IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
Debtors.	)	(Jointly Administered)
	)	**Objection Deadline:** **May 17, 2019 at 4:00 p.m. (ET)**
	)	**Hearing Date:** **June 12, 2019 at 10:00 a.m. (ET)**

DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING THE LITIGATION FUNDING AND COOPERATION AGREEMENT

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") hereby submit this motion (this "**Motion**") for the entry of an order, substantially in the form attached hereto as Exhibit A (the "**Proposed Order**"), pursuant to sections 105(a), 363(b), and 364(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"); Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and Rule 4001-2 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), (i) approving that certain *Litigation Funding and Cooperation Agreement*, a copy of which is attached to the Proposed Order as Exhibit 1 (the "**Cooperation Agreement**"), by and among Welded Construction, LP ("**Welded**"), Federal Insurance Company (the "**Surety**") and the Official Committee of Unsecured Creditors (the "**Committee**" and, together with Welded and the Surety, the "**Parties**"), and (ii) authorizing the Debtors to take any and all actions

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

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necessary to effectuate the Cooperation Agreement. In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT[2]

1. The Parties seek approval of the Cooperation Agreement, which resolves the Surety's assertion of equitable-subrogation rights, secures funding for the Williams Litigation, and establishes a protocol to share the net proceeds of the recovery in such litigation. The Surety has agreed to provide $2.5 million of funding (or more if consented to by the Parties) to the Debtors' estates for prosecution of the Williams Litigation. The litigation funding is secured by a lien, solely to the extent of the funding amount, in the litigation proceeds. The Cooperation Agreement also establishes a protocol for the disposition of the net proceeds of the Williams Litigation between the Surety and Welded's bankruptcy estate. The Parties reached this agreement following good faith, arm's-length negotiations. Approving the Cooperation Agreement will preserve and maximize the value of the Debtors' estates and is a sound exercise of the Debtors' business judgment.

JURISDICTION

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the "**Amended Standing Order**"). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] Capitalized terms used, but not defined, in this Preliminary Statement shall have the meanings given to such terms below.

3. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), and 364(c) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and Local Rule 4001-2.

BACKGROUND

A. General

4. On October 22, 2018, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (the "**Petition Date**"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Committee was appointed on October 30, 2018.

5. Additional information regarding the Debtors' businesses, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Frank A. Pometti in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 4] (the "**Pometti Declaration**"), which is incorporated herein by reference.

B. The Surety Bond

6. The Surety issued Performance Bond no. 8219-24-58 (the "**Bond**") in the amount of $454,471,254, naming Welded as principal and Transcontinental Gas Pipe Line Company, LLC ("**Transcon**") as obligee, relating to a construction contract dated August 10, 2016 (the "**Williams Contract**") between Debtor and Transcon (a company indirectly owned by Williams Partners Operating LLC and Williams Companies, Inc., (collectively and with Transcon, "**Williams**")) for construction work on the Atlantic Sunrise natural gas pipeline (the "**Williams Project**"). In connection with the Bond, Welded and the Surety entered into the General Indemnity Agreement dated February 27, 2017 (the "**Indemnity Agreement**"), pursuant to which Welded agreed to indemnify and hold the Surety harmless from losses incurred by the Surety as a result of having issued the Bond.

7. The Surety has informed the Debtors and the Committee that it has received claims on the Bond in excess of $74 million and has paid in excess of $33 million to date. The Surety has filed proofs of claim against the Debtors' estates related to the Bond and the Indemnity Agreement [*see* Claim Nos. 529 & 551] (the "**Surety Claims**"). Pursuant to its asserted equitable-subrogation rights, the Surety alleges that it has a right to all contract balances due under the Williams Contract to the extent of its allowed Surety Claims (i.e., the amounts the Surety has paid related to claims made by subcontractors and suppliers under the Bond) and further asserts that such right is superior to any right of the Debtors or any creditor of the Debtors' estates in the contract balances.

C. The Williams Contract

8. Prior to the commencement of these chapter 11 cases, on September 19, 2018, Welded achieved mechanical completion on the Williams Project. Immediately following that achievement, Williams notified Welded that it was withholding reimbursement of approximately $24 million that Welded had paid to construct Williams' pipeline over the previous ten (10) months. Coupled with that withholding, Williams filed a lawsuit in Oklahoma state court asserting a breach-of-contract claim against Welded in the approximate amount of $24 million. Williams's actions created acute liquidity issues for the Debtors and concerns in the market about their viability as a going concern, ultimately leading to the filing of these cases. *See Pometti Declaration*, ¶¶ 15, 30-33.

9. Transcon thereafter filed two proofs of claims against Welded's estate with respect to the Williams Project, seeking (1) damages in the estimated amount of $16,320,000 for the repair of allegedly defective work [*see* Claim No. 632] and (2) damages in the amount of $94,291,513.58 for alleged (a) overbilling, (b) breaching the Williams Contract and violating safety and environmental regulations, (c) failing to complete construction on

schedule, and (d) failing to properly remit payment to subcontractors and suppliers [*see* Claim No. 636] (collectively, the "**Proofs of Claim**").

10. As set forth more fully in the Debtors' complaint and objection to claims, annexed hereto (without exhibits) as Exhibit B (*see Welded Construction, L.P. v. Williams Companies et al.,* Adv. Proc. No. 19-50194 (KG) (the "**Williams Litigation**")), Transcon owes the Debtors' estates substantial amounts related to, among other things, the Williams Contract and the Williams Project (the "**Williams Claims**"), and the Proofs of Claim are without merit.

D. The Cooperation Agreement

11. The material terms of the Cooperation Agreement are as follows:[3]

a. Litigation Costs. The Surety has agreed to fund $2,500,000 subject to increase with the prior written consent of the Parties (the "**Litigation Fund**") for fees and costs actually incurred by the Debtors in prosecuting the Williams Litigation, without charging any interest or fees. A confidential budget will be shared among the Parties. Upon thirty (30) days' written notice to Welded, the Surety may terminate its obligation to fund the Williams Litigation for any fees or costs incurred from and after the expiration of such notice period;

b. Reimbursement; Lien Grant. In the event of any recovery by Welded as a result of a judgment in, or settlement of, the Williams Litigation (the "**Recovery**"), the Surety shall be reimbursed only from and to the extent of the Recovery for all amounts advanced by the Surety into the Litigation Fund. The Surety shall be granted a first priority lien on only the Recovery and on no other assets or property of the Debtors or their estates, or the proceeds thereof. In the event that there is no Recovery or the Recovery is less than the amount advanced in the Litigation Fund, the Surety shall have a general unsecured, non-priority claim against the Debtor for the unpaid amounts advanced;

c. Estate Sharing Arrangement and Related Matters. After the Surety and/or the Welded estate (the "**Estate**") receive reimbursement of litigation costs, the Estate will receive a portion of the remaining proceeds from the Williams Litigation (the "**Net Proceeds**"), calculated as follows: (i) the lesser of $250,000 or the Net Proceeds (such amount, the "**Estate**

[3] The following is a summary of the Cooperation Agreement and is qualified in its entirety by reference to the Cooperation Agreement, the terms of which control.

Reimbursement"), and (ii) 10% of the Net Proceeds (inclusive of the Estate Reimbursement) if the Net Proceeds are less than or equal to $5 million or greater than $10 million, or $750,000 (in addition to the Estate Reimbursement) if the Net Proceeds are greater than $5 million and less than or equal to $10 million. The Surety will be entitled to the remainder of the Net Proceeds and will share in any payments to the general unsecured creditor class on the basis of any allowed Surety unsecured, non-priority claim.

d. Cooperation and Settlement Authority. The Parties have agreed to reasonably cooperate with respect to the Williams Litigation, and Welded will consult with the Surety and the Committee in connection with any related settlement negotiations and litigation disposition.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of the Proposed Order, pursuant to sections 105(a), 363(b), and 364(c) of the Bankruptcy Code; Bankruptcy Rules 2002, 4001, 6004, and 9014; and Local Rule 4001-2, (i) approving the Cooperation Agreement and the terms thereof attached as Exhibit 1 to the Proposed Order and (ii) authorizing the Debtors to take any and all actions necessary to effectuate the Cooperation Agreement.

BASIS FOR RELIEF

I. IMPLEMENTING THE COOPERATION AGREEMENT IS A SOUND EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT

13. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The Court may use its power under section 105(a) of the Bankruptcy Code to authorize payments that are essential for operating the debtor's business in chapter 11 and maximizing the value of the estate. *Just for Feet, Inc.*, 242 B.R. 821, 824-26 (D. Del. 1999) (debtors may make payments that are essential to the continued operation of the business while in chapter 11).

14. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." To approve the use of estate property under section 363(b)(1) of the Bankruptcy Code, a debtor must show that the decision to use the property outside of the ordinary course of business was based on the debtor's business judgment. *See Martin v. Myers (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a 363(b) application must find a good business reason to grant such application). Once a debtor articulates a valid business justification, the law vests the debtor's decision to use property outside of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

15. The Debtors submit that entry into the Cooperation Agreement is the product of their sound, reasonable business judgment and is in the best interests of the estates and their stakeholders. The Surety has asserted equitable subrogation rights in any Recovery. The Debtors and the Committee have engaged in lengthy, arm's-length negotiations with the Surety regarding the Surety's asserted rights, the path forward with the Williams Litigation, and the sharing of the Recovery. The Cooperation Agreement is the outcome of these negotiations and fairly allocates the benefits and burdens of the Williams Litigation and the Recovery. Notably, the Committee took a leading role in negotiating a sharing mechanism between the

Estate and the Surety for the disposition of the Net Proceeds. The Cooperation Agreement additionally provides the Debtors' estates with funding to pursue the Williams Litigation and allows the Debtors to do so without diminishing or jeopardizing their estates' existing assets. Both key components of the Cooperation Agreement align the interests of the parties and provide certainty regarding the benefits of the Recovery.

