidential (OPPD-EXPERT-000424).xlsx."
[86] HKA Exhibit 6 – Lost Retail Capacity Revenue.

lost retail capacity revenue damages outlined above. I understand that OPPD considered these potential lost revenue scenarios when developing and negotiating the Liquidated Damages.

6.6 EXTENDED PROJECT COSTS

6.6.1 OPPD has incurred, or anticipates to incur, extended project costs due to Zachry's missed December 2024 Substantial Completion dates from January 2025 through December 2025. OPPD quantified and estimated these extended project costs of approximately $18 million.[87] The extended project costs include items such as costs to pay Technical Field Assistants for an extended time on the Projects, repair costs for damaged items, extended payroll costs, etc.[88]

[87] HKA Exhibit 7 - Project Costs OPPD Incurred From Missed Guaranteed Substantial Completion Dates.
[88] Id.

Appendix A

CURRICULUM VITAE

KIMBERLY R. REOME

PARTNER



QUALIFICATIONS

MBA, Kellogg Graduate School of Management, Northwestern University, USA
BA (High Honors), Finance, Michigan State University Honors College, USA
Certified Construction Industry Financial Professional (CCIFP)
Certified Fraud Examiner (CFE)

MEMBERSHIPS

Member, Association of Certified Fraud Examiners (ACFE)
Member, Construction Financial Management Association (CFMA)
Member, AACE International
Member, Women Construction Owners & Executives (WCOE)
Associate Member, American Bar Association (ABA)

- Litigation Section
- Forum on Construction Law
- Infrastructure and Regulated Industries Section
- Section of Environment, Energy, and Resources

Member, U.S. Women in Nuclear (U.S. WIN)

PERSONAL DEVELOPMENT

Lexology Index (formerly Who's Who Legal (WWL)) Client Choice Award – Global Elite Thought Leader – Energy – Consulting Experts, 2025
Lexology Index Consulting Experts – Construction – Quantum, Delay & Technical, 2023 & 2024
Lexology Index Consulting Experts – Financial Advisory and Valuation – Quantum of Damages, 2024
Lexology Index Commercial Litigation – Expert Witnesses, 2024
Lexology Index Client Choice Award – Energy – Experts, 2024
Lexology Index Construction Expert Witness, 2024

PROFILE

Kimberly R. Reome has more than 30 years of experience in damages analysis, primarily focused on the construction, electric utility, and government contracts industries. Kim has analyzed accounting, financial, and economic issues in various types of disputes, including increased costs, critical path schedule analysis, productivity analysis, lost profits, and valuation of lost royalties. She has also calculated damages for intellectual property, environmental and financial institutions, and other commercial litigation.

Kim has provided trial testimony, arbitration testimony, expert reports, and deposition testimony in civil courts, arbitrations, and regulatory commissions in the U.S. Court of Federal Claims, U.S. District Court, California State Court, Colorado State Court, Georgia Public Service Commission, Illinois State Court, Kansas State Court, Missouri State Court, Montana State Court, Nebraska State Court, Nevada State Court, Texas State Court, Washington State Court, and Wisconsin State Court, as well as in domestic and international arbitrations and dispute resolution board hearings.

Kim's project experience includes nuclear and other electric power plants, steel facilities, highways, aircraft modifications, hotels, casinos, residential housing, airports, oil refineries, mines and processing facilities, wastewater treatment plants, sports arenas, and hospitals. Her clients include electric power and telecommunication companies, construction and government contractors, project owners, real estate developers, insurance companies, manufacturers, computer software companies, service companies, steel companies, oil and chemical companies, financial institutions, universities, labor unions, and state and county agencies, among others.

CONSTRUCTION CLAIMS EXPERIENCE

AEROSPACE, SECURITY & SPACE

Government Contractor, Aircraft Modification Project, Canada

Assisted a government contractor involved in a dispute with a subcontractor on an aircraft modification project. The subcontractor claimed delay and disruption. Analyzed the subcontractor's claim, developed a counterclaim for delay costs and lost productivity, and prepared a schedule analysis for this complex long-term project.

BUILDINGS

COMMERCIAL

Contractor, Cold Storage Warehouse – Automated Conveyance Handling System

Assisted a contractor in a dispute with the owner of a cold storage warehouse. The contractor designed, procured, and installed the automated storage and retrieval conveyance handling system. Analyzed the owner's alleged damages, including liquidated damages, costs to repair, and past and future lost profits, and prepared and presented a preliminary expert report at mediation, where the case was settled.

Developer, Office Building Conversion

Assisted the developer involved in converting a historic mid-rise building into office space. The developer was in a dispute with the general contractor and architect. Analyzed change orders to determine the adjusted value of the guaranteed maximum price contract and analyzed schedule delays.

EDUCATION

General Contractor, University Building Renovation

Assisted a general contractor engaged in the renovation of a historic university building. The general contractor was in a dispute with the electrical subcontractor. Calculated the general contractor's damages for costs to complete, repair costs for defective work, and other back charges; analyzed the subcontractor's damages

claims, including claims for alleged extra work and productivity claims; and performed schedule analysis of the subcontractor's work and the overall project work. Issued an expert report and testified at deposition and trial.

PUBLIC SECTOR

City Government and Real Estate Developer, Various Buildings and Facilities, USA
Hired by both parties to assist in a dispute between a city government and a private real estate developer over cost sharing in a joint development agreement. The project involved the city's construction of a museum and convention center and the private developer's construction of an office building, all on the same site. The two parties shared the costs of the site's parking garage and various building infrastructure. Role included analyzing the construction costs incurred and determining appropriate cost allocations.

Community Park District, Municipal Renovation Project, USA
Assisted a community park district in a dispute with the architect of a municipal project consisting of the renovation and construction of new facilities at a farm owned by the park district. Analyzed cost support for change orders assessed against the architect, investigated delays caused by late design work, and quantified credit owed to the park district for overpayments to the architect. Quantified the associated schedule delays and economic damages.

County Government, Multipurpose Complex, USA
Assisted the owner (a county government) of a multipurpose sports, entertainment, convention, and expo complex after the steel contractor went bankrupt during the project. As a result, the county was faced with delay and disruption claims from multiple contractors. Evaluated claims for three of the contractors (masonry, cement, walls), ultimately providing settlement recommendations to the county. Claims were settled based on the recommendations and claims analysis.

HEALTHCARE

Framing and Drywall Subcontractor, Hospital Expansion
Assisted a framing and drywall subcontractor in preparing a claim for wrongful termination on a hospital expansion project. Analyzed the subcontractor's damages, including productivity analysis and cost of changed work.

REAL ESTATE

Owner, Mixed-Use Development (Casino, Hotels, Residential, Shopping, Theater)
Assisted the owner of a multibillion-dollar, mixed-use development (including high-rise hotels and condominium towers, a casino, a shopping center, a convention center, a theater, parking garages, and associated infrastructure) in a dispute with the general contractor and numerous subcontractors. Analyzed damages incurred by the owner, including cost overruns, costs to repair, back charges, and liquidated damages, as well as the subcontractors' claims (including electrical and plumbing) for delay and disruption. Also supported the contract closeout of hundreds of subcontracts.

Development Group, Various Multi-Use Projects
Assisted a development group that had constructed several multi-use condominium and restaurant projects and that suspected one of its partners and the general contractor owned by that partner of potential fraudulent use of funds. Analyzed the use of funds to determine whether any fraudulent activity had occurred.

General Contractor, Mixed-Use Condominium and Shopping Complex
Assisted a general contractor who constructed a condominium and shopping complex in a ski resort town. Analyzed cost overruns and schedule delays to determine what was caused by the owner either through additional scope or delays in providing information or payment.

General Contractor, Mixed-Use Condominium and Retail Building
Assisted the general contractor of a mixed-use condominium and retail building in a dispute against the developer. Performed a project cost audit to validate that the labor, material, equipment, and subcontractor

costs incurred on the project were accurately reported in the contractor's cost accumulation and reporting system.

Developer, Historic-to-Mixed-Use Building Conversion Project
Assisted a developer who renovated a historic mid-rise building into a mixed-use retail and office building. Developed a framework to analyze the change order requests, allowances, and contingency for numerous subcontractors to determine an adjusted guaranteed maximum price to be used in closeout negotiations with the contractor. Also analyzed schedule delays caused by the architect.

Developer, Mixed-Use Office and Retail Development
Assisted a developer in a dispute with a construction manager of a mixed-use office and retail development over the construction manager's failure to complete the project. Prepared a damages claim, including the cost to complete and the value of the construction costs completed before termination.

Developer, Government Building-to-Mixed-Use Development Conversion Project
Assisted a developer in converting a former government building into a mixed-use development with restaurant, retail, office, and residential space. Audited one of the subcontractor's project costs to determine if the subcontractor had fraudulently billed the developer. Audit included project records such as contracts, invoices, payment applications, and canceled checks.

RESIDENTIAL

Developer, Various Apartment Complexes
Assisted a developer in calculating damages incurred on the construction of numerous apartment complexes throughout the United States. The developer alleged a bribery and fraud scheme among one of its employees and several contractors. Calculated damages associated with this alleged bribery scheme, which included liquidated damages, extended project costs, and defective work costs, among others, and analyzed claims from an adverse party, which included lost profits. Submitted several expert reports and testified at multiple depositions.

Drywall Subcontractor, Apartment Projects
Assisted a drywall subcontractor in a dispute with a contractor on several apartment construction projects by calculating the subcontractor's damages, including pricing of disputed change orders and analysis of contract balance. Submitted an expert disclosure and testified at trial.

General Contractor and Subcontractors, Office-to-Condominium Building Conversion Project
Assisted counsel for a general contractor and several subcontractors in preparing damages claims related to the conversion of a historic high-rise office building to a residential condominium tower. Prepared damages claims, including damages for delays and disruption, and analyzed the owner's counterclaim, including increased financing costs and lost sales of condominium units.

Labor Union, Residential Subdivisions
Assisted a labor union in reviewing claims by residential housing developers and contractors. The labor union had picketed model homes and construction sites in several new subdivisions because the construction contractors were using non-union labor. The developers and contractors claimed damages for lost home sales during the picketing, as well as other damages such as extra security costs and vandalism. Reviewed publicly available home sales data in the two subdivisions and by the specific builders in question before, during, and after the picketing. Analyzed home sales in the surrounding area to identify any trends in the real estate market. Also reviewed the work papers of the opposing damages expert.