16. In consideration of the Surety's agreement to provide the Litigation Funding without charging interest or fees, the Surety is being granted a limited lien solely to the extent of any Litigation Funding provided and only on the Recovery. The Debtors submit that it is appropriate and necessary for the Court to grant the lien pursuant to section 364(c) of the Bankruptcy Code. Courts consider the following factors in determining whether obtaining postpetition financing pursuant to section 364(c) is appropriate: (i) whether the debtor is unable to obtain unsecured credit under section 364(b); (ii) whether the transaction is necessary to preserve the assets of the debtor's estate; and (iii) whether the terms of the transaction are fair, reasonable and adequate under the circumstances. *See In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312-13 (Bankr. D. Del. 2011) (noting these three factors in considering proposed postpetition financing). The Debtors submit that the Litigation Funding is effectively a no-interest, no-fee loan secured by a lien solely in the Recovery and that such terms are not obtainable from another source. The transaction is necessary to preserve the Estate assets and is fair, reasonable and adequate to pursue a significant asset of the Estate. Based on the foregoing, the granting of the lien is appropriate under the circumstances.

17. Accordingly, the Debtors submit that approving the Cooperation Agreement is a valid exercise of the Debtors' business judgment and in the best interests of the Debtors and their stakeholders.

II. WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

18. The Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief requested herein is necessary, among other things, for the Debtors to maximize stakeholder recoveries through pursuit of the Williams Litigation in a timely and efficient manner. Thus, the Debtors respectfully request that the Court waive the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h) (and any other applicable stay).

NOTICE

19. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; and (iii) all parties who, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 3, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Sean M. Beach

Sean M. Beach (No. 4070)
Matthew B. Lunn (No. 4119)
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Counsel to the Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	Case No. 18-12378 (KG)
Debtors.	(Jointly Administered)
	Objection Deadline: **May 17, 2019 at 4:00 p.m. (ET)**
	Hearing Date: **June 12, 2019 at 10:00 a.m. (ET)**

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE; (II) COUNSEL TO THE COMMITTEE; AND (III) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") have filed the attached *Debtors' Motion for Entry of an Order Approving the Litigation Funding and Cooperation Agreement* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **May 17, 2019 at 4:00 p.m. (ET)** (the "**Objection Deadline**") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **JUNE 12, 2019 AT 10:00 A.M. (ET)** BEFORE THE HONORABLE KEVIN GROSS, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: May 3, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Sean M. Beach

Sean M. Beach (No. 4070)
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Counsel to the Debtors

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
Debtors.	)	
	)	**Ref. Docket No. ___**

ORDER APPROVING LITIGATION FUNDING AND COOPERATION AGREEMENT

Upon consideration of the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") for the entry of an order, pursuant to sections 105(a), 363(b), and 364(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "**Bankruptcy Code**"); Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and Rule 4001-2 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), (i) approving that certain *Litigation Funding and Cooperation Agreement*, attached hereto as Exhibit 1 (the "**Cooperation Agreement**"), by and among Welded Construction, LP ("**Welded**"), Federal Insurance Company (the "**Surety**") and the Official Committee of Unsecured Creditors (the "**Committee**" and, together with Welded and the Surety, the "**Parties**"), and (ii) authorizing the Debtors to take any and all actions necessary to effectuate the Cooperation Agreement; and upon consideration of the Motion and all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion and the relief provided for herein is required; and it

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors and an appropriate exercise of the Debtors' business judgment; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth herein.

2. The Cooperation Agreement, attached to this Order as Exhibit 1 and incorporated herein by reference as if set forth in full (including, without limitation, the estate sharing arrangement contained in paragraph 3 of the Cooperation Agreement), is approved in its entirety pursuant to sections 105(a), 363(b), and 364(c).

3. The Debtors are authorized to enter into the Cooperation Agreement, comply with their obligations thereunder, and to take all actions necessary to carry out the terms of the Cooperation Agreement.

4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. This Court shall retain jurisdiction with respect to all matters arising from or related to the Cooperation Agreement and the implementation of this Order.

EXHIBIT 1

Cooperation Agreement

LITIGATION FUNDING AND COOPERATION AGREEMENT

THIS LITIGATION FUNDING AND COOPERATION AGREEMENT (the "**Agreement**") is made and entered into as of the 3rd day of May, 2019, by and between:

1) FEDERAL INSURANCE COMPANY ("**Surety**"),
2) WELDED CONSTRUCTION, LP ("**Debtor**"), and
3) OFFICIAL COMMITTEE OF UNSECURED CREDITORS ("**Committee**") (all entities recited above, collectively, the "**Parties**").

W I T N E S S E T H:

WHEREAS, Surety, on behalf of and at the request of Debtor, issued Performance Bond no. 8219-24-58 (the "**Bond**") in the amount of $454,471,254, naming Debtor as principal and Transcontinental Gas Pipe Line Company, LLC ("**Transcon**") as obligee, relating to a construction contract dated August 10, 2016 between Debtor and Transcon (a company indirectly owned by Williams Partners Operating LLC and Williams Companies, Inc., (collectively, "**Williams**")) for construction work on the Atlantic Sunrise natural gas pipeline (the "**Williams Project**");

WHEREAS, as consideration for the issuance of the Bond, Debtor executed the General Indemnity Agreement dated February 27, 2017 (the "**Indemnity Agreement**"), pursuant to which Debtor agreed, among other things, to indemnify and hold Surety harmless from any losses incurred by Surety as a result of having issued the Bond;

WHEREAS, Surety has received claims on the Bond in excess of $74 Million and has paid in excess of $33 Million to date. Pursuant to the Surety's right of equitable subrogation, the Surety asserts that it has a right to all contract balances due under the Williams Contract to the extent the Surety has satisfied claims made by subcontractors and suppliers under the Bond and further asserts that such right is superior to any right of the Debtor or any creditor of the Estate in the contract balances;

WHEREAS, the Debtor and the Committee have discussed the equitable subrogation rights with the Surety and the Parties have agreed to consent to such equitable subrogation rights, subject to the sharing arrangement set forth herein;

WHEREAS, without limiting other claims or causes of action that the Debtor or any other party in interest has or may have against Transcon, the Debtor has asserted that Transcon has failed to pay all of the amounts due to the Debtor under the Williams Contract and that such failure has contributed to Debtor's inability to pay the subcontractors and suppliers on the Williams Project. The Debtor is prepared to prosecute affirmative claims against Transcon and Williams arising under or in relation to the Williams Project, including any contract or agreement related thereto with Transcon, Williams or either of their affiliates (the "**Williams Contract**") for, among other things, the underpayments and other associated claims (the "**Williams Claims**"). The Parties agree that the net proceeds of any recovery on the Williams Claims should be paid to subcontractors and suppliers on the Williams Project, or otherwise to

the Surety pursuant to its equitable subrogation rights to the extent the Surety has satisfied claims made by subcontractors and suppliers under the Bond; provided, however, that the Surety has agreed to sharing a portion of the recovery on the Williams Claims, including any settlement thereof, with the Debtor's estate (the "**Estate**") for the benefit of the creditors in the Bankruptcy Case (as defined below);

WHEREAS, on October 22, 2018, the Debtor and Welded Construction Michigan, LLC (the "**Michigan Debtor**") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") and are currently operating as debtors-in-possession in cases jointly-administered under case no. 18-12378 (the "**Bankruptcy Case**");

WHEREAS, the Debtor and Surety are parties to that certain Joint Defense and Common Interest Agreement dated December 23, 2018 (the "**Debtor Joint Defense Agreement**") and the Committee and the Surety are parties to that certain Joint Defense and Common Interest Agreement dated as of February 6, 2019, (the "**Committee Joint Defense Agreement**") (the Debtor Joint Defense Agreement, the Committee Joint Defense Agreement and any other joint defense or common interest agreements by and between any of the Parties, whether or not in writing, are collectively referred to hereafter as the "**Joint Defense Agreements**");

WHEREAS, the Surety has agreed to provide funding to allow the Debtor to pursue the Williams Claims under the terms set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Litigation Costs. The Surety agrees to fund up to a maximum of $2,500,000, subject to increase with the prior written consent of the Parties (the "**Litigation Fund**") for fees and costs actually incurred in prosecuting the claims and defenses of the Debtor arising under or in relation to the Williams Claims (the "**Williams Litigation**"). The Litigation Fund, to be further identified in a confidential budget provided solely to the Parties, shall be used to pay the fees and expenses of Young Conaway Stargatt & Taylor, LLP (counsel to the Debtor), Lewis Brisbois Bisgard & Smith LLP, AlixPartners, LLP, litigation consultants, experts, contractors, and e-Discovery vendors related solely to the extent of work performed or costs incurred in connection with the Williams Litigation, but shall not be used to pay the fees and expenses of any other entity, including but not limited to, the Committee appointed in the Bankruptcy Case or its professionals. Upon 30 days written notice to the Debtor, the Surety may terminate the obligation to fund the Williams Litigation for any fees or costs incurred from and after the expiration of such notice period (a "**Funding Termination Event**"); *provided, however,* that a decision by the Surety not to fund any amounts in excess of $2,500,000 to the Litigation Fund shall not be deemed a Funding Termination Event. Upon a Funding Termination Event where the Debtor determines to proceed with prosecuting the Williams Litigation utilizing funds not provided by Surety, the Surety shall be entitled to reimbursement of any costs advanced by Surety under this Agreement pro-rata with any costs incurred by Debtor and its estate prior to any other disposition of the proceeds of a recovery in the Williams Litigation, if any, obtained

from prosecution or settlement of the Williams Litigation. If a Funding Termination Event occurs, except with respect to pro-rata reimbursement of the Surety's litigation costs, the Surety shall be deemed to have released its first priority interest and liens in the Recovery (as defined below). For avoidance of doubt, the Surety shall at all times retain its rights under the Indemnity Agreement, subject only to the terms of this Agreement.