RETAIL & COMMERCIAL

Shopping Center
Reviewed construction liens, claims, payments, and job progress reports of the general contractor and subcontractors involved in the construction of a shopping center.

TOURISM, HOTELS & RESORTS

Interior Designer, Hotel Renovation
Assisted an interior designer in a dispute with a hotel owner on a hotel renovation project. The hotel owner claimed that the interior designer caused delays resulting in damages. Analyzed the owner's damages claims for increased construction costs, increased procurement costs, and lost profits. Prepared a schedule analysis to assess what deadlines were met and the cause of delays. Issued an expert report, presented at mediation, and testified at arbitration.

Contractor, Various Hotel Projects
Assisted a contractor in a dispute with a former employee and several related entities. The contractor alleged the employee had engaged in potential fraud on several hotel construction projects, including hiring related-entity subcontractors that performed allegedly overpriced and defective work. Calculated damages related to alleged overpayments, costs to correct deficient work, and excess payments to the benefit of the employee, and issued an expert report.

Concrete Subcontractor, Hotel and Resort Complex
Assisted a concrete subcontractor who alleged that late, incomplete, and inadequate design drawings delayed and disrupted the performance of concrete operations during the construction of a mid-rise hotel and resort complex. Analyzed the construction schedule to determine the duration and cause of delays to the concrete work, including the development of precast concrete shop drawings. Reviewed the concrete subcontractor's calculation of increased costs, including extended general conditions costs.

DEFENSE

Contractor and Surety, U.S. Air Force Base – Hydrant Fuel System Replacement, USA
Assisted a contractor and its surety in packaging their claim against the federal government for the replacement of a hydrant fuel system at a U.S. Air Force base. Analyzed the cost and schedule impacts of differing site conditions.

INDUSTRIAL & MANUFACTURING

AUTOMOTIVE

Owner, Bus Manufacturing Facility
Assisted the owner of a bus manufacturing facility in performing a project cost audit of the construction contractor of a new bus manufacturing facility and corporate headquarters. Audited costs invoiced by the cost-plus contractor, including subcontractor, payroll, material, equipment, and non-reimbursable costs, as well as general conditions and profit.

MANUFACTURING

Owner, Biodiesel Production Facility
Assisted the owner of a biodiesel production facility in analyzing a construction contractor's claim. Evaluated the contractor's invoices for potential discrepancies, inconsistencies, and double counting.

Construction Company, Coke Battery Facility
Prepared a damages claim for a construction company in a dispute with the owner of a coke battery facility. Quantified labor inefficiency and delay claims.

Owner, Automation Equipment Manufacturing Facility
Analyzed claims for schedule delay and disruption for a manufacturer of automation equipment.

Design/Builder, Cement Plant Capital Improvement Project
Assisted the design/builder on a capital improvement project for a cement plant by calculating home office overhead claims for arbitration.

Owner, Pea Processing Plant
Assisted an owner of a pea processing plant in a dispute with the engineering, procurement, and construction (EPC) contractor over the construction of the plant. Analyzed the contractor's claim for increased costs and calculated the owner's damages, including costs to complete, costs to repair defective work, and lost profits for delayed operations. Issued multiple expert reports and testified at deposition.

Construction Manager, Corn Processing Plant Expansion
Assisted a construction management firm in analyzing claims related to a corn processing plant expansion project. Analyzed delay and disruption claims from the owner, the subcontractor, and the subcontractor's vendors.

MINING & METALS

Contractor, Aluminum Smelter Modernization
Assisted the contractor on an aluminum smelter modernization project by evaluating the cost growth of project estimates and performing a cost analysis to determine the cause and associated cost type for the growth throughout each period. Also assisted the contractor in preparing a root cause analysis presentation that was presented to the owner.

Contractor, Direct Reduced Iron (DRI) Processing Facility
Assisted the contractor on an overseas DRI processing facility construction project. Prepared cost and schedule delay claims arising from delayed and deficient owner-supplied structural steel, ductwork, and process equipment. Also reviewed project schedules and cost data to prepare claims for delay, acceleration, lost productivity, extended site overhead, and material quantity growth.

Owner, Potash Mine and Processing Facility
Assisted the owner of a potash mine and processing facility in performing a project cost audit of the EPC contractors for the facility's expansion. Audited the costs the contractors billed the owner, including subcontractor and vendor, field construction equipment, payroll, and non-reimbursable costs.

Owner, Coal Handling Facility
Assisted an owner involved in a dispute with an engineering firm that provided engineering services to design a coal handling facility. The owner claimed that the engineering firm's drawings were late and incorrect, resulting in increased costs. Analyzed whether late and incorrect drawings resulted in increased costs and worked with the technical design expert witness to prepare for arbitration.

Owner and Construction Manager, Steel Mill
Assisted the owner and construction manager of a large steel mill construction project with the contract termination of the foundation contractor. The contractor was terminated due to poor performance on schedule, safety, and quality issues. Helped prepare a preliminary claim against the contractor for use in settlement discussions and analyzed reasons for schedule delays. Also gathered documentation regarding the contractor's schedule, safety, and quality performance and prepared a database of relevant documents.

RESEARCH & DEVELOPMENT

Developer, Various Biotechnology Research Facilities
Assisted a real estate development company that constructed numerous biotechnology research facilities overseas to investigate whether fraud had occurred by some of its employees. Analyzed construction costs, including contracts, bids, invoices, and cost reporting systems, and developed recommendations for project controls.

Owner, Nuclear Laboratory Decontamination and Decommissioning
Assisted the owner of a nuclear laboratory in a dispute with a contractor on the decontamination and decommissioning of a building at the nuclear laboratory. Analyzed the contractor's and owner's damages and performed a detailed analysis of the contractor's project costs and schedule to determine what areas of the project experienced cost overruns and responsibility for delays. Prepared a mediation report and presented findings at mediation.

TRANSPORTATION INFRASTRUCTURE

AIRPORTS

Contractor, Airport Terminal
Assisted a contractor in a dispute with the steel subcontractor on an airport terminal construction project. Calculated the contractor's damages for increased costs, including schedule delay costs for the contractor and its subcontractors and costs to complete and correct defective work. Analyzed the subcontractor's claims for increased costs due to alleged disruption, delay, and repair costs and submitted several expert reports. Also analyzed the contractor's potential claims against the owner for delay and disruption.

Design and Construction Contractor, Airport Terminal
Assisted a design and construction joint venture contractor with claims against the design joint venture on an airport terminal construction project. Analyzed existing claims assembled by the client and consolidated damages and supporting documents for these claims. Also presented (in a mediation-like forum) the value of these claims to the design joint venture and its insurers to assist in negotiations.

General Contractor, Airport Terminal
Assisted the general contractor on an airport terminal construction project to analyze subcontractor claims involving cost overruns, delay, and disruption. Negotiated change orders and analyzed the claim of the plumbing subcontractor who was terminated for convenience.

Excavation Contractor, Airport Runway
Assisted the excavation contractor on an airport runway construction project in submitting claims for increased costs due to differing site conditions to the owner. Analyzed the contractor's claim pricing and presentation and assisted the contractor in properly pricing its claims for the purpose of change order negotiations.

RAIL & TRANSIT

Government Contractor, Train Control System Dispute
Assisted a government contractor in developing a cost and schedule claim on a dispute with a railway authority involving the development of a train control system that used global positioning satellite technology to allow high-speed passenger and freight trains to share the same tracks.

ROADS & HIGHWAYS

Contractor, Highway and Bridge Construction Project
Assisted a contractor in preparing a claim related to a highway and bridge construction project. Calculated damages due to a delay by a steel subcontractor and performed a detailed schedule analysis, review of cost and accounting records, development of claim methodology, and pricing of claim elements.

PETROLEUM REFINING

Owner, Oil Refinery – Sulfur Reduction Units
Prepared a labor inefficiency claim for an oil refinery owner who experienced delays during the construction of new sulfur reduction units. Quantified inefficiency man-hours and associated costs and assisted in determining which equipment arrived late and the effects of the delays on the site.

Mechanical Contractor, Oil Refinery
Assisted an oil company in analyzing a claim from a mechanical contractor on an oil refinery construction project. Analyzed the contractor's claim for cost overruns and schedule delays and provided recommendations on the claim pricing and entitlement for the oil company to use in settlement negotiations.

Owner, Oil Refineries – Capital Improvement Projects
Assisted an oil company in developing certain claims against the contractor performing capital improvement projects on two refineries. The projects involved installing equipment to reduce the refineries' sulfur emissions. Worked in conjunction with a technical industry expert to determine the contractor's performance on the cost-plus design, engineering, and construction project.

POWER & UTILITIES

COMBINED-CYCLE GAS TURBINE (CCGT)

Electric Utility, Combined-Cycle Natural Gas Power Plant
Assisted an electric utility in a dispute with the contractor for the construction of a combined-cycle natural gas power plant. The utility terminated the contractor for default and took over management of the remaining construction and start-up efforts. To support the utility's decision to terminate the contractor for default, developed schedule and percent-complete analyses. Also assisted with the analysis of costs and damages.

Subcontractor, Combined-Cycle Natural Gas Generating Facility
Assisted a subcontractor on a claim involving the construction of a combined-cycle natural gas generating facility. Analyzed labor hours and costs to calculate labor productivity and discrete claims.

FOSSIL (COAL-, GAS- & OIL-FIRED)

Owner, Coal-Fired Power Plant
Assisted the owner of a coal-fired power plant in a dispute with a co-owner. Analyzed replacement power costs for periods when the plant was not operating, issued an expert report, and testified at trial.

Equipment Manufacturer, Various Coal-Fired Power Plants, China
Assisted a power equipment manufacturer in analyzing the project's financial status to construct four coal-fired power plant projects in China. Also assessed the financial condition of one of three consortium members who entered into an agreement to design and procure equipment and material for the projects.

Electric Utility, Coal-Fired Power Plant – Temporary Shutdown
Assisted an electric utility in a dispute with the manufacturer of a piece of equipment that failed, causing the temporary shutdown of a coal-fired power plant. Analyzed lost profits and replacement power costs caused by the plant shutdown, increased financing costs, and costs to repair. Presented damages calculation in deposition and trial testimony.

General Contractor, Coal-Fired Power Plant – Precipitator Rebuild
Assisted a general contractor in a dispute with a subcontractor on a precipitator rebuild project for a coal-fired power plant. The subcontractor had claimed that lack of payment on the project had put the company in severe financial condition. Analyzed the subcontractor's financial situation before, after, and during the project. Also evaluated the entity's financial condition based on a review of project records, estimates to completion, internal management reports, bank records, and other various financial records.

General Contractor, Natural Gas-Fired Power Plant
Prepared a claim for a general contractor in a dispute with a manufacturer and two insurance companies (builders' risk and ocean cargo insurance) related to the construction of a natural gas-fired power plant. Major equipment for the plant was damaged in shipment, causing delays to the construction of the plant. The contractor accelerated its work to mitigate the delays. Worked with the contractor to contemporaneously

document increased direct and disruption costs associated with the impacts resulting from the incident, and calculated damages related to productivity impacts and delays.

Design & Construction Contractor, Coal-Fired Power Plant – Selective Catalytic Reducer
Assisted the joint venture responsible for the design, engineering, and construction of a selective catalytic reducer for a coal-fired power plant in preparing a request for equitable adjustment (REA). The joint venture had experienced cost overruns, disruption, and schedule delays caused by late and defective equipment deliveries and changed conditions. Analyzed cost overruns attributed to discrete changes, productivity impacts, and delays and assisted the joint venture in presenting the REA to the owner.

EPC Subcontractor, Coal-Fired Power Plant – New Units, Asia
Assisted a contractor in preparing claims related to the construction of new units at a coal-fired power plant in Asia. The client was the EPC subcontractor to the overall project contractor. Calculated increased costs for EPC work and prolongation costs, calculated schedule delays, and analyzed claims from the contractor's procurement joint venture partner.

Electric Utility, Coal and Natural Gas Power Plant Retrofit
Assisted an electric utility in assessing a claim submitted by its contractor on the retrofit of a coal and natural gas power plant. The contractor, who was responsible for installing pollution controls and emissions monitoring equipment to make the plant compliant with new regulatory requirements, claimed extended overhead costs caused by delays and productivity impacts.

Electrical Subcontractor, Gas-Fired Power Plant
Assisted an electrical subcontractor in a dispute with the contractor on a natural gas-fired power plant. Analyzed increased costs and prepared a productivity claim for labor inefficiencies caused by the owner and contractor.

EPC Contractor, Gas-Fired Power Plant
Assisted an EPC contractor in a dispute with the owner of a natural gas-fired power plant construction project. The owner had terminated the contractor for default, and the contractor argued that termination for default was not reasonable. Evaluated and responded to the expert report filed on behalf of the owner and analyzed project documentation and schedule analysis, including reconciliation of the initial cost estimate and pre-termination target price estimate.

Owner, Historic Coal-Fired Municipal Power Plant
Assisted the owner of a historic coal-fired municipal power plant in evaluating a claim submitted by an asbestos removal subcontractor during a demolition project. Reviewed relevant documents to determine the validity of the claim and prepared a counterclaim.

Power Plant Manufacturer, Gas-Fired Power Generation Facility, Latin America
Assisted a power plant manufacturer involved in litigation regarding the cancellation of the construction of a natural gas-fired power generation facility in Latin America. Analyzed the opposing experts' report claiming lost profits. Analysis included appropriate discount rate, capacity factors, and fuel prices, including currency and government risk.

HYDROELECTRIC

Electric Utility, Hydroelectric Power Facility – Breached Reservoir
Assisted an electric utility with analyzing replacement options for a breached reservoir in a hydroelectric power facility. The utility was in negotiations with its insurance company over various repair or replacement options. Analyzed the cost estimates for various options provided by the utility and the insurance company's engineers to provide comparable cost estimates on which to base decisions. Also evaluated contractors' bids and contract estimates, adjusting project estimates for risks not covered in the estimates.

NUCLEAR

Electric Utility, New Nuclear Power Plant Construction
Assisted an electric utility in the prudence review regarding the construction of two new nuclear power plant units. Analyzed the causes of more than $6B in cost growth, including costs of delay, productivity loss, technical and design changes, and other costs; issued an expert report; and testified at a public utility commission hearing.

Owners, New Nuclear Power Plant Construction
Assisted an electric utility and its co-owners in litigation with the EPC contractor over the design and construction of two new nuclear power plant units. Analyzed cost and schedule issues, performed document review, assisted with fact witness deposition discovery, and organized millions of project records. Also evaluated and critiqued the contractor's damages claims, including more than $1B in increased costs associated with design changes and years of project delays. After the contractor declared bankruptcy, prepared cost estimates for the owner to complete the project.

Owners, New Nuclear Power Plant Construction
Assisted an electric utility and its co-owners in a dispute with the completion contractor for the construction of two new nuclear power plant units. Analyzed the contractor's time-related delay costs and provided rebuttal testimony to the opposing expert's time-related cost calculations. Submitted an expert report and testified at deposition and at a dispute review board hearing.

Electrical Substation Contractor, Nuclear Power Plant – Forced Outage
Assisted an electrical substation contractor in litigation with the owner of a nuclear power plant regarding a forced outage at the plant. Reviewed the damages and delay analyses prepared by the owner's expert and analyzed alleged lost sales, replacement power costs, and direct outage-related expenses. Also evaluated the outage schedule to determine the cause of the forced outage's length. Submitted two expert reports and testified at two depositions.

Various Electric Utilities, Spent Nuclear Fuel Storage
Assisted more than a dozen electric utilities with damage claims against the U.S. Department of Energy for increased costs related to spent nuclear fuel storage. Analyzed least-cost strategies for storage of spent nuclear fuel, as well as past and future capital, operations and maintenance, storage, and decommissioning costs; and assessed increased financing costs. Issued expert reports, and testified at deposition in multiple cases. Assisted numerous utilities with annual settlement filings for ongoing costs.

Various Electric Utilities, Nuclear Power Plants – Steam Generator Disputes
Prepared damage claims for numerous nuclear facilities' steam generator degradation issues, including the analysis of past and future costs related to the degradation issues and quantification of delay costs. Developed a computer model to identify the least-cost steam generator remediation strategy, using degradation projections and the costs and technical feasibility of different remediation strategies. Also analyzed similar models developed by utilities and replacement power costs for plant shutdowns and derates caused by the degradation.

Various Electric Utilities, Nuclear Power Plant Disputes
Analyzed electric power utilities' corporate decision-making models to facilitate the determination of future claimed costs for nuclear power plant disputes and to understand the utilities' cost structures and numerous inputs considered in their decision-making processes, including fuel costs, escalation rates, operation costs, capital expenditures, system power outputs, and cost of capital.

Electric Utility, Nuclear Power Plant – Steam Generator Replacement Prudence
Assisted an electric utility in preparing for a potential prudence audit of its steam generator replacement project at a nuclear power plant. Reviewed the document trail for certain key decisions regarding the project and helped the utility complete its prudence package.

Electric Utility, Nuclear Power Plant – Steam Generator Replacement Termination
Assisted an electric utility with the termination of a contract for the fabrication of replacement steam generators at a nuclear power plant. The contract was terminated because the utility decided not to replace the steam generators at this nuclear facility. The contractor had already begun purchasing materials and performing preliminary engineering for the steam generators. Assisted the utility in determining a reasonable termination value to be paid to the contractor. Analyzed the contractor's direct and indirect costs and overhead and profit rates. Resulting recommendation was used by the utility to effectively settle the contract termination.

Electric Utility, Nuclear Power Plant – Steam Generator Replacement Risk Assessment
Assisted an overseas electric utility that was undergoing a steam generator replacement project at its nuclear power plant. Prepared a risk assessment report analyzing the cost and procurement risks of the steam generator replacement contractor and other risks related to the steam generator replacement outages.

Electric Utility, Nuclear Power Plant Modifications
Assisted an electric utility with a prudence review of the capital costs of modifications at a nuclear power plant. Analyzed costs budgeted and incurred, purchase orders, work orders, and reasons for cost growth.

Electric Utility, Nuclear Power Plant – Lifecycle Management and Power Uprate
Assisted an electric utility under investigation by a state utility commission for the prudence, reasonableness, and rate recoverability of the utility's lifecycle management and power uprate at a nuclear power plant. Analyzed the basis for cost estimates during the project's design and construction phases. Identified the underlying causes for cost overruns. Reviewed and analyzed accounting information, supporting cost information, project status reports, budgets, and numerous other company and publicly available documents. Analyzed and reconciled cost overruns on the project and the prudence of management's decisions.

Electric Utility, Various Nuclear Power Plants – Prudence
Assisted an electric utility involved in a prudence audit regarding the operations of several nuclear power plants. Prepared testimony for the expert witness, critiquing a management audit ordered by the state public utility commission, and designed and developed a database of case documents, assigning relevant issues to each document.

RENEWABLES (BIO, GEOTHERMAL, SOLAR, TIDAL, WIND)

Electric Utility, Waste-to-Energy Plant
Assisted an electric utility in a dispute with an independent power producer. The independent power producer had constructed a waste-to-energy plant and, under a state law, was allowed a retail rate for power produced. When the state revoked this facility's qualification, the utility instead paid a wholesale rate to the power producer. The power producer filed for bankruptcy and claimed breach of contract against the utility. Analysis included lost profits and review of relevant power rates.

EPC Contractor, Thermosolar Power Plant
Assisted an EPC contractor on a thermosolar power plant to recalculate the owner's assessment of damages related to the plant's ability to meet performance criteria. The contract called for a performance model to determine the amount of energy that should be produced. Determined the proper methods for the performance model inputs, which are actual meteorological conditions. Analyzed meteorological inputs in the format required to run the performance model. Using the model inputs, determined the amount of energy that should be produced by the plant given the conditions at the plant site. Using the amount of energy output by the model, calculated the number of damages that should have been assessed. Submitted three expert reports.

Owner and Contractor, Solar Power Plant
Assisted the owner and contractor of a solar power plant in a dispute with a supplier of major equipment. Analyzed the owner and contractor's damages for repairs and replacement of defective equipment. Issued expert report.

Owner, Various Solar Power Plants – Defective Equipment
Assisted the owner of numerous solar power plants in a dispute with the solar equipment supplier regarding alleged defective equipment. Analyzed the owner's damages, including repair and replacement costs and lost profits. The analysis included actual costs incurred and preparing a model projecting future replacement, repair, and lost profits costs for equipment on thousands of solar panels. Lost profits calculation used models analyzing expected energy production based on meteorological inputs and site conditions to compare expected energy output to actual energy output.