2. Reimbursement of Surety from Litigation Proceeds. Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, in the event of any recovery by the Debtor as a result of a judgment in, or settlement of, the Williams Litigation (the "**Recovery**"), the Surety shall be reimbursed only from and to the extent of the Recovery for all amounts advanced by the Surety into the Litigation Fund (to the extent that such amounts exceed the $2,500,000 maximum amount set forth above such excess shall have been consented to in writing by each of the Parties). The Surety shall be granted a first priority lien on only the Recovery and on no other assets or property of the Debtor, the Michigan Debtor, the Debtor's estate or the Michigan Debtor's estate, or the proceeds thereof, which lien shall be approved by the Bankruptcy Court as a condition of this Agreement. The reimbursement to Surety under this paragraph shall be made prior to any other disposition of the Recovery. In the event that there is no Recovery or the Recovery is less than the amount advanced in the Litigation Fund, the Surety shall have a general unsecured, non-priority claim against the Debtor for the unpaid amounts advanced under this Agreement.

3. Estate Sharing Arrangement and Related Matters: The Parties agree to the following sharing arrangement with respect to the disposition of the proceeds of a recovery in the Williams Litigation:

(a) Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, the Surety shall receive reimbursement of all amounts advanced for the Williams Litigation in accordance with Paragraph 2 with the remaining proceeds after such reimbursement defined for purposes of this Agreement as the "**Net Proceeds**."

(b) The Estate shall receive from the Net Proceeds the lesser of $250,000 or the Net Proceeds ("**Estate Reimbursement**") to cover the costs incurred by the Estate for maintaining staff and other resources necessary for the litigation of the Williams Claims.

(c) In addition to the Estate Reimbursement, the Estate will receive one of the following mutually exclusive payments:

(1) Where the Net Proceeds are less than or equal to $5 million, the Estate will receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to $3 million, the Estate will receive $50,000 in addition to the Estate Reimbursement.

(2) Where the Net Proceeds are greater than $5 million and less than or equal to $10 million, the Estate will receive $750,000 in addition to the Estate Reimbursement ($1 million total).

(3) Where the Net Proceeds are greater than $10 million, the Estate shall receive 10% of the Net Proceeds inclusive of the Estate Reimbursement. For example, if the Net Proceeds are equal to $12 million, the Committee will receive $950,000 in addition to the Estate Reimbursement.

(d) The Surety will share in any payments to the general unsecured creditor class on the basis of any allowed Surety unsecured, non-priority claim hereunder or under or in respect of the Bond and the Indemnity Agreement, to the extent such claim has been allowed pursuant to applicable bankruptcy law or by final, unstayed Bankruptcy Court order.

(e) The Surety shall provide each of the Debtor and the Committee with a monthly, confidential, detailed accounting of payments it makes to claimants under the Bond. The Surety shall use its reasonable, best efforts to make payments on each outstanding claim submitted under the Bond by no later than June 30, 2019 and to the extent permitted by applicable law, so long as such claimant has provided appropriate documentation to the Surety pertaining to its claim.

4. Cooperation and Settlement Authority. The Parties shall reasonably cooperate with respect to the Williams Litigation, including information that may be requested by any Party, and the Debtor shall keep the Surety and the Committee advised of all material matters relating to the Williams Litigation. The Debtor agrees to consult with the Surety and the Committee in advance of, and allow the Surety and the Committee to participate in, any settlement negotiations relating to the Williams Litigation, as well as any final disposition of the Williams Litigation. Additionally, upon request of the Surety or the Committee, subject to the Joint Defense Agreements, the Debtor shall provide a confidential update to the Surety and the Committee of the then current status of the Williams Litigation and shall consult with the Surety and the Committee regarding any litigation issues that may materially impact the success of the Williams Litigation.

(a) Nothing in this Agreement shall be deemed to preclude the Surety from (i) settling, for itself only, any claims made by subcontractors, suppliers, and assignees of subcontractors and suppliers under the Bond on terms acceptable to the Surety in its sole and absolute discretion, or (ii) obtaining from Williams a release of Surety's liability under the Bond on terms acceptable to Surety in its sole discretion.

(b) Nothing herein shall be deemed to waive any terms, conditions or limitations contained in the Bond, including, without limitation, the penal limit thereof and the Bond shall remain in full force and effect.

(c) Nothing in this Agreement shall be deemed to limit or alter the Debtor's exercise of its fiduciary duties or the Debtor's rights and defenses against the Surety or in any way related to the Bond or the Indemnity Agreement.

5. Joint Defense. The Parties agree that the terms of the Joint Defense Agreements shall govern all communications between the Parties with respect to this Agreement or the

Williams Litigation, ensuring that all communications between the Parties related to such proceedings are protected by all applicable privileges, including but not limited to the attorney-client privilege, the work product doctrine, the self-critical examination privilege, the trade secret doctrine, and the common interest privilege.

6. Governing Law. This Agreement is entered into in the State of Delaware and shall be governed by and construed in accordance with the laws of the State of Delaware. Any dispute by and between the Debtor and the Surety shall be adjudicated by the United States Bankruptcy Court for the District of Delaware.

7. Bankruptcy Court Approval. This Agreement is subject to approval by the Bankruptcy Court pursuant to a final, unstayed order of the Bankruptcy Court (the finality requirement may be waived by the Parties in writing), which is acceptable to the Parties.

IN WITNESS WHEREOF, this Agreement is executed by the parties on the day and date first set forth above.

/s/ Sean M. Beach
YOUNG CONAWAY STARGATT & TAYLOR, LLP
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Counsel to the Official Committee of Unsecured Creditors of Welded Construction, L.P., et al.

EXHIBIT B

Williams Complaint

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WELDED CONSTRUCTION, L.P., *et al.*,[1] Debtors.	Chapter 11 Case No. 18-12378 (KG) (Jointly Administered)
WELDED CONSTRUCTION, L.P., Plaintiff, v. THE WILLIAMS COMPANIES, INC., WILLIAMS PARTNERS OPERATING LLC, and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC, Defendants.	Adv. Pro. No. _____

COMPLAINT AND OBJECTION TO CLAIMS

The above-captioned plaintiff ("Welded"), by its undersigned attorneys, for its Complaint against the above-captioned defendants (collectively, the "Defendants" or "Williams"),[2] and for its Objection to proofs of claim 632 and 636 (collectively, the "Transco Claims") filed by defendant Transcontinental Gas Pipe Line Company, LLC, hereby alleges as follows:

Introduction

On September 19, 2018, Welded successfully achieved mechanical completion on a 96-mile expanse of Williams's Atlantic Sunrise natural-gas pipeline, which received FERC approval

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

[2] For ease of reference, and due to the difficulty differentiating between the web of entities associated with Williams that interacted with Welded, the Defendants often are referred to herein, collectively, as "Williams." Where possible, Welded has attempted to differentiate between the entities, but the use of the term "Williams" or "Transco" should not be construed as an admission by Welded as to the activities of one Defendant or another or otherwise used against Welded for any purpose.

and was placed into service on October 6, 2018. In completing the pipeline, Welded's personnel overcame numerous challenges that increased the difficulty and expense of the project far beyond anything reasonably contemplated at the outset, including, for example, severe winter weather, record rainfall, repeated protester interference, debilitating permitting issues, and serial expansions and modifications of the project scope. Despite these hurdles, the completed pipeline has been tremendously successful, providing cost-effective natural gas to consumers all along the East Coast, and providing Williams with self-reported revenue of $35 million per month.

On October 4, 2018, Williams, once its final FERC approval was firmly in hand, abruptly notified Welded that Williams was withholding reimbursement of approximately $24 million that Welded had paid to construct Williams's pipeline over the previous 10 months. Coupled with that withholding, Williams, without any warning or prior discussion with Welded, filed a lawsuit in Oklahoma state court asserting a breach-of-contract claim against Welded in the approximate amount of $24 million.

Nothing in the cost-reimbursement contract that Williams and Welded executed would permit Williams to withhold funds under these circumstances. The contract provides that Welded would receive a fixed fee from Williams to cover its profit and back-office services and would be entitled to reimbursement of the actual labor and equipment costs incurred in constructing the pipeline. From the beginning of construction in September 2017, Williams paid Welded's construction costs in the ordinary course for more than a year until October 4, 2018, when Williams suddenly withheld approximately $24 million, citing previously unarticulated issues with Welded's bills reaching all the way back to the beginning of construction.

Despite the pending lawsuit and significant deprivation of funds, Welded continued its clean-up work on the project and continued good-faith efforts to reach a resolution of Williams's

alleged issues. As Welded informed Williams, however, withholding the reimbursement of such substantial amounts—funds that Welded had already expended—threatened Welded's ability to make payroll and to continue operations in the ordinary course.

In response, Williams withheld another $17 million and indicated its intention to continue clawing back costs that Welded incurred building the pipeline. These actions pitched Welded into acute financial distress, ultimately leading to the filing of these chapter 11 cases, and demonstrated Williams's complete lack of concern for Welded and its vendors, subcontractors, and employees—the very people who built the pipeline that has been so massively profitable for Williams.

For all of the foregoing reasons, and as further set forth herein, the Court should order Williams to turn over the funds it has wrongfully seized, and to make further payments to Welded as required under the Contract, so that Welded may have a full and fair opportunity to pursue a chapter 11 plan of reorganization that will maximize the value of Welded's assets for the benefit of all stakeholders.

Parties

1. Plaintiff Welded is a Delaware limited partnership. Plaintiff Welded has two general partners and two limited partners. The general partners are Ohio Welded Company LLC (owner of 15 partnership units) and McCaig Welded GP, LLC (owner of 5 partnership units). The limited partners are Bechtel Oil, Gas and Chemicals, Inc. (owner of 735 partnership units) and McCaig US Holdings, Inc. (245 partnership units). The entity is overseen by a five-member board of managers, and governed in accordance with the *Second Amended and Restated Limited Partnership Agreement of Welded Construction, L.P.* dated December 1, 2015.

2. Welded's headquarters is located at 26933 Eckel Road, Perrysburg, OH 43551.

3. On information and belief, Defendant Transcontinental Gas Pipe Line Company, LLC ("Transco") is a Delaware limited liability company.

4. On information and belief, the sole member of Defendant Transco is Defendant Williams Partners Operating LLC ("Williams Partners"), a Delaware limited liability company with its principal place of business in Tulsa, Oklahoma.

5. On information and belief, the sole member of Defendant Williams Partners is Defendant The Williams Companies, Inc. ("Williams Co."), a Delaware corporation with its principal place of business in Tulsa, Oklahoma.

Jurisdiction and Venue

6. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1409 because this adversary proceeding arises in cases commenced under title 11 of chapter 11 of the United States Code (the "Bankruptcy Code").

8. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (C), (E), and (O). Accordingly, the Court may enter a final order or judgment consistent with Article III of the United States Constitution. Welded consents to the entry of final orders or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

Factual Allegations

I. Welded partners with Williams to expand access to natural-gas markets along the East Coast.

9. Headquartered in Perrysburg, Ohio, Welded is a mainline pipeline construction contractor capable of executing pipeline construction projects in lengths ranging from a few hundred feet to over 200 miles.

10. Welded has overseen projects nationwide and has become one of the largest and most relied upon mainline pipeline construction contractors in the United States. Welded's customers include some of the most prominent oil and gas pipeline operators in the country, including Sunoco, Energy Transfer Partners, Columbia Gas, and Williams.

11. On or about November 5, 2015, Welded and Transco executed a letter of intent (the "Letter of Intent") for Welded to construct a portion of the Atlantic Sunrise pipeline, a natural-gas pipeline connecting gas-producing regions in Pennsylvania to markets in the Mid-Atlantic and southeastern states.[3] The pipeline would stretch 186 miles from northeastern to southeastern Pennsylvania, with construction tentatively scheduled to begin in the last quarter of 2016.

12. The Letter of Intent provided that Transco and Welded would "use good faith efforts to reach a definitive agreement for the execution of the Project based on the . . . principles" articulated in the Letter of Intent. According to the Letter of Intent, the contract would "be executed on a cost reimbursable fixed fee basis" under which Williams would reimburse Welded's construction expenses and pay Welded a fixed fee as profit. Payments terms under the contract would "be based on achieving a neutral cash flow for Welded . . . ."

[3] The Letter of Intent is attached hereto as Exhibit 1.

13. Attachment 1 to the Letter of Intent between Welded and Transco was titled "Cost Reimbursable Fixed Fee Structure for Atlantic Sunrise Project" and provided that Transco would reimburse Welded for four categories of "**Direct Costs**," without any markup:

- "Labor – Actual Cost"
- "Equipment, Fuel, and Supplies – 50% of actual Labor cost"
- "Subcontracts, Materials, Specialty Equipment and Outside Services – Actual cost"
- "Timber Mats – Actual cost"

14. On or about August 10, 2016, Welded enters into a construction contract with Transco (including any amendments, schedules and exhibits, the "Contract") on the terms set forth in the Letter of Intent.[4]

15. On September 15, 2017, Williams issues a press release announcing that construction was underway:

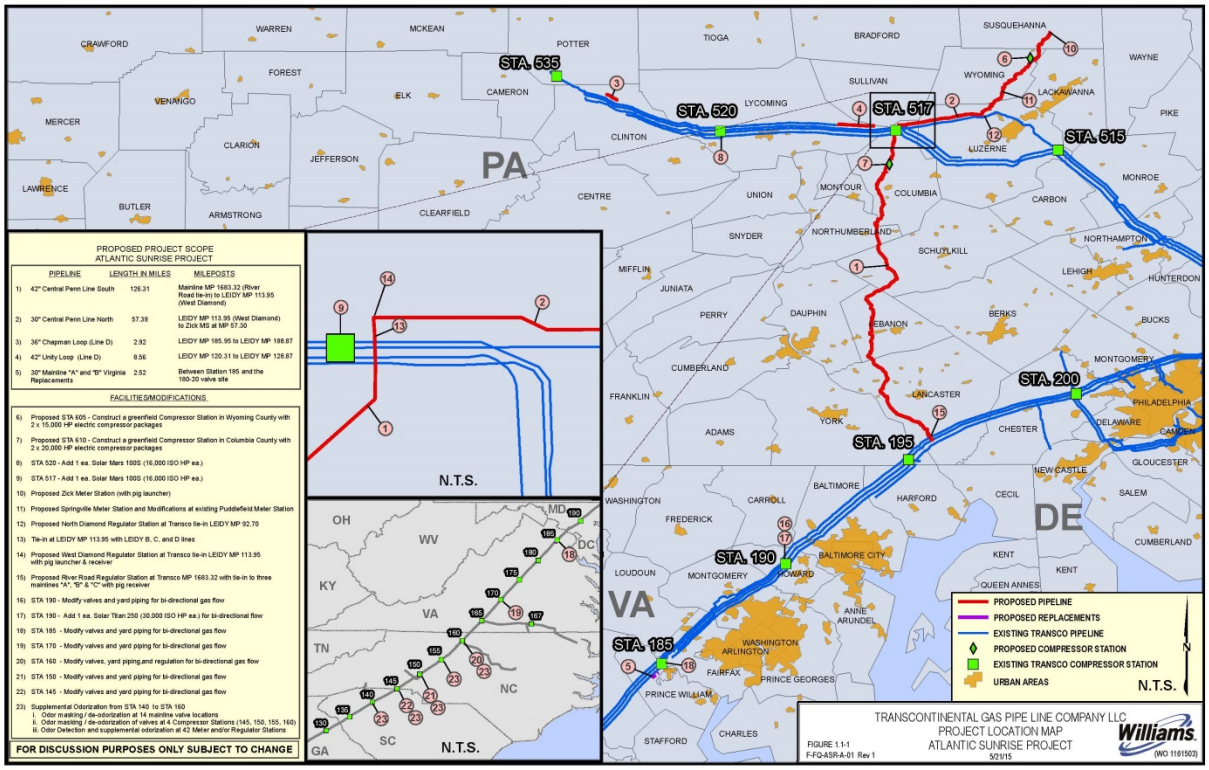
> Pipeline and compressor station construction is anticipated to last approximately 10 months, weather permitting. The nearly $3 billion project, which is designed to increase natural gas deliveries by 1.7 billion cubic feet per day, is scheduled to be placed into full service in mid-2018. . . . During peak construction periods, the project is anticipated to directly employ approximately 2,300 people in 10 Pennsylvania counties. In addition, the project could support an additional 6,000 jobs in related industries and generate up to $1.6 billion in economic activity, according to researchers at Pennsylvania State University.

16. The Atlantic Sunrise pipeline construction consisted of eight different construction spreads divided among four primary construction contractors: Henkels & McCoy, Inc., Latex Construction Company, Inc., Michels Corporation, and Welded.

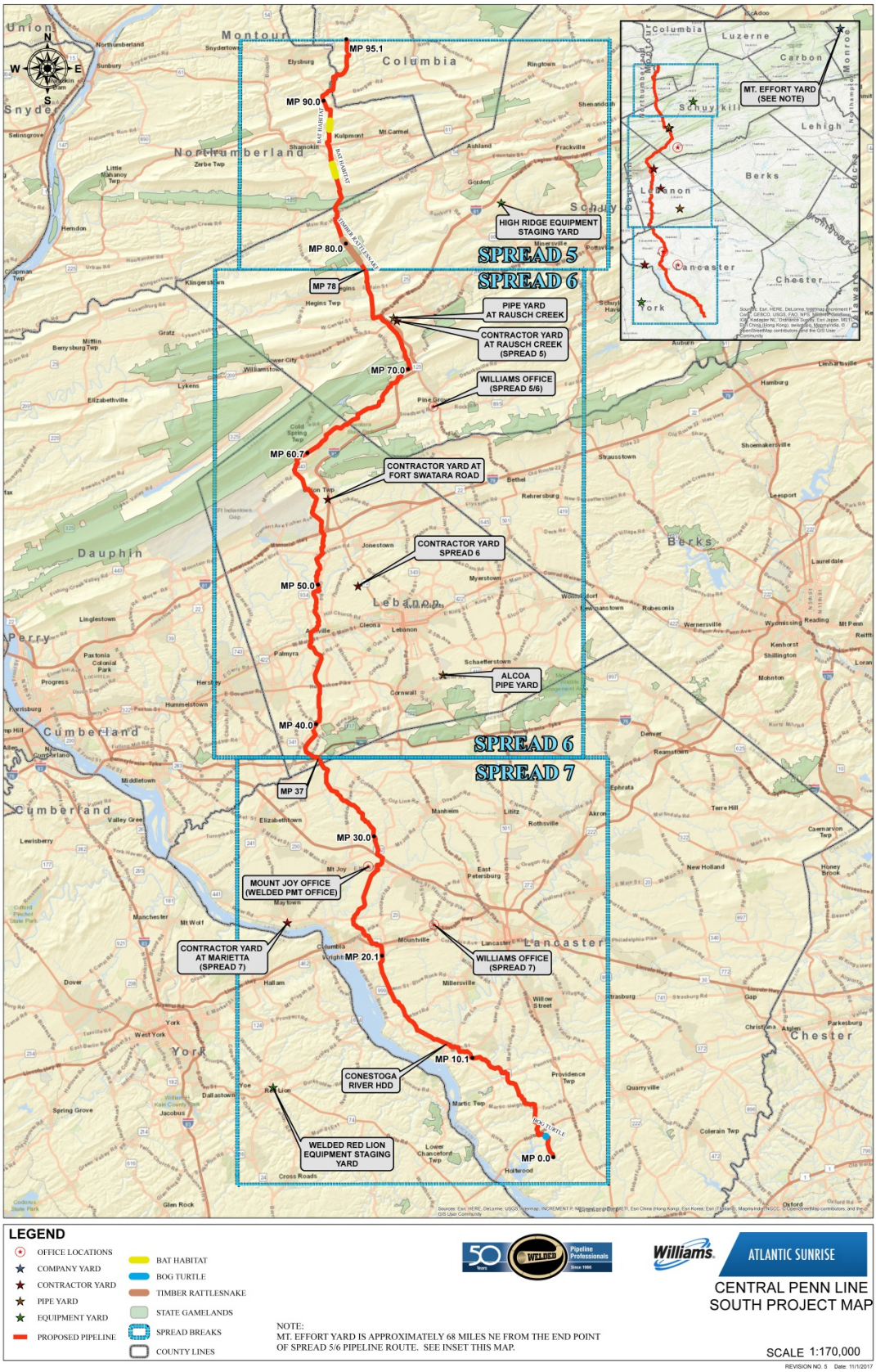
17. Welded was responsible for construction of three contiguous segments of the pipeline—Spreads 5, 6, and 7—which covered more than half the length of the entire pipeline,