Owner, Various Wind Power Generation Facilities
Assisted the owner of three separate wind power generation facilities who was involved in three disputes with the construction contractor (one of the disputes also involved the wind turbine supplier). Prepared a schedule delay analysis, calculated damages, and responded to the delay and damages opinions presented by the opposing experts. Submitted expert reports. Provided expert testimony in deposition and at an arbitration hearing on damages issues.

TRANSMISSION & DISTRIBUTION

Design-Build Contractor, Two Electric Power Substations
Assisted a design-build contractor in a dispute with a construction subcontractor on the construction of two electric power substations. The contractor terminated the subcontractor for cause. Calculated delay and acceleration damages. Assessed back charges. Presented findings at a mediation.

WASTE

Contractor, Decommissioned Plutonium Production Facility – Waste Treatment Plant, USA
Assisted a contractor on a waste treatment plant for environmental cleanup of a decommissioned U.S. Department of Energy plutonium production facility. Assisted contractor with analysis of project delays and lost productivity. Provided technical writing for the contractor's REA.

WATER & WASTEWATER

Contractor, Brewery Wastewater Treatment System
Assisted a contractor who provided a wastewater treatment system to a beer company to treat the brewery's wastewater. The beer company claimed damages related to the alleged non-performance of the wastewater treatment system. Evaluated the owner's damages claims for lost savings, lost revenue, and capital and operating expenditures.

TECHNOLOGY

TELECOMMUNICATIONS

Construction Company, Cellular Telecommunications Construction Project
Analyzed cost overruns and schedule delays incurred during a cellular telecommunications construction project for a large international construction company. Investigated the cost overrun and evaluated owner changes that impacted the cost of installation. Investigated delay, acceleration, and productivity impacts. Prepared a damages claim for the construction company to use in settlement discussions with the owner and prime contractor.

General Contractor, Fiber-Optic Cable Installation Project
Assisted a general contractor in evaluating a subcontractor's claims associated with the installation of underground fiber-optic cables for broadband service. Reviewed and analyzed opposing experts' reports submitted on behalf of the subcontractor. Analyzed alleged extended costs resulting from project impacts and delays and the methodology used to calculate alleged project delays.

Telecommunications Company, Telecommunications Construction Project
Prepared a damages claim for changed work for a telecommunications company that installed a telecom system throughout a university, including preparation of trial exhibits, and managed a large document library and database.

FORENSIC ACCOUNTING & COMMERCIAL DAMAGES EXPERIENCE

INTELLECTUAL PROPERTY

- Assisted an international engineering and manufacturing company in an international arbitration dispute with a U.S.-based competitor. The two parties had recently ended a long-term relationship of sharing technology in the areas of nuclear fuel and nuclear power plant design, fabrication, construction, and servicing. Quantified economic damages, including lost profits and reasonable royalty, due to alleged contract breaches and unauthorized use of nuclear design technologies.
- Assisted a chemical company that was a defendant in a patent infringement dispute with a competitor. The plaintiff's claim included damages for lost profits and price erosion. Analyzed the case issues and Panduit criteria and determined that lost profits and price erosion were not applicable. Analyzed the company's incremental profit to determine a reasonable royalty.
- Assisted a university that was a defendant in a patent infringement dispute with a biomedical device company. The plaintiff company had a consulting arrangement for research with a doctor at the university. The plaintiff alleged breach of contract and trade secret violations and claimed lost profits damages. Analyzed the plaintiff's claim for lost profits using the Panduit criteria and determined that lost profits were not applicable. Determined a reasonable royalty for an alternate damages amount.
- Analyzed a lost profits claim for patent infringement in the computer software industry.

DAMAGES ANALYSIS

- Assisted a contractor in analyzing lost profits incurred at a petrochemical plant that lost electric power. The owner of the petrochemical plant was in dispute with a contractor who performed services and supplied equipment at an electrical substation at the plant. Analyzed the plaintiff's lost profits damages calculations. Submitted an expert report and provided deposition testimony.
- Assisted a contractor in analyzing potential lost profits and other damages allegedly incurred at an oil refinery that lost electric power. The owner of the refinery was in a dispute with the utility that supplied power and a contractor that manufactured components at the electrical substation. The refinery's alleged damages included lost profits during the power outage and increased costs. Analyzed the plaintiff's damages. Submitted an expert report and provided deposition testimony.
- Assisted an automotive crankshaft manufacturer in a commercial damages dispute with a steel supplier. Prepared lost profits claim on lost sales caused by the manufacturer's damaged reputation based on the defective steel supplied by its supplier.
- Assisted an insurance company in defense of a steel company's lost profits claim for a shutdown blast furnace. Analyzed opposing expert's lost profits claim based on lost production.
- Calculated the cost impact of a change in accounting practices for a government contractor performing environmental science services.
- Assisted potentially responsible parties of an environmental cleanup site by reviewing the costs incurred to date by the U.S. Environmental Protection Agency (EPA) and other government entities. Identified the level of supporting documentation provided by the government to assist the companies in settlement negotiations.

- Prepared damages claims for potentially responsible parties of an environmental cleanup site. Determined the costs incurred and anticipated to be incurred to remediate the site. Calculated weighted average cost of capital rates for the companies involved.
- Reviewed draft EPA settlement for de minimis parties for potentially responsible parties of an environmental cleanup site. Analyzed how the proposed settlement would affect payments by various parties. Prepared questions for the EPA regarding the proposed settlement.
- Identified potentially responsible parties for an environmental cleanup site.

BREACH OF CONTRACT

- Assisted a manufacturer on a breach of contract matter involving a failed joint venture between two companies that manufactured prefabricated shelters used for telecommunication projects or power conversion stations. Calculated lost profits and increased cost damages and analyzed the alleged lost profits and increased costs claimed by the opposing party. Submitted two expert reports and provided trial testimony.

WRONGFUL DEATH

- Assisted both plaintiffs and defendants in several wrongful death matters in the railroad industry. Prepared and reviewed damages claims for future lost earnings, which considered various inputs such as salary, benefits, salary growth rate based on industry data, and personal consumption. Provided videotaped testimony that was used in mediation.

FRAUD INVESTIGATION

- Assisted the operator of several cemeteries after the operator was accused in a criminal investigation of misappropriation of funds from the cemetery operating accounts. Analyzed checking and investment account records for various operating and capital funds for numerous cemeteries. Performed a detailed forensic accounting analysis of the sources and uses of funds to determine whether cemetery operating accounts were used to pay for any personal expenses.

MISCELLANEOUS

- Analyzed the accounting and business records of a rental property manager claiming lender liability. Performed analysis to support the lender's claim that the loan default was caused by the rental property manager's poor management practices. Performed market analysis of rental rates charged for other apartment complexes in the area.
- Assisted states in the identification and quantification of healthcare expenditures associated with Medicaid, state employees, and charitable hospitals that were attributable to the use of tobacco by individuals.
- Performed a business valuation of a surgical clinic.

PUBLICATIONS & PAPERS

"**Nuclear Renaissance – Avoiding New Generation Reactor Construction Issues**," Commercial Dispute Resolution, *March 2025*

"**The Coming Wave of Construction Disputes – Supply Chain Disruptions and Material Price Increases**," Co-Author, Who's Who Legal, *October 2022*

"**Don't Let the Poppies Slow You Down – Flow-down, Delay and Liquidated Damages Provisions**," Co-Author, Paper presented at American Bar Association (ABA) Forum on Construction Law 2018 Midwinter Program, *January 2018*

"**CFMA's Study Guide for the CCIFP [Certified Construction Industry Financial Professional] Exam, 2017–18**," Co-Author, Construction Financial Management Association (CFMA), *January 2017*

"**Spent Nuclear Fuel and the U.S. Response to Fukushima**," Co-Author, Energy Litigation, a publication of the American Bar Association (ABA) Section of Litigation Energy Litigation Committee, *Fall 2011*

"**Nuclear Energy Powers Up, But Challenges Remain...**," Co-Author, Trends, a publication of the ABA Section of Environment, Energy and Resources, *November/December 2010*

"**Nuclear Waste Issue Persists as New Plants Forge Ahead**," Co-Author, Ecopolitology, *April 2010*

"**DOE's Non-Performance on Permanent Storage of Spent Nuclear Fuel Costs Billions**," Co-Author, Ecopolitology, *November 2009*

"**A Lack of Performance on Nuclear Waste Storage**," Co-Author, Nuclear Street, *July 2009*

"**Nonperformance on Nuclear Waste Storage**," Co-Author, Law360, *April 2009*

"**Serving Clients by Managing Your Experts and Consultants: Up-Front Planning and Regular Communications Are Essential**," Co-Author, *Of Counsel*, Aspen Publishers, *July 2008*

"**Expert Use in Claims of Construction Defects and Code Violations**," Co-Author, Construct!, a publication of the ABA Construction Litigation Committee, *Spring 2007*

PRESENTATIONS & SPEAKING ENGAGEMENTS

Lectured at seminars on accounting, nuclear power, construction damages, delay, fraud, and contractual issues for various organizations, including Northwestern University School of Engineering; American Bar Association Forum on Construction Law; American Bar Association Litigation Section, Construction Litigation and Expert Witness Committees; Construction SuperConference; Construction Financial Management Association; National Association of Women in Construction; Construction Owners Association of America; National Contract Management Association; National Subcontractors Alliance; Chicago Bar Association; Lorman Education; and law firms.