[4] The Contract is attached hereto as Exhibit 2. Welded and Transco subsequently entered into an amendment modifying portions of the Contract (the "Amendment"). The Amendment is attached hereto as Exhibit 3.

approximately 96 miles total. In the map below, the Atlantic Sunrise pipeline is shown in red. Welded's segment runs from southern Columbia County to Marker 15.



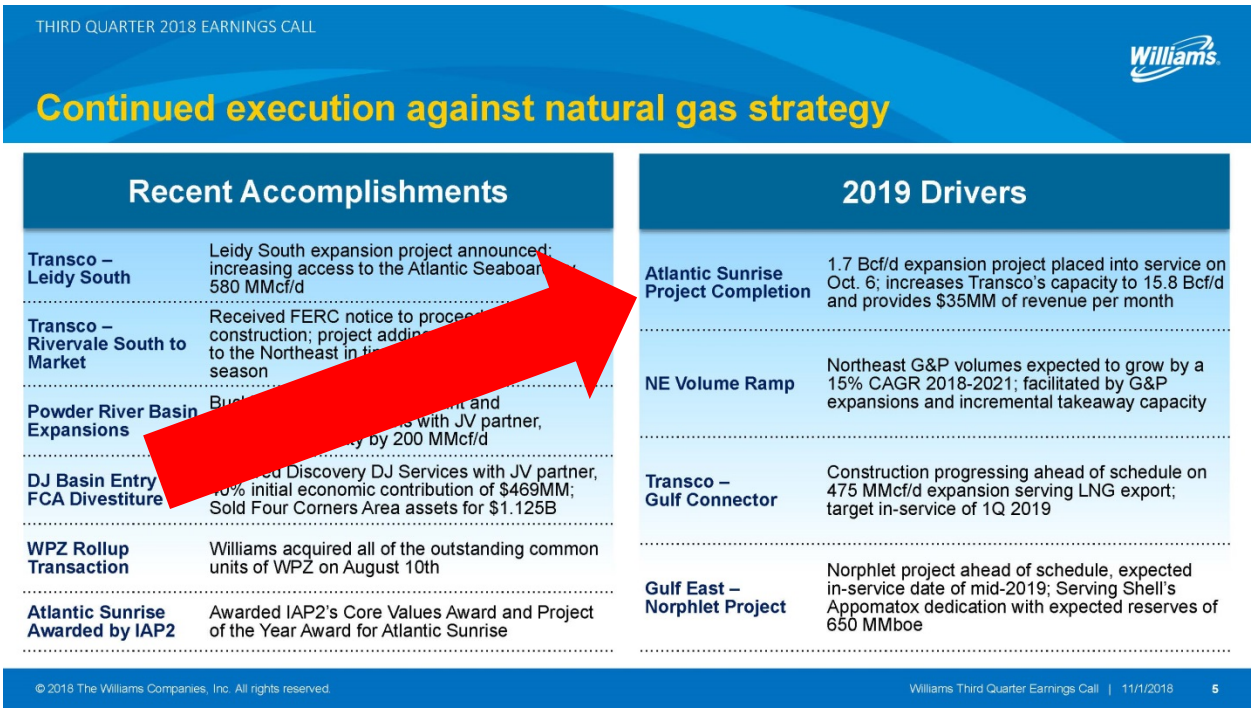
18. The map below shows Welded's three construction spreads in greater detail.


MP 95.1
MP 90.0
MP 80.0
MP 78
MP 70.0
MP 60.7
MP 50.0
MP 40.0
MP 37
MP 30.0
MP 20.1
MP 10.1
MP 0.0
SPREAD 5
SPREAD 6
SPREAD 6
SPREAD 7
HIGH RIDGE EQUIPMENT STAGING YARD
PIPE YARD AT RAUSCH CREEK
CONTRACTOR YARD AT RAUSCH CREEK (SPREAD 5)
WILLIAMS OFFICE (SPREAD 5/6)
CONTRACTOR YARD AT FORT SWATARA ROAD
CONTRACTOR YARD SPREAD 6
ALCOA PIPE YARD
MOUNT JOY OFFICE (WELDED PMT OFFICE)
CONTRACTOR YARD AT MARIETTA (SPREAD 7)
WILLIAMS OFFICE (SPREAD 7)
CONESTOGA RIVER HDD
WELDED RED LION EQUIPMENT STAGING YARD
MT. EFFORT YARD (SEE NOTE)
BAT HABITAT
BOG TURTLE
TIMBER RATTLESNAKE
LEGEND
OFFICE LOCATIONS
COMPANY YARD
CONTRACTOR YARD
PIPE YARD
EQUIPMENT YARD
PROPOSED PIPELINE
BAT HABITAT
BOG TURTLE
TIMBER RATTLESNAKE
STATE GAMELANDS
SPREAD BREAKS
COUNTY LINES
NOTE:
MT. EFFORT YARD IS APPROXIMATELY 68 MILES NE FROM THE END POINT OF SPREAD 5/6 PIPELINE ROUTE. SEE INSET THIS MAP.
ATLANTIC SUNRISE
CENTRAL PENN LINE SOUTH PROJECT MAP
SCALE 1:170,000
REVISION NO. 5 Date: 11/1/2017

19. Welded achieved mechanical completion of Spreads 5, 6, and 7 on September 19, 2018, and on October 4, 2018, Williams received FERC approval to put the Atlantic Sunrise pipeline into full service.

20. The Atlantic Sunrise pipeline was placed into full service on October 6, 2018, and was ultimately a resounding success. According to Williams, the "historic" project increased the capacity of the Transco pipeline by 1.7 billion cubic feet per day (approximately 12 percent) to 15.8 billion cubic feet per day. Alan Armstrong, Williams's president and chief executive officer extolled: "The project is significant for Pennsylvania and natural gas-consuming markets all along the East Coast, alleviating infrastructure bottlenecks and providing millions of consumers direct access to one of the most abundant, cost-effective natural gas supply sources in the country."

21. The Atlantic Sunrise project has also proven highly profitable for Williams. As Williams reported in its earnings webcast presentation for the third quarter of 2018, the "Atlantic Sunrise Project Completion . . . increases Transco's capacity to 15.8 Bcf/d and *provides $35MM of revenue per month*" (emphasis added).



II. Williams seized Welded's funds as soon as the pipeline was complete.

22. On October 4, 2018, the same day that Williams received FERC approval to put the Atlantic Sunrise pipeline into service, Williams turned around and—without warning—informed Welded that it was withholding $23,563,538 due and owing to Welded under the Contract.

23. At the same time, also without any warning, Transco filed a lawsuit (the "Transco Complaint") in the District Court of Tulsa County for the State of Oklahoma, asserting a breach-of-contract claim against Welded in the amount of $23,563,538. Despite the Transco Complaint, however, the Oklahoma state court currently lacks jurisdiction over Welded, because, as of the date hereof, Williams has not served process on Welded as required under Oklahoma law.

24. On October 5, 2018, as required under the Contract, Welded submitted an invoice for a true-up payment from Williams in the amount of $16,592,432.09 for costs Welded actually incurred constructing Williams's pipeline in August 2018. Under the Contract, payment was due

by November 5, 2018. As of the date hereof, Williams has refused to pay and, moreover, has refused to explain or justify its refusal to pay these amounts.

25. On October 11, 2018, Evan Kirchen, Williams's VP Engineering & Construction, and R. Christopher Springer, Transco's Atlantic Sunrise Project Director, spoke with Welded's representatives and shareholders and informed them that Williams intended to continue to look for ways to claw back costs incurred by Welded on the Atlantic Sunrise project.

26. Based on these initial withholdings, Williams is unjustifiably and unlawfully withholding $40,155,970.09, in the aggregate, due and owing to Welded under the Contract (the "Initial Withholdings").

27. In addition, on March 4, 2019, Welded submitted an invoice to Williams for a true-up payment in the amount of $17,440,392.90 for costs Welded actually incurred constructing Williams's pipeline in September 2018 (the "September True-Up Invoice"). Also on March 4, 2019, Welded submitted an invoice to Williams for a true-up payment in the amount of $13,713,655.68 for costs Welded actually incurred constructing Williams's pipeline in October 2018 (the "October True-Up Invoice").

28. Williams did not pay the September True-Up Invoice or the October True-Up Invoice when due, and accordingly, as of the date hereof, Williams is unjustifiably and unlawfully withholding an additional $31,154,048.58, in the aggregate, on account of the September True-Up Invoice and October True-Up Invoice (the "Additional Withholdings" and, together with the Initial Withholdings, the "Withheld Funds"), which amounts are due and owing to Welded under the Contract for amounts that Welded paid out of its own pocket to construct Williams's pipeline.