LANGUAGES

English (native)

Kimberly R. Reome
Testimony List

Case Name	Venue	Approximate Date
ERES Yellowstone Hospitality, LLC v. Connor & Gaskins Unlimited, LLC and Andrew Twetan Cause No. DV-16-2023-869-OC	Gallatin County District Court, State of Montana	2025
Alpine Customs, Inc. v. Connor & Gaskins Unlimited, LLC, and Yellowstone Crossing HC, LLC, ERES Yellowstone Hospitality, LLC Cause No. DV-16-2023-1002-BD	Gallatin County District Court, State of Montana	2025
Bechtel Power Corporation v. Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; Dalton Utilities; and Southern Nuclear Operating Company, Inc.	Dispute Resolution Board Proceeding for the Vogtle 3 and 4 Construction Completion Agreement	2024
Austin Building and Design, Inc. d/b/a The Austin Company v. Ingredion Incorporated v. Austin Building and Design, Inc. d/b/a The Austin Company; Kajima U.S.A., Inc. and Kajima International, Inc. Case No. CI 20-91	District Court, Dakota County, Nebraska	2024
Garcia's Drywall, LLC v. Inwall Services, LLC; McPherson Contractors, LLC; Fidelity and Deposit Company of Maryland; and Kris Smithson d/b/a Inwall Services, d/b/a Inwall Services, LLC Case No. 19-CV-4316	District Court of Johnson County, Kansas; Civil Court Department	2024
In Re: Georgia Power Company's Application to Adjust Rates to Include Reasonable and Prudent Vogtle Units 3 and 4 Costs Docket No. 29849	State of Georgia, Before the Georgia Public Service Commission	2023

Kimberly R. Reome
Testimony List

Case Name	Venue	Approximate Date
CORE Electric Cooperative f/k/a Intermountain Rural Electric Association v. Public Service Company of Colorado Case No. 2021CV32787	District Court, Denver County, Colorado	2023
Alabama Power Company, Georgia Power Company and Southern Nuclear Operating Company, Inc. v. United States Case Nos. 17-1480C, 17-1481C, 17-1492C	U.S. Court of Federal Claims Washington, D.C.	2023
Continental Properties Company, Inc.; Continental 335 Fund LLC; Continental 355 Fund LLC; Continental 235 Fund LLC; Continental 342 Fund LLC; Continental 326 Fund LLC; Continental 298 Fund LLC; Continental 332 Fund LLC; and Continental 347 Fund LLC v. Hiscox Insurance Company, Inc. Case No. 2020CV000248	State of Wisconsin Circuit Court, Waukesha County	2023
Code Engineering Services, Inc. v. Berglund Construction Company and The University of Chicago Case No. 2016-CH-04296	Circuit Court of Cook County, Illinois, County Department – Chancery Division, Mechanics Lien Division	2022
Parkland Acquisition Two, LLC v. Avenir Creative, LLC Case No. 0l-19-0004-1177	American Arbitration Association	2022
Skookumchuck Wind Energy Project, LLC v. RES America Construction, Inc. Case No. 01-21-0002-1061	American Arbitration Association	2021

Kimberly R. Reome
Testimony List

Case Name	Venue	Approximate Date
Indorama Ventures Oxides LLC (successor in interest to Huntsman International LLC) v. ABB Inc. v. Huntsman Petrochemical LLC; Indorama Ventures Oxides LLC (f/k/a Huntsman International Fuels, LLC), and Indorama Ventures Propylene Oxides LLC (f/k/a Huntsman Propylene Oxides LLC) v. Pritech LLC and Samir M. Patel Cause No. E-201064	District Court of Jefferson County, Texas; 172nd Judicial District	2021

Zachry Holdings, Inc. v. Omaha Public Power District **Appendix C**
List Of Documents Considered
May 19, 2025

Category	Document Description	Bates Number
	All documents referenced in the Report and Report Exhibits	
Legal Filings	Order Granting Complex Chapter 11 Bankruptcy Cases Treatment dated May 21, 2024. The Reorganized Debtors' First Amended Adversary Complaint, dated April 11, 2025. Omaha Public Power District's Application for Allowance of Administrative Expense Claim dated February 14, 2025. Order Granting Omaha Public Power District's Application for Allowance of Administrative Expense Claim dated February 14, 2025. Reorganized Debtors' Motion For Partial Summary Judgment Re: Liquidated Damages dated April 28, 2025.	
Contracts	Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations Contract, dated September 21, 2021. Exhibit E to Engineer, Procure, and Construct Contract for Omaha Public Power District Standing Bear Lake and Turtle Creek Generating Stations Contract, dated September 21, 2021.	OPPD-EXPERT-001079-OPPD-EXPERT-001095
	First Amendment to Agreement between Omaha Public Power District and Zachry Industrial, Inc., dated October 11, 2023. 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. Standing Bear Lake Station and Turtle Creek Station Capacity Purchase Agreements for the period May 2023 through December 2025.	OPPD-EXPERT-01118
Miscellaneous	Declaration of Tanya Bodell, dated April 28, 2025. Project Costs OPPD Incurred in missing Amendment 2 Guaranteed Substantial Completion Date.	OPPD-EXPERT-OPPD-EXPERT-000484
	Standing Bear and Turtle Creek Demand Revenue for Google for period May 2020 through April 2025.	OPPD-EXPERT-000424
	Internal Omaha Public Power District Email Chain, Subject: Prep for Tuesday Meeting, dated May 5, 2025 through May 7, 2025.	OPPD-EXPERT-000425-OPPD-EXPERT-000431
	Standing Bear and Turtle Creek Energy Revenue Impact Amendment 2 for period May 2023 through December 2025. "Capacity Purchase Contracts – TCS and SBL Delay May 2023-Dec 2025(OPPD-EXPERT-01118).xlsx. Summary Table – TCS and SBL Energy Revenue Impact Amendment 2 CONFIDENTIAL (OPPD-EXPERT-000482).xlsx." Standing Bear and Turtle Creek Lost Revenue – Confidential (OPPD-EXPERT-000424).xlsx	OPPD-EXPERT-000482
Publicly Available Information	"2022/2023 Planning Resource Auction (PRA) Results," MISO, April 14, 2022, https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf. "Planning Resource Auction Results for Planning Year 2023-24," MISO, May 19, 2023, https://cdn.misoenergy.org/2023%20Planning%20Resource%20Auction%20(PRA)%20Results628925.pdf. "Planning Resource Auction Results for Planning Year 2024-25," MISO, April 25, 2024, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf.	

Zachry Holdings, Inc. v. Omaha Public Power District **Appendix C**
List Of Documents Considered
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Category	Document Description	Bates Number
	"Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.	
	"Spinning, Non-Spinning, and Supplemental Reserves", https://mypdh.engineer/lessons/spinning-non-spinning-and-supplemental-reserves/.	
	"West Leg 2024," Northern Natural Gas, May 163, 2025, https://www.northernnaturalgas.com/expansionprojects/Pages/West_Leg_2024.aspx.	
	"2024 SPP Resource Adequacy Report," Southwest Power Pool, June 14, 2024, https://www.spp.org/documents/71804/2024%20spp%20june%20resource%20adequacy%20report.pdf.dn.	
	"Aurora Energy Forecasting Software," Energy Exemplar, https://www.energyexemplar.com/aurora.	
	"Planning Resource Auction Results for Planning Year 2024-25," MISO, April 25, 2024, https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf.	
	"Planning Resource Auction Results for Planning Year 2025-26," MISO, April 28, 2025, https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250428694160.pdf.	
	"Peak load trend likely to continue," *The Wire*, OPPD, March 21, 2023, https://oppdthewire.com/peak-load-trend-likely-to-continue/.	
	https://mypdh.engineer/lessons/spinning-non-spinning-and-supplemental-reserves/	
	"Quick Facts," OPPD, December 31, 2024, https://www.oppd.com/media/204897/quick-facts.pdf.	
	"Resource Adequacy," Southwest Power Pool, https://www.spp.org/engineering/resource-adequacy/.	
	"2025 Summer Reliability Assessment," North American Electric Reliability Corporation, May 2025, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2025.pdf.	
	"Cost of New Entry" and "Resource Adequacy Assurance," Southwest Power Pool, *Open Access Transmission Tariff*, Sixth Revised Volume No. 1 – Attachment AA Resource Adequacy, Sections 13 and 14, available at https://sppviewer.etariff.biz/tariff	
	"Turtle Creek Station," OPPD, https://www.oppdcommunityconnect.com/turtle-creek-station.	
	"Wartsila North America, Inc." Dun & Bradstreet Business Directory, https://www.dnb.com/business-directory/company-profiles.wartsila_north_america_inc.cebf621ddbcbf6905b19e949b4f8b67f.html.	
	"Zachry Industrial, Inc.," Dun & Bradstreet Business Directory, https://www.dnb.com/business-directory/company-profiles.zachry_industrial_inc.81b945ea3ce2b060d13669d1a358e401.html.	
	"Aurora Energy Forecasting Software," Energy Exemplar, https://www.energyexemplar.com/aurora	
	"Cost of New Entry" and "Resource Adequacy Assurance," Southwest Power Pool, *Open Access Transmission Tariff*, Sixth Revised Volume No. 1 – Attachment AA Resource Adequacy, Sections 13 and 14, available at https://sppviewer.etariff.biz/tariff	
	OPPD website, https://www.oppd.com/.	
	Siemens Energy website, https://www.siemens-energy.com/us/en/home.html.	
	Wartsila website, https://www.wartsila.com/usa.	
	Zachry Group website, https://zachrygroup.com/.	
	"About Us / Overview," Northern Natural Gas, May 19, 2025, https://www.northernnaturalgas.com/aboutus/Pages/Overview.aspx	
	"Propane-Air Peak Shaving Plants Custom & Turnkey Packages," TransTech Energy LLC, https://www.transtechenergy.com/peak-shaving-systems	

Zachry Holdings, Inc. v. Omaha Public Power District **Appendix C**
List Of Documents Considered
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Category	Document Description	Bates Number
Publications	Barry B. Bramble & Michael T. *Callahan, Construction Delay Claims* (Seventh Edition, 2025-1 Supp. 2020).	
	Michael T. Callahan, Robert F. Cushman, John D. Carter, Paul J. Gorman & Douglas F. Coppi, *Proving and Pricing Construction Claims* (4th Edition, 2025-2 Supp. 2020).	
	Neal J. Sweeney, Chad V. Theriot, Christopher D. Cazenave, Tiffany C. Raush & Lauren Lesueur, *Construction Law Update* (2024 Edition 2021).	
	William Schwartzkopf, *Calculating Construction Damages* (Fourth Edition, 2025-2 Supp. 2021).	
Rate Manuals	Omaha Public Power District Resolution No. 6544: Omaha Public Power District 2023 Corporate Operating Plan, dated December 13, 2022.	
	Omaha Public Power District Resolution No. 6621: Omaha Public Power District 2024 Corporate Operating Plan, dated December 19, 2023.	OPPD-EXPERT-000740-OPPD-EXPERT-000899
	Omaha Public Power District Service Regulations & Schedules, dated January 1, 2025.	OPPD-EXPERT-000900-OPPD-EXPERT-001056
	FERC Gas Tariff Seventh Revised Volume No. 1 of Northern Natural Gas Company, dated August 30, 2024.	OPPD-EXPERT-001260-OPPD-EXPERT-001346
		OPPD-EXPERT-000001-OPPD-EXPERT-000364
Agreements	Accredited Generation Capacity & Energy Supply Agreement between Omaha Public Power District and Goldenrod LLC, dated March 27, 2019.	
	Metropolitan Utilities District of Omaha, Nebraska Firm Deferred Delivery Supply Agreement, dated October 18, 2021	OPPD-EXPERT-000483-OPPD-EXPERT-000513
	Amended & Restated Accredited Generation Capacity & Energy Supply Agreement by and between Omaha Public Power District and Goldenrod LLC and Fermion Energy LLC, dated June 1, 2023.	OPPD-EXPERT-001243-OPPD-EXPERT-001259
		OPPD-EXPERT-000376-OPPD-EXPERT-000423
Invoices	Metropolitan Utilities District Invoice November 2022.	
	Metropolitan Utilities District Invoice December 2022.	OPPD-EXPERT-001444
	Metropolitan Utilities District Invoice January 2023.	OPPD-EXPERT-001456
	Metropolitan Utilities District Invoice February 2023.	OPPD-EXPERT-001365
	Metropolitan Utilities District Invoice March 2023.	OPPD-EXPERT-001371
	Metropolitan Utilities District Invoice April 2023.	OPPD-EXPERT-001382
	Metropolitan Utilities District Invoice May 2023.	OPPD-EXPERT-001388
	Metropolitan Utilities District Invoice June 2023.	OPPD-EXPERT-001346
	Metropolitan Utilities District Invoice July 2023.	OPPD-EXPERT-001352
	Metropolitan Utilities District Invoice August 2023.	OPPD-EXPERT-001394
	Metropolitan Utilities District Invoice September 2023.	OPPD-EXPERT-001358
	Metropolitan Utilities District Invoice October 2023.	OPPD-EXPERT-001425
	Metropolitan Utilities District Invoice November 2023.	OPPD-EXPERT-001432
	Metropolitan Utilities District Invoice December 2023.	OPPD-EXPERT-001438
	Metropolitan Utilities District Invoice January 2024.	OPPD-EXPERT-001450
	Metropolitan Utilities District Invoice February 2024.	OPPD-EXPERT-001462
	Metropolitan Utilities District Invoice March 2024.	OPPD-EXPERT-001400
	Metropolitan Utilities District Invoice April 2024.	OPPD-EXPERT-001406
	Metropolitan Utilities District Invoice May 2024.	OPPD-EXPERT-001412
	Metropolitan Utilities District Invoice Reversal of 2% Statutory Payment to Cities June 2024.	OPPD-EXPERT-001413
	Metropolitan Utilities District Invoice June 2024.	OPPD-EXPERT-001468
	Metropolitan Utilities District Invoice July 2024.	OPPD-EXPERT-001414
	Metropolitan Utilities District Invoice August 2024.	OPPD-EXPERT-001415
	Metropolitan Utilities District Invoice September 2024.	OPPD-EXPERT-001416

Zachry Holdings, Inc. v. Omaha Public Power District **Appendix C**
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Category	Document Description	Bates Number
	Metropolitan Utilities District Invoice October 2024.	OPPD-EXPERT-001417
	Metropolitan Utilities District Invoice November 2024.	OPPD-EXPERT-001418
	Metropolitan Utilities District Invoice December 2024.	OPPD-EXPERT-001419
	Metropolitan Utilities District Invoice January 2025.	OPPD-EXPERT-001420
	Metropolitan Utilities District Invoice February 2025.	OPPD-EXPERT-001421
	Metropolitan Utilities District Invoice March 2025.	OPPD-EXPERT-001422
	Metropolitan Utilities District Invoice April 2025.	OPPD-EXPERT-001423
	Northern Natural Gas Invoice November 2024.	OPPD-EXPERT-001424
	Northern Natural Gas Invoice December 2024.	OPPD-EXPERT-000370
	Northern Natural Gas Invoice January 2025.	OPPD-EXPERT-000371
	Northern Natural Gas Invoice February 2025.	OPPD-EXPERT-000372
	Northern Natural Gas Invoice March 2025.	OPPD-EXPERT-000373
	Northern Natural Gas Invoice April 2025.	OPPD-EXPERT-000374
		OPPD-EXPERT-000375
Discussions with OPPD Personnel	Matthew Eibes, Director of Utility Project Operations	
	Shannon Coleman, Manager, Energy Resource Planning	
	Eric Bassingthwaighte, Manager, Energy Commodities	
	Joseph Lang, Director, Generation Strategy & Origination	
	Jene' Reese, Manager, Large C&I (Commercial and Industrial) Sales & Service	
	James Krist, Director of Customer Sales and Service	
	Deborah Burns, Fuel Supply Manager of Natural Gas	
	Jacob Glair, Manager of Thermal Energy Resources	
	Devin Meisinger, Manager Economic Development	

Exhibit 1

Zachry Holdings, Inc. v. Omaha Public Power District
Liquidated Damages 15% Cap

Contract Price [1]	15% Liquidated Damages Cap [2]	Total Liquidated Damages
$ 428,741,118	*15.00%*	$ 64,311,168

Source(s):

(1) Change Order No. 1, pg. 3 (*See* First Amendment to EPC - signed.pdf).

(2) "Total liquidated damages in the aggregate for both sites shall not exceed [f]ifteen percent (15%) of the Contract Price." (*See* signed EPC Contract (No Exhibits) 2021.pdf).

Exhibit 2

Zachry Holdings, Inc. v. Omaha Public Power District
Summary of Damages

Damages Period	Capacity Purchases	Missed Market Energy Net Revenue	Natural Gas Damages	Lost Retail Capacity Revenue	Extended Project Costs	Total
May 2023 - Aug. 2024	$ 13,058,000	$ 5,140,000	$ 1,685,000	$ 76,686,000	*N/A*	**$ 96,569,000**
Sep. 2024 - Dec. 2024	6,226,000	115,000	3,217,000	16,036,000	*N/A*	**25,594,000**
Jan. 2025 - Dec. 2025	20,481,000	5,870,000	11,771,000	14,479,000	18,096,000	**70,697,000**
	$ 39,765,000	**$ 11,125,000**	**$ 16,673,000**	**$ 107,201,000**	**$ 18,096,000**	**$ 192,860,000**

Source(s):
HKA Exhibits 3 through 7.

Exhibit 3

Zachry Holdings, Inc. v. Omaha Public Power District

Capacity Purchases Summary

Date	Capacity (MW)	Price ($/kW-mo)	Cost
May-23	150	$ 2.00	$ 300,000
Jun-23	334	1.06	355,400
Jul-23	334	1.06	355,400
Aug-23	334	1.06	355,400
Sep-23	334	2.74	916,750
Oct-23	230	2.20	506,000
Nov-23	230	2.20	506,000
Dec-23	230	2.20	506,000
Jan-24	230	2.20	506,000
Feb-24	230	2.20	506,000
Mar-24	230	2.20	506,000
Apr-24	230	2.20	506,000
May-24	230	2.20	506,000
Jun-24	497	4.51	2,242,230
Jul-24	497	4.51	2,242,230
Aug-24	497	4.51	2,242,230
Sep-24	497	4.51	2,242,230
Oct-24	242	4.18	1,010,980
Nov-24	242	4.18	1,010,980
Dec-24	427	4.60	1,962,230
Jan-25	427	4.60	1,962,230
Feb-25	427	4.60	1,962,230
Mar-25	427	4.60	1,962,230
Apr-25	242	4.18	1,010,980
May-25	242	4.18	1,010,980
Jun-25	325	7.16	2,325,930
Jul-25	325	7.16	2,325,930
Aug-25	325	7.16	2,325,930
Sep-25	325	7.16	2,325,930
Oct-25	200	4.20	839,680
Nov-25	200	4.20	839,680
Dec-25	200	7.95	1,589,680
May 2023 - Aug. 2024	**4,817**	**$ 2.44**	**$ 13,057,640**
Sep. 2024 - Dec. 2024	**1,408**	**$ 4.37**	**$ 6,226,420**
Jan. 2025 - Dec. 2025	**3,665**	**$ 5.59**	**$ 20,481,410**
		Total	**$ 39,765,470**

Source(s):

Capacity Purchase Contracts - TCS and SBL Delay May 2023-Dec 2025(OPPD-EXPERT-01118).xlsx.

Exhibit 4

Zachry Holdings, Inc. v. Omaha Public Power District
Missed Energy Market Net Revenue - Turtle Creek Station

Date	Generation (MWh)	Total Production Cost [1]	Total Energy Revenue [1]	Net Revenue/(Cost) [1]
May-23	-	$ -	$ -	$ -
Jun-23	-	-	-	-
Jul-23	-	-	-	-
Aug-23	60,788	1,541	2,721	1,180
Sep-23	-	-	-	-
Oct-23	-	-	-	-
Nov-23	-	-	-	-
Dec-23	-	-	-	-
Jan-24	83,134	8,941	8,020	(922)
Feb-24	-	-	-	-
Mar-24	-	-	-	-
Apr-24	-	-	-	-
May-24	-	-	-	-
Jun-24	20,464	519	911	392
Jul-24	225,061	4,434	7,718	3,284
Aug-24	177,999	3,513	5,528	2,015
Sep-24	14,129	332	447	115
Oct-24	-	-	-	-
Nov-24	-	-	-	-
Dec-24	-	-	-	-
Jan-25	-	-	-	-
Feb-25	-	-	-	-
Mar-25	-	-	-	-
Apr-25	-	-	-	-
May-25	-	-	-	-
Jun-25	4,728	201	355	154
Jul-25	112,482	4,084	7,406	3,322
Aug-25	56,764	2,252	4,280	2,028
Sep-25	12,488	446	632	187
Oct-25	-	-	-	-
Nov-25	-	-	-	-
Dec-25	-	-	-	-
	768,038	**$ 26,263**	**$ 38,018**	**$ 11,755**
May 2023 - Aug. 2024	**567,446**	**$ 18,948**	**$ 24,897**	**$ 5,949**
Sep. 2024 - Dec. 2024	**14,129**	**$ 332**	**$ 447**	**$ 115**
Jan. 2025 - Dec. 2025	**186,463**	**$ 6,983**	**$ 12,674**	**$ 5,691**

Note(s):
(1) Represented in thousands.

Source(s):
Summary Table - TCS and SBL Energy Revenue Impact Amendment 2 CONFIDENTIAL (OPPD-EXPERT-000482) .xlsx.