29. Accordingly, as of the date hereof, Williams is unjustifiably and unlawfully withholding $71,310,018.67, in the aggregate, due and owing to Welded under the Contract.

A. Williams has no basis for withholding Welded's funds.

30. Appendix G to the Contract sets forth the parties' agreed procedures for "Invoicing and Payment of Invoices."

a. Williams pays Welded in advance for estimated expenses.

31. Under paragraph 1.2.2 of Appendix G, each month Welded would send Williams an invoice with an estimate of the funds required for the *following* month (the "Pay Month"). For example, on May 5, Welded would invoice Williams for its estimated costs for the Pay Month of June.

32. Paragraph 1.2.3 of Appendix G obligates Williams, on or before the fifth day of the Pay Month, to pay Welded the undisputed amounts in the estimated invoice submitted the previous month: "On or before the fifth (5) day of the Pay Month, [Transco] will pay [Welded] the undisputed amounts invoiced." For example, on June 5, Williams would be obligated to pay Welded the undisputed amounts that Welded had estimated for June in its May 5 invoice.

33. If Williams were to dispute any portion of the estimated invoice, Paragraph 1.2.3 further provides that "the Parties will work diligently to resolve any disputed amounts prior to the date for payment of such invoice." For example, if Williams disputed a portion of the June estimate that Welded provided on May 5, the parties were required to work to resolve that dispute before June 5 when payment would be due to Welded.

34. If the parties were unable to resolve a dispute over an estimated invoice within 10 business days of the date on which payment was due, paragraph 1.2.3 provides that the matter

"will immediately be escalated to senior management for a discussion as soon as reasonably possible."

35. If the senior management discussion did not resolve the matter, paragraph 1.2.3 states that "the matter will be resolved in accordance with the provisions of Article 37 of Section I of the Contract and paid in accordance with the terms of such resolution."

36. Article 37 of Section I of the Contract requires the parties to consider ADR before litigating. More specifically, Article 37 provides, in full, that: "[Transco] and [Welded] shall give good faith consideration to using alternative dispute resolution prior to or in lieu of litigation to resolve disputes arising under or in connection with this Contract."

37. Nothing in Appendix G permits Williams to withhold funds due to Welded on an undisputed invoice, and nothing in Appendix G permits Williams to withhold funds from Welded on account of invoiced amounts that Williams disputes months after the fact.

b. Williams and Welded reconcile payment for actual expenses the following month.

38. Pursuant to paragraph 1.2.4 of Appendix G, within 30 days of the Pay Month, Welded would provide Williams with a reconciliation of actual versus estimated expenditures. Welded would then true-up the amounts owed or owing in future invoices. For example, on July 30, Welded would provide Williams with a reconciliation of the June estimate versus the amounts actually incurred in June. Welded would then adjust its future invoices to reflect the true-up for June.

39. Paragraph 1.2.5. of Appendix G is explicit that any disputes about Welded's actual expenses and invoices *must be reconciled within one pay period* and *must not disrupt* the payment of undisputed amounts: "Any differences between the Parties related to verifying actual expenditures or invoices and adjusting against forecast and funded amounts shall be reconciled

within one pay period, provided, however, that such differences will not interrupt the payment of [Welded's] undisputed invoices, as set out herein."

40. Nothing in Appendix G permits Williams to withhold funds from Welded after the fact on account of true-up amounts it later disputes. To the contrary, paragraph 1.2.5 is explicit that disputes over reconciliations "will not" interrupt other payments due to Welded.

c. Williams paid invoices in the ordinary course for 10 months without raising any concerns.

41. Welded submitted its first estimated invoice to Williams in September 2017, when Williams finally obtained the permits necessary to permit construction to begin. Each month thereafter, Welded invoiced Williams, and Williams paid Welded, pursuant to the procedures set forth in Appendix G.

42. In March and June of 2018, Williams made partial payment on Welded's invoices because Williams needed to arrange a purchase order increase to permit full payment, which was eventually made.

43. Williams paid invoices, and did not raise any concerns about Welded's billing practices, until July 3, 2018—a period of approximately 10 months after Welded began invoicing Williams for construction of the Atlantic Sunrise pipeline.

44. On July 3, 2018, R. Christopher Springer, Transco's Atlantic Sunrise Project Director, sent a letter to Stephen Hawkins, Welded's President and CEO, stating that Transco was releasing payment to Welded under protest:

> [D]ue to: (1) Welded's failure to meet expectations on productivity, work quality, and safe work practices; (2) questions and concerns about the accuracy of billing and Welded's compliance with contract obligations; and (3) uncontrolled growth in Welded's estimated cost of completion, this payment is not easy to release. Welded's installation of Atlantic Sunrise spreads 5, 6, and 7 is quickly becoming the most expensive onshore pipeline ever installed. Transco is not satisfied with Welded's management of this project and feel Welded is taking advantage. Welded is now exceeding any schedule contemplated in the original agreement. In

> addition, Welded keeps adding to the tie-in weld count and continues to have difficulty forecasting productivity. Transco's other contractors on this pipeline project are mechanically complete and/or wrapping up pipeline installation.
>
> As such, for the reasons mentioned above, this payment and any payment made by Transco from this point forward in time are made under protest and shall not be construed as concurrence that Welded has earned invoiced amounts nor that "true-ups" accurately reflect amounts owed and/or are payable by Transco. Further, payments by Transco do not constitute admissions of liability and do not effectuate waiver of any rights Transco has under the contract or remedies at law, including, but not limited to: the right to reject non-conforming work, rights to recover overpayments made to Welded, rights to demand compliance with contract terms, and/or rights to recover from Welded damages incurred by Transco.

45. On July 16, 2018, Mr. Hawkins replied to Mr. Springer's letter, responding to his allegations and seeking to understand the basis for Mr. Springer's concern about alleged inaccurate billing:

> [W]e were surprised and dismayed by several of the statements in the Letter and feel both parties would benefit from a brief response.
>
> First, with respect to your statement concerning schedule, as you know, the target mechanical completion date in the contract is June 15, 2018. The incentive/penalty examples included with the contract provides an example of the project being 10 weeks late (corresponding to our current Mechanical Completion). So, we believe the contract clearly contemplated a completion date in line with our current forecast. The reasons for the schedule erosion are well known by both COMPANY and CONTRACTOR with both parties contributing to schedule erosion as well as both parties taking actions to mitigate extensions of time.
>
> Second, regarding your comparison of Welded's progress relative to the other ASR spreads, we understand your frustrations with the current status of the project as we are equally frustrated. However, our understanding of the other contractors performance is not in line with the accusations asserted in your letter.
>
> Third, concerning the statement in the letter regarding the accuracy of Welded's billing, this is the first we have heard about this issue. The only communications we have received concerning pay applications relate to field-level requests for certain backup documentation which may have been misplaced or illegible. The assertion by Williams is very disappointing considering that the issues Williams refers to have not followed any sort of agreed escalation path. Issues cannot go from working level to senior sponsor level with no escalation process between the parties. Welded is more than willing to work through the invoicing issues to

> ensure there is agreement by both parties that our processes are compliant with the contract.

46. Williams did not respond to Mr. Hawkins's July 16 letter or provide any information about the alleged inaccurate billing.

47. Instead, in July of 2018, Williams engaged Oil and Gas Contracts Services ("OGCS") to perform an audit to support its accusation of inaccurate billing.

48. On July 24 and 25, 2018, Phil Burke and Adrian Green of OGCS visited Welded's offices and met with Welded's personnel for two full days of in-depth diligence. Throughout July, August, and September 2018, Welded worked diligently with OGCS, promptly responding to numerous requests and providing thousands of pages of records, invoices, receipts, paystubs, and other documents.

49. Welded repeatedly asked OGCS's auditors for updates on their findings so that Welded could work through any issues identified by the auditors in real time.

50. Neither the auditors nor Williams ever identified any particular issues prior to blindsiding Welded with the Transco Complaint and the withholding of nearly $24 million.

B. Williams seized Welded's funds without warning or explanation, driving Welded into bankruptcy.

51. As noted above, on October 4, 2018, Williams received FERC approval to put the Atlantic Sunrise pipeline into full service.

52. Immediately upon receiving FERC approval, Transco—without any warning—filed the Transco Complaint in Oklahoma state court, alleging that Welded breached the Contract by overbilling Williams.

53. Williams ignored the contractual terms that provide a mechanism for resolving billing disputes. Among other things, Williams did not raise any concerns with Welded's bills until nearly a year after the fact, did not escalate its concerns to senior management for

discussion, and did not investigate or pursue ADR with Welded before filing the Transco Complaint.

54. Instead, also on October 4, 2018, Mr. Singer sent a letter to Mr. Hawkins, stating that Transco was withholding approximately $24 million from Welded on account of alleged "erroneous billing" dating back to the inception of the Contract:

> In accordance with the Contract Audit provisions, Section VIII and Appendix G of the Transco-Welded Contract, Transco hereby provides notice of withholding in connection with Welded's advance payment invoice submitted in September 2018. Based on the ongoing review of Welded's advance payment requests, Welded has erroneously billed Transco for fees and costs in excess of those allowed under the Contract and has failed to properly reconcile the overbillings as contemplated by the Contract. As described below, the following examples represent charges that are disputed by Transco, which have been identified to date.
>
> Based upon Transco's current review and the ongoing audit process, Welded has charged a fifty percent (50%) Equipment Fee on costs that do not include "actual Work performed," including "show-up time and wait time." Welded has also charged an Equipment Fee for costs related entirely to the provision of equipment, rather than "actual Work performed," including Vehicle Rental and Rig Rental Equipment charges. Although the Equipment Fee was to cover the cost of Included Equipment, Welded has separately charged Transco for Included Equipment provided by Subcontractors, including pickup truck rental, dump truck rental for post-delivery hauling, and site office trailers and equipment. Welded has also separately charged Williams for Site Utilities that were to be provided as Included Equipment.
>
> . . . .
>
> Additionally, Welded failed to achieve Mechanical Completion as required on June 14, 2018. According to the Contract Schedule incentive/disincentive program and the declared date of Mechanical Completion, Welded owes Transco at least $1,928,571 for delays to the completion date. The combined total of the currently identified overcharges and schedule disincentive payments is $23,563,538. Williams intends to withhold that amount from the September 2018 advance payment request.
>
> . . . .
>
> Transco requests a meeting with Welded next week to discuss this withholding and the findings noted above.