Exhibit 4.1

Zachry Holdings, Inc. v. Omaha Public Power District
Missed Energy Market Net Revenue - Standing Bear Lake Station

Date	Generation (MWh)	Total Production Cost [1]	Total Energy Revenue [1]	Net Revenue/(Cost) [1]
May-23	-	$ -	$ -	$ -
Jun-23	-	-	-	-
Jul-23	1,413	90	78	(12)
Aug-23	815	52	52	1
Sep-23	-	-	-	-
Oct-23	-	-	-	-
Nov-23	-	-	-	-
Dec-23	-	-	-	-
Jan-24	10,171	2,555	1,737	(817)
Feb-24	-	-	-	-
Mar-24	-	-	-	-
Apr-24	-	-	-	-
May-24	-	-	-	-
Jun-24	-	-	-	-
Jul-24	278	17	19	2
Aug-24	994	58	74	16
Sep-24	-	-	-	-
Oct-24	-	-	-	-
Nov-24	-	-	-	-
Dec-24	86	6	6	(0)
Jan-25	-	-	-	-
Feb-25	-	-	-	-
Mar-25	-	-	-	-
Apr-25	-	-	-	-
May-25	-	-	-	-
Jun-25	-	-	-	-
Jul-25	1,469	118	221	103
Aug-25	987	79	155	76
Sep-25	-	-	-	-
Oct-25	-	-	-	-
Nov-25	-	-	-	-
Dec-25	-	-	-	-
	16,213	**$ 2,975**	**$ 2,344**	**$ (630)**
May 2023 - Aug. 2024	**13,670**	**$ 2,771**	**$ 1,962**	**$ (809)**
Sep. 2024 - Dec. 2024	**86**	**$ 6**	**$ 6**	**$ (0)**
Jan. 2025 - Dec. 2025	**2,456**	**$ 197**	**$ 376**	**$ 179**

Note(s):
(1) Represented in thousands.

Source(s):
Summary Table - TCS and SBL Energy Revenue Impact Amendment 2 CONFIDENTIAL (OPPD-EXPERT-000482) .xlsx.

Zachry Holdings, Inc. v. Omaha Public Power District
Turtle Creek Firm Natural Gas Station Transport Summary

Exhibit 5

Vendor	Invoice Identifier	Invoice Date	Transaction Dates	Rate Schedule[1]	Rate	Quantity (dth)	Amount ($/Dth)	Source
Northern Natural Gas - Tenaska Marketing Ventures	RC00112411249957	12/2/2024	11/1/24 - 11/30/24	TFX	$ 15.4794	51,474	$ 796,787 [2]	OPPD-EXPERT-000370
Northern Natural Gas - Tenaska Marketing Ventures	RC00122412241920	1/2/2025	12/1/24 - 12/31/24	TFX	25.7990	51,474	1,327,978	OPPD-EXPERT-000371
Northern Natural Gas - Tenaska Marketing Ventures	RC00012501254008	2/3/2025	1/1/25 - 1/31/25	TFX	25.7990	51,474	1,327,978	OPPD-EXPERT-000372
Northern Natural Gas - Tenaska Marketing Ventures	RC00022502256230	3/3/2025	2/1/25 - 2/28/25	TFX	25.7990	51,474	1,327,978	OPPD-EXPERT-000373
Northern Natural Gas - Tenaska Marketing Ventures	RC00032503258398	4/1/2025	3/1/25 - 3/31/25	TFX	25.7990	51,474	1,327,978	OPPD-EXPERT-000374
Northern Natural Gas - Tenaska Marketing Ventures	RC00042504250108	5/1/2025	4/1/25 - 4/30/25	TFX	9.6760	51,474	498,062	OPPD-EXPERT-000375
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	5/1/25 - 5/31/25	TFX	9.6760	51,474	498,062 [3]	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	6/1/25 - 6/30/25	TFX	9.6760	51,474	498,062	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	7/1/25 - 7/31/25	TFX	9.6760	51,474	498,062	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	8/1/25 - 8/31/25	TFX	9.6760	51,474	498,062	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	9/1/25 - 9/30/25	TFX	9.6760	51,474	498,062	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	10/1/25 - 10/31/25	TFX	9.6760	51,474	498,062	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	11/1/25 - 11/30/25	TFX	25.7990	51,474	1,327,978	
Northern Natural Gas - Tenaska Marketing Ventures	*N/A*	*N/A*	12/1/25 - 12/31/25	TFX	25.7990	51,474	1,327,978	
						Total	**$ 12,251,090**	

May 2023 - Aug. 2024	**$ -**
Sep. 2024 - Dec. 2024	**$ 2,124,764**
Jan. 2025 - Dec. 2025	**$ 10,126,326**

Note(s):

(1) Per the Rate Schedule TFX from the FERC Gas Tariff, Winter rates are from November through March and Summer rates are from April through October. OPPD-EXPERT-000001 - 364 @ OPPD-EXPERT-000008.

(2) November 2024 was a partial month due to the start of the NNG - Tenaska Marketing Ventures firm transportation contract.OPPD-EXPERT-000425-431 @ OPPD-EXPERT-000427.

(3) For May 2025 through December 2025, I used the FERC Gas Tariff TFX rates to anticipate the period May through December 2025. OPPD-EXPERT-000001 - 364 @ OPPD-EXPERT-000008.

Source(s):

FERC Gas Tariff: OPPD-EXPERT-000001 - 364 @ OPPD-EXPERT-000008.

Exhibit 5.1

Zachry Holdings, Inc. v. Omaha Public Power District

Standing Bear Lake Station Natural Gas and Propane Service Costs

Date	Monthly MUD Fees [1]	Propane Demand Charge	Storage Fee	Refund 2% Tax [2]	Total	Bates For Invoice(s)
Nov-22	$ 10,623	$ -	$ -	$ -	$ 10,623	OPPD-EXPERT-001444
Dec-22	10,623	-	-	-	10,623	OPPD-EXPERT-001456
Jan-23	10,672	-	-	-	10,672	OPPD-EXPERT-001365
Feb-23	10,673	-	-	-	10,673	OPPD-EXPERT-001371
Mar-23	10,673	-	-	-	10,673	OPPD-EXPERT-001382
Apr-23	10,673	-	-	-	10,673	OPPD-EXPERT-001388
May-23	10,673	-	-	-	10,673	OPPD-EXPERT-001346
Jun-23	10,673	-	-	-	10,673	OPPD-EXPERT-001352
Jul-23	10,673	-	-	-	10,673	OPPD-EXPERT-001394
Aug-23	10,673	-	-	-	10,673	OPPD-EXPERT-001358
Sep-23	10,673	-	-	-	10,673	OPPD-EXPERT-001425
Oct-23	10,673	30,500	727,763	-	768,936	OPPD-EXPERT-001432
Nov-23	10,673	146,000	-	-	156,673	OPPD-EXPERT-001438
Dec-23	10,673	146,000	-	-	156,673	OPPD-EXPERT-001450
Jan-24	10,698	146,000	-	-	156,698	OPPD-EXPERT-001462
Feb-24	10,698	158,541	-	-	169,239	OPPD-EXPERT-001400
Mar-24	10,698	148,980	-	-	159,678	OPPD-EXPERT-001406
Apr-24	10,698	31,122	-	-	41,821	OPPD-EXPERT-001412
May-24	10,492	-	-	(19,859)	(9,367)	OPPD-EXPERT-001413; OPPD-EXPERT-001468
Jun-24	10,492	-	-	-	10,492	OPPD-EXPERT-001414
Jul-24	10,492	-	-	-	10,492	OPPD-EXPERT-001415
Aug-24	10,492	-	-	-	10,492	OPPD-EXPERT-001416
Sep-24	10,492	-	-	-	10,492	OPPD-EXPERT-001417
Oct-24	10,492	30,500	727,763	-	768,754	OPPD-EXPERT-001418
Nov-24	10,492	146,000	-	-	156,492	OPPD-EXPERT-001419
Dec-24	10,492	146,000	-	-	156,492	OPPD-EXPERT-001420
Jan-25	10,517	146,000	-	-	156,517	OPPD-EXPERT-001421
Feb-25	10,517	146,000	-	-	156,517	OPPD-EXPERT-001422
Mar-25	10,517	146,000	-	-	156,517	OPPD-EXPERT-001423
Apr-25	10,517	30,500	-	-	41,017	OPPD-EXPERT-001424
May-25	10,517	-	-	-	10,517 (3)	*N/A*
Jun-25	10,517	-	-	-	10,517	*N/A*
Jul-25	10,517	-	-	-	10,517	*N/A*
Aug-25	10,517	-	-	-	10,517	*N/A*
Sep-25	10,517	-	-	-	10,517	*N/A*
Oct-25	10,517	30,500	727,763	-	768,779	*N/A*
Nov-25	10,517	146,000	-	-	156,517	*N/A*
Dec-25	10,517	146,000	-	-	156,517	*N/A*
Total	**$ 402,248**	**$ 1,920,643**	**$ 2,183,288**	**$ (19,859)**	**$ 4,486,319**	
May 2023 - Aug. 2024	**$ 170,144**	**$ 807,143**	**$ 727,763**	**$ (19,859)**	**$ 1,685,190**	
Sep. 2024 - Dec. 2024	**$ 41,967**	**$ 322,500**	**$ 727,763**	**$ -**	**$ 1,092,229**	
Jan. 2025 - Dec. 2025	**$ 126,200**	**$ 791,000**	**$ 727,763**	**$ -**	**$ 1,644,963**	

Note(s):

(1) Monthly MUD Fees = Service Fee + Gas Infrastructure Replacement.

(2) Refund of 2% Tax in May 2024 due to Standing Bear Lake Station being outside city limits.

(3) For May 2025 through December 2025, I used the historical pricing from fall 2024 for Propane Demand Charges and the Storage Fee; and the annual Monthly MUD Fees from 2025.