55. On October 7, 2018, Mr. Hawkins responded to Mr. Springer's letter, disputing the Mr. Springer's allegations as follows:

> We are in receipt of your letter dated October 4, 2018 and are extremely disappointed by the content, especially as we have been communicating frequently with your audit team over the past several months and this is the first notice of these disputed charges or contract interpretation.
>
> We categorically disagree with the unfounded allegations of erroneous charges. For example, the calculation of the Equipment Fee has been applied as specified by Section VIII Compensation of the Agreement. The Equipment Fee was calculated as a factor to Labor Cost which by definition includes wages and benefits payable to NPLA and Field Personnel, including fringe benefits, employee vehicle rental/pay, travel pay, per diem, fuel pay, payroll taxes and insurance. Vehicle and rig rental, show up, stand-by and wait time pay are further defined as NPLA benefits in Exhibit 4. This is how we have invoiced and have been reimbursed throughout the project with no prior objection or dispute from Transcontinental or anyone in past dealings.
>
> Regarding subcontract truck rental, Section VIII specifies the reimbursement of rental costs for rental vehicles used in conjunction with the performance of Work in the Field. Welded requests specific line-item details on the audit findings supporting your objections to the charges for dump truck rental, trailers/site offices, and site utilities. Certain site utilities such as portable toilets are specified to be a reimbursable cost, however we are unable to determine if this is the charge in dispute without benefit of seeing further details. We cannot have a meaningful meeting (as requested in your October 4 letter) without additional information as to the specific charges to which you are objecting. We request a listing of the specific invoice line items in dispute one week prior to the proposed meeting so that we have time to review and respond.
>
> The ability to achieve Mechanical Completion on June 14, 2018 was precluded, among other things, by the late receipt and delivery of numerous Company-provided permits to allow work to proceed at Pequea creek, Ironville Pike, Amtrak, I-76, Goldmine Road, Cavalry, Jonestown, I-81, Swatara creek, Industrial Rd, Quaker Run, and Happy Valley – many of these not received until after June 14, 2018. Further, the project was delayed by 3+ weeks due to the transverse indications welds on spreads 5 and 6. This avoidable delay was due to company's NDE subcontractor. Transcontinental's role in failing to meet the contract Mechanical Completion is well documented in the project's weekly reports and various correspondence. Transcontinental failed to meet its obligations under the contract to enable Mechanical Completion of June 14, 2018.
>
> Transcontinental's arbitrary and wrongful withholding of payment at this stage of the project is contrary to the contract requirements including, without limitations, Appendix G clause 1.2.5 and constitutes a blatant breach of contract without any

> legitimate basis and will cause substantial and immediate harm to Welded. The withholding of the October cash call is of such extreme hardship to Welded that it jeopardizes Welded's ability to continue as a viable business and will preclude the ability to meet payroll liabilities beyond October 07, 2018, thus effectively halting work on this date.
>
> . . . . As a matter of urgency, we request the details of the disputed charges today so that a meaningful discussion can occur next week to resolve this matter.

56. In a response to Mr. Hawkins dated October 9, 2018, Mr. Springer attempted to justify Williams's decision to withhold the Withheld Amounts—but failed to provide any support for the alleged billing errors and, moreover, failed to identify any provision in the Contract that would permit Williams to withhold funds from Welded under the circumstances:

> We disagree with Welded's assertion that Transco's October 4 letter was the "first notice of . . . disputed charges." In addition to previous withholding amounts from Welded's invoices, and Transco's notices of payments under protest, Welded was aware that its billing practices have been under audit.
>
> Despite the fact that the Contract provided for a final construction cost in the amount of $454,500,000, Welded has submitted cash calls to Transco well in excess of $700,000,000. As you know, it was Welded's responsibility in the first instance to properly invoice Transco on a monthly estimated basis consistent with the terms and provisions of the Contract. Further, it was Welded's obligation thereafter to provide written reconciliation to Transco of all amounts actually incurred and invoiced and to adjust invoices to ensure that Welded was properly charging Transco pursuant to the agreed terms and provisions. Notwithstanding Welded's obligations, the Contract clearly provides Transco the right to conduct an audit to ensure that it was properly invoiced pursuant to the Contract. At all times, Transco's actions have been consistent with the Contract.
>
> On a number of occasions, Transco expressed its concern to Welded of the rising costs and performance issues on the project. However, by virtue of the audit, substantial additional detailed information has been made available to Transco which was not otherwise ascertainable in Welded's cash calls or reconciliations. Thus far, our auditors have reviewed thousands of pages and tens of thousands of line items in Welded's invoices and accounting data. As this additional information was reviewed, Transco provided Welded notice of its concerns, even advising Welded that significant payments by Transco were being made under protest. Our company is over 100 years old and we pride ourselves in dealing with our customers, service providers, and investors with integrity. We are not the kind of company that withholds payment from contractors without justification. By letter dated October 4, 2018, Transco set out very specific categories of charges which were invoiced by Welded contrary to the Contract and, thus, properly

> withheld from Welded's cash call. These categories include an Equipment Fee improperly charged for "Wait/Show Up Time," "Travel Pay/ Per Diem," "Vehicle Rental Equipment Fee" and "Rig Rental Fee." Other categories of improperly charged "Included Equipment" include "Sub Contract Truck Rental," "Dump Truck Rental (Post-delivery hauling)," ["]Trailers/Site Offices," and "Site Utilities" (portable toilets).
>
> Welded should be aware of its own invoice line items that include these improper charges. Moreover, from Welded's recent letter, it appears that Welded is well aware of the areas of improper billings that have been identified.
>
> . . . .
>
> Your October 7 letter also purports to justify Welded's failure to timely achieve Mechanical Completion by June 14, 2018. Your attempt to blame Transco for Welded's failure in this regard is without basis and entirely inconsistent with Welded's obligations under the Contract. The Mechanical Completion Date (which was previously amended from October 6, 2017) is a material term of the Contract and is not subject to unilateral alteration after-the-fact by Welded.
>
> As to your threat to halt work on the project, such action would be ill-advised as it would constitute an additional breach of the Contract by Welded for which Transco will hold Welded accountable. If Welded terminates its work, Transco will exercise all of its rights and remedies under the Contract and the performance bond.
>
> Attached to this letter is a courtesy copy of a Petition that has been filed. We will postpone formally serving the Petition with the hope that our anticipated meeting will be productive.
>
> We and our auditors are available to meet with you the week of October 15 in Houston to present the details of the audit findings which support the amounts withheld by Transco.

57. On October 11, 2018, Mr. Hawkins emailed Mr. Springer and Evan Kirchen, Williams's VP Engineering & Construction, emphasizing Welded's financial distress and its desperate need to receive payment from Williams:

> Welded is in acute financial distress because of Transco's decision to withhold $24M without any notice.
>
> Welded's shareholders came to the meeting today with the hope of resolving your concerns. Given Williams' position that it will continue to look for ways to claw back costs incurred by Welded on the ASR project, leaving this as an open ended liability, our shareholders are unwilling to put additional funds into the company

> to allow it to operate in the normal course. As a consequence, Welded's ability to make payroll on your project next week is in jeopardy.
>
> I reiterate my request that I made at the meeting to provide funds immediately. In addition to the $24M withheld, we currently have a $17M true up due on November 5th. This true up is money owed to Welded for costs already incurred. Welded respectfully requests that the $17M be released immediately by Williams to enable us to continue in operation and resolve the broader issue.[5]

58. On October 16, 2018, Sean Singleton and Marcus Hood, Welded's Project Controls Manager and Senior Project Manager, respectively, met with David Sztroin and John Todd, Williams's Project Managers, and with Adrian Green and Phil Burke from OGCS. It was at this meeting that Williams and OGCS first provided an explanation of the audit findings and alleged overbillings.

59. On October 18, 2018, Mr. Singleton emailed Mr. Green to follow up on the documentation on the audit filings, stating: "As you can imagine we are anxious to work thru the findings and avoid another large invoice reduction surprise…so as soon as you can, please send us the files we discussed Tuesday. Our target is to have resolution by end of the month (or sooner) to be able to more accurately predict the payment due from Williams on Nov 5th."

60. Later that day, Mr. Green finally responded with the promised documentation: "As promised. We are still awaiting a response from Williams but have sent this in advance of any formal confirmation from Williams."

61. Welded engaged in dialogue with Williams in an attempt to consensually resolve the dispute and avert the need for the filing of these chapter 11 cases. As noted above, Mr. Hawkins repeatedly requested that Williams make payment to Welded. Williams's representatives indicated that Williams was not inclined to make any payments to Welded.

[5] A copy of Mr. Hawkins's email to Messrs. Springer and Kirchen, dated October 11, 2018, is attached hereto as Exhibit 4.

62. Williams never paid Welded the amounts owed, and on October 22, 2018 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. As detailed in the *Declaration of Frank Pometti in Support of the Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4, Case No. 18-12378 (KG)], Williams's abrupt and improper withholding of nearly $24 million deprived the Debtors of the necessary liquidity to sustain their business operations outside of chapter 11 proceedings.