Exhibit 6

Zachry Holdings, Inc. v. Omaha Public Power District
Lost Retail Capacity Revenue

	[A]	[B]	[C = A - B]	[D]	[E = C * D * 1000]
Date	3/2019 Energy Supply Agreement (ESA) Exhibit B Load Schedule (MW)	Google Total History (MW)	Difference (MW) (ESA - Actual Load)[1]	Demand Charge Rate ($/kW)[2]	Demand Revenue Difference
May-23	300	48	252	$19.52	$ 4,928,566
Jun-23	300	55	245	19.52	4,776,154
Jul-23	330	60	270	19.52	5,265,793
Aug-23	330	67	263	19.52	5,138,913
Sep-23	330	76	254	19.52	4,952,536
Oct-23	360	87	273	19.52	5,328,023
Nov-23	360	95	265	19.52	5,173,503
Dec-23	360	109	251	19.52	4,906,547
Jan-24	390	119	271	18.36	4,977,102
Feb-24	390	135	255	18.36	4,685,031
Mar-24	390	149	241	18.36	4,427,771
Apr-24	420	164	256	18.36	4,708,018
May-24	420	178	242	18.36	4,438,732
Jun-24	420	194	226	18.36	4,142,530
Jul-24	450	206	244	18.36	4,487,221
Aug-24	450	213	237	18.36	4,349,557
Sep-24	450	218	232	18.36	4,265,322
Oct-24	450	229	221	18.36	4,061,856
Nov-24	450	238	212	18.36	3,899,050
Dec-24	450	242	208	18.36	3,810,167
Jan-25	450	247	203	19.51	3,951,514
Feb-25	450	259	191	19.51	3,726,941
Mar-25	450	265	185	19.51	3,612,959
Apr-25	450	287	163	19.51	3,187,700
May-25	450	*N/A*	*N/A*	19.51	*N/A*
Jun-25	450	*N/A*	*N/A*	19.51	*N/A*
Jul-25	450	*N/A*	*N/A*	19.51	*N/A*
Aug-25	450	*N/A*	*N/A*	19.51	*N/A*
Sep-25	450	*N/A*	*N/A*	19.51	*N/A*
Oct-25	450	*N/A*	*N/A*	19.51	*N/A*
Nov-25	450	*N/A*	*N/A*	19.51	*N/A*
Dec-25	450	*N/A*	*N/A*	19.51	*N/A*
Total / Average	**13,200**	**3,939**	**5,661**	**$19.08**	**$ 107,201,507**
May 2023 - Aug. 2024	**6,000**	**1,954**	**4,046**	**$18.94**	**$ 76,685,998**
Sep. 2024 - Dec. 2024	**1,800**	**927**	**873**	**$18.36**	**$ 16,036,395**
Jan. 2025 - Dec. 2025	**5,400**	**1,058**	**742**	**$19.51**	**$ 14,479,114** [3]

Note(s):

(1) This analysis calculates lost retail revenue for one large customer.

(2) Demand Charges of $19.52/kW, $18.36/kW, and $19.51/kW for 2023, 2024, and 2025 respectively.

(3) This subtotal only includes January through April 2025 as no historical MWs have been provided for the remainder of 2025.

Source(s):

Standing Bear and Turtle Creek Lost Revenue - Confidential (OPPD-EXPERT-000424).xlsx.

Energy Supply Agreement w Goldenrod LLC - Executed (OPPD-EXPERT-000483-000513).pdf.

Rate Manuals:

2022-12-dec-resolution-6544-2023 final corporate operating plan(OPPD-EXPERT-000740-000899).pdf.

2023-12-dec-resolution-6621-2024 final corporate operating plan(OPPD-EXPERT-000900-001056).pdf.

2025 oppd-rate-manual (OPPD-EXPERT-001260).pdf.

Exhibit 7

Zachry Holdings, Inc. v. Omaha Public Power District

Project Costs OPPD Incurred From Missed Guaranteed Substantial Completion Dates

Costs Incurred in Zachry Missing Amendment 2 Guaranteed Substantial Completion Dates [1]

OPPD			
HDR	$	710,983	
Qualus, Benesch, Farris, etc.		378,608	
Fuel Oil Analysis		24,557	
Payroll		3,866,891	
EMI Expert MegaLabs		23,100	
EMI Materials & Installation		380,720	
Wilson & Co. TCS Wastewater		37,495	
	$	**5,422,354**	
Legal Fees			
Legal Fees	$	705,903	
	$	**705,903**	
OFE (Technical Field Assistant "TFA")			
Wartsila	$	3,297,384	
Siemens		6,002,719	
	$	**9,300,103**	
Damage Claims			
Siemens			
Fuel Oil Related	$	1,155,265	[2]
Unit 2 Zachry Fuel Oil Human Performance Error		390,000	
Damaged / Missing Parts		1,000,000	
Wartsila			
Dec. 16, 2024 EMI Incident Damaged Cards		225,000	
Raccoon		38,275	
Damaged / Missing Parts		190,146	
Engine 8 Sabotage		55,075	
TCS Fuel Oil Spill Remediation		320,020	
	$	**3,373,781**	
Total (Not Including Legal Fees)	**$**	**18,096,238**	

Note(s):

(1) For purposes of this analysis, the costs are assumed to have been incurred after December 2024.

(2) Costs for the Service Team would be in addition to the $1.2 million.

Source(s):

Project Costs - OPPD Incurred(OPPD-EXPERT-000484).png.

Exhibit 3

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

In re:	§	Chapter 11
ZACHRY HOLDINGS, INC., *et al*	§	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 JOSEPH LANG IN SUPPORT OF DEFENDANT OMAHA PUBLIC POWER DISTRICT'S OPPOSITION TO ZACHRY'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE LIQUIDATED DAMAGES

I, Joseph Lang, make the following declaration in lieu of an affidavit pursuant to 28 U.S.C. § 1746:

1. I am over 21 years old. The facts and matters stated in this declaration are based on my own personal knowledge and information, or on my review of records created by Defendant Omaha Public Power District ("OPPD") in the ordinary course of business. I submit this declaration in connection with OPPD's Opposition to Zachry's Motion for Partial Summary Judgment re: Liquidated Damages.

1. I am currently employed by OPPD as the Director of Generation Strategy & Origination, in Omaha, Nebraska. In this capacity, I am responsible for overseeing efforts to site, spec, negotiate and contract for the purchase of generation equipment and construction for new and existing OPPD generation facilities. I am a licensed Professional Engineer in the State of Nebraska.

2. I have knowledge of the 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 "EPC" or "Contract"). Under the terms of the Contract, Zachry is to provide services for all activities associated with designing, procuring, installing, starting up, and testing two (2) power plant sites: (i) the Standing Bear Lake Station ("SBLS"); and (ii) the Turtle Creek Station ("TCS") (collectively the "Projects"). The Contract was amended in October of 2023, and August of 2024.

3. Through my past and current employment with OPPD, I have knowledge of the tariff, protocols, and other rules of the Southwest Power Pool ("SPP"). I am a member of the following relevant SPP committees: Chairman of the SPP Markets and Operations Policy Committee, and member of the Members Committee that advises the SPP Board of Directors on voting positions. OPPD is a Transmission Owner member of SPP. OPPD also is a "Load Responsible Entity" within the rules of SPP. A Load Responsible Entity within SPP is an entity that has a service obligation to provide electric service to end-use customers. OPPD is a Load Responsible Entity for a service area that includes the Omaha, Nebraska metropolitan area, east of the Missouri River, and thirteen counties in eastern Nebraska.

4. As a Load Responsible Entity within SPP, OPPD has an obligation to have sufficient electric capacity to serve the peak load of its customers plus a margin above that peak load, referred to in SPP as a Planning Reserve Margin ("PRM"). Presently, the PRM under SPP rules is fifteen percent (15%) year-round. Beginning in the summer of 2026 and winter of 2026-27, SPP has increased the PRM to be 16% during the summer months and 36% in the winter months.

5. For an electric utility like OPPD, there are two critical aspects to the production of electricity from generation units such as TCS and SBLS: capacity and energy. "Capacity" is the maximum amount of power that a generator can produce. "Energy" refers to the amount of electricity generated or consumed over a period of time. Capacity typically is expressed in megawatts ("MW"), representing the maximum output of a generator at any given time. Energy is measured in kilowatt hours ("kWh"). It describes a generator operating for a specific duration and is the basis for billing customers for their use of energy.

6. The Declaration of Tanya Bodell, offered by Zachary in support of its Motion for

Partial Summary Judgment, states that OPPD projects using SBLS and TCS approximately 15% of the time on an annual basis. Although that statement may be accurate as to energy usage over the course of a year, it neglects to consider the capacity provided by these two stations, which is a total of 600 MW. That capacity is needed by OPPD to meet Resource Adequacy ("RA") requirements of SPP. When Zachary delayed the completion of the two power stations, OPPD still had to meet its RA requirements with SPP. To do so, OPPD was required to enter into capacity contracts in the market to meet the RA requirements. Those capacity purchases were substantial. They total in excess of $25 million for the period beginning August of 2024 and extending through 2025. The alternative faced by OPPD if it did not purchase capacity to meet its RA requirements, when the plants were delayed, was a deficiency payment assessed by OPPD known as a Cost of New Entry ("CONE") payment. Those payments would have been $13.6 million for 2023 and $34.1 million for 2024.

7. The Liquidated Damages clause in the Contract states that actual damages would be difficult to determine, and that both parties agreed the Liquidated Damages amounts were reasonable and appropriate measures of damages and not a penalty. The total Liquidated Damages were not to exceed 15% of the Contract Price.

> "(a) The 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**." (emphasis added)

8. The Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security identifies the energy sector and electric power industry as critical infrastructure. Not having the Turtle Creek Station ("TCS") and Standing Bear Lake Station ("SBLS") facilities commissioned prevents them from supporting OPPD's system and grid resiliency and adversely impacts OPPD's ability to serve load under certain adverse grid conditions and localized grid events. These events could lead to a weakened system or load shedding that TCS and SBLS could otherwise have addressed or prevented. These generation assets are located close to OPPD's load pocket and SBLS and TCS completion delays create risks and impacts to OPPD's mission critical facilities.

9. TCS and SBLS provide voltage support on the local and regional electrical grid.

Delay of having these generation facilities online creates power quality and low voltage risks that could adversely impact customers in addition to causing premature degradation to grid components and equipment leading to decreased equipment life and increased failure risks.

10. OPPD is a customer owned public power utility and such adverse grid events without the support of SBLS and TCS could impact OPPD's reputation and goodwill with the public, community and economic development of OPPD's service territory.

11. The foregoing damages are difficult to determine due to the physical nature of grid and equipment impacts, as well as anticipating the scenarios and unforeseen circumstances that could materialize. There are also intangible losses that can further impact future losses, the quantification of which would be highly speculative and difficult to determine.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of May, 2025.

DocuSigned by:
Joseph E. Lang
E215E097FE0444A...

Joseph E. Lang, P.E.