C. Transco improperly demands immediate payment under Commitment Letters.

63. In light of the bankruptcy filing, Welded and Transco entered into three "commitment letters" under which Transco agreed to prepay Welded for its postpetition work on the Atlantic Sunrise project. The Court entered orders approving the commitment letters on October 21, 2018 [Docket No. 45] (the "First Commitment Letter"), October 28, 2019 [Docket No. 111] (the "Second Commitment Letter"), and November 6, 2018 [Docket No. 172] (the "Third Commitment Letter" and, together with the First Commitment Letter and Second Commitment Letter, the "Commitment Letters"). Each Commitment Letter concerned work to be performed during a different, specified time period.

64. Under the Commitment Letters, Transco agreed to pre-fund $8,050,000, in the aggregate, for "Welded's internal costs and expenses of providing work, as well as Welded third-party subcontractor, vendor, materialmen, and supplier costs, expenses, profit and invoices for work, labor, material and rentals" on spreads 5, 6, and 7 of Transco's Atlantic Sunrise project. Under the Third Commitment Letter, Welded agreed to provide Transco "a reconciliation of all remaining amounts for obligations that were accrued or were incurred for forecasted work versus actual cost of work." To the extent that any advanced funds remained after that reconciliation, the funds would be returned to Transco within one business day. Overhead costs were not subject

to reconciliation: "fixed overhead costs of $25,000 per week from the Petition Date through December 8, 2018, . . . shall be available to the Debtors for general use, not subject to reconciliation, to offset the significant overhead costs not captured in the project cost estimate."

65. Welded provided Transco with its reconciliation on January 17, 2019, demonstrating that all advanced funds had been used on the project and that no remainder was due to Transco. In support of its reconciliation, Welded attached approximately 25 pages of line-item expenses.

66. More than three months later, on April 18, 2019, Transco's counsel sent Welded's bankruptcy counsel a letter (the "Demand Letter"), identifying purported revisions to Welded's postpetition reconciliation and demanding that Welded pay a $2,399,279.48 refund within one business day. Transco sent its demand for immediate payment of a multi-million dollar refund without any notice to, or discussion with, Welded and without any supporting documentation or identification of the specific bases for Transco's alleged refund.

67. On April 19, 2019, Welded's counsel responded to the Demand Letter, stating that Welded believed its reconciliation was factually correct and consistent with the terms of the Commitment Letters. Welded's counsel indicated, however, that Welded would endeavor to review Transco's revised reconciliation expeditiously. Welded's counsel also requested that Transco identify the specific items it viewed as problematic, explaining that that information would aid Welded's review considerably. To date, Transco has not responded.

III. Welded has earned payment of a Fixed Fee, expense reimbursement, and incentive bonus.

68. Construction contracts are typically fixed-price contracts in which the contractor bids an amount for the project, and the payment amount does not depend on the resources used

or time expended. In fixed-price contracts, the contractor bears the risk that the cost of the project will be greater than anticipated.

69. Here, by contrast, the parties agreed to a cost-plus, or cost-reimbursement, contract structure in which the contractor is paid for all of its expenses, plus an additional payment to allow for the contractor's profit. In cost-reimbursement contracts, the owner of the project bears the risk that the cost of the project will be greater than anticipated.

70. Accordingly, the payments to a contractor under a cost-reimbursement fall into two buckets, broadly speaking. The first is the amount for the contractor's profit and back-office services—here, the "Fixed Fee"—and the second is reimbursement due to the contractor for the actual work performed on the project—here, the "Labor Costs" and the "Equipment Fee."

A. Welded's Fixed Fee is a firm, negotiated amount that is not subject to modification or reduction.

71. Section I, Article 3, of the Contract states that "[a]s full and complete compensation for Work to be performed, [Transco] agrees to pay and [Welded] agrees to accept remuneration based upon the price(s) in ***Section VIII*** of the Contract (Compensation)" (emphasis in original).

72. The Letter of Intent had contemplated that Welded would receive a "fixed fee . . . to compensate Welded for home office overheads [sic], senior management and margins associated with the project."

73. Accordingly, Section VIII, Article 2.A, of the Contract defines the Fixed Fee as the amount specified to cover Welded's profit and back-office functions related to the Atlantic Sunrise project:

> "Fixed Fee" means the $50,500,000 lump sum fixed fee price, payable to [Welded] in installments as further set forth in this Contract, covering all: (i) [Welded] cost and expenses attributable to [Welded's] Home Office overhead and management in connection with the Project; (ii) profit payable to [Welded] in

> connection with the Project; and (iii) all income, revenue, rates, overtime, premium pay, taxes, benefits and expenses (including any business, travel or living expenses) in connection with Work performed by Home Office Personnel.

74. Section VIII, Article 2.B, makes clear that under no circumstances is the Fixed Fee is subject to reduction:

> The Fixed Fee is a fixed, firm negotiated amount which is neither subject to modification nor escalation or reduction, due to: (i) changes, modifications or deviations to the proposed pipeline set forth in the Scope of Work; (ii) changes, modifications or deviations to the pipeline route itself; (iii) any increase in the quantity of tasks, any additional effort, and/or changes or modifications to the means of construction which [Welded] must employ to meet the Mechanical Completion Date set forth herein[;] (iv) underestimated [Welded] overhead, costs and expenses; (v) delay due to low [Welded] productivity; (vi) extensions due to failure to achieve the Mechanical Completion Date; and/or (vii) costs or delay due to due to unexpected weather or geological conditions experienced over the course of the Project. [Welded] warrants and represents that it will complete the Work in accordance with the schedule and the Contract under the Fixed Fee set forth in the Contract.

75. Section VIII, Article 2.D.3, is explicit that "the Fixed Fee covers all cost and expense and all compensation due and payable to [Welded] in connection with Work performed by Home Office Personnel."

B. Welded's Labor Costs vary by month and are reimbursed by Williams.

76. The Letter of Intent had contemplated that Williams would reimburse Welded for its labor at "Actual Cost" and specified three categories of actual labor costs:

- Based on current (at the time of construction) wage rates and agreements for classified personnel under the National Pipeline Agreement (NPLA) with the four international unions that are a party to the agreement.
- Regular Welded pay scale for site supervisory (employees not covered by the NPLA) clerical and support personnel assigned to the project.
- Fringe benefits, employee vehicle rental, travel pay, subsistence or per diem payments, payroll taxes and insurance.

77. Accordingly, in addition to the Fixed Fee covering back-office services, the Contract provides that Williams will reimburse Welded for the actual labor costs incurred by

Welded in constructing the pipeline. More specifically, Section VIII, Article 2.D, provides that "[c]ompensation for labor, including manual labor, professional services, management, supervision, and/or consultation, shall be paid for actual Work performed in accordance with this subsection 'D.'"

78. Tracking the language of the Letter of Intent, the Contract defines Welded's "Labor Costs" as:

> i) the actual wage rates and benefits paid to NPLA Personnel pursuant to the NPLA for actual Work performed, ii) the actual wages and benefits, in accordance with Exhibit 1 paid to Field Personnel for actual Work performed and iii) for both i and ii above, to the extent however not already addressed by or covered under the NPLA with respect to NPLA Personnel, fringe benefits, employee vehicle rental/pay, travel pay, per diem, fuel pay, payroll taxes and insurance in accordance with Exhibit 1 actually paid to NPLA and Field Personnel in connection with payment for actual Work.

79. Section I, Article 1, of the Contract defines "Work" as the "entire construction project" or any parts thereof:

> The term 'Work', as used in this Contract, shall mean the entire construction project and/or parts thereof that are to be performed by [Welded] pursuant to this Contract, including its appendices. Work may also be referred to in some of the appendices as 'Job', 'Construction' or 'Project'. The Contract, including its appendices, is intended to describe the Work [Welded] is performing hereunder. All documents that comprise the Contract are intended as complementary to one another. . . . Any errors or omission in the documents will not relieve [Welded] of its responsibility to perform and construct the Work as reasonably required pursuant to the generally accepted practices governing the type of Work being performed or constructed.

80. "Field Personnel" refers to any Welded employees and contract personnel (excluding Home Office Personnel) "who perform Work in the Field."

81. Under Section VIII, Article 2.D.2, "[c]ompensation for Work performed by Field Personnel shall be paid in accordance with the actual wages and benefits paid to Field Personnel as set forth in Exhibit 1."

82. Under Exhibit 1, Field Personnel are salaried employees whose compensation is fixed based on a 60-hour work week.

83. Specifically, Exhibit 1 identifies the weekly pay rate for various categories of Field Personnel, such as a Superintendent or Field Office Manager, as well as the miscellaneous benefits that Field Personnel receive, such as a Per Diem and Sunday Pay.

84. In contrast to Welded's Field Personnel, "NPLA Personnel" are, essentially, union members. The Contract defines NPLA Personnel as "those individuals who perform Work on the project who are members of a union that is party to the NPLA and whose payroll rates (including fringes, premiums, per diem, rents, etc.) are set forth and subject to payment and modification in accordance with the NPLA."

85. "NPLA" refers to "the effective National Pipeline Agreement between the Pipeline Contractors Association and: (i) the Laborers' International Union; and/or (ii) the International Brotherhood of Teamsters; and/or (iii) the United Association of Journeymen; and/or (iv) Apprentices of the Plumbing and Pipe Fitting Industry and the International Union of Operating Engineers."

86. Under Section VIII, Article 2.D.1, of the Contract, "[c]ompensation for Work performed by NPLA Personnel shall be paid in accordance with the actual wages and benefits paid to NPLA Personnel as set forth in the current NPLA, as evidenced in Exhibit 3."

87. Exhibit 3 identifies four applicable NPLAs:

1) NPLA International Brotherhood of Teamsters

2) NPLA United Association

3) NPLA International Union of Operating Engineers

4) NPLA Laborers International Union of NA[6]

88. Section VIII, Article 2.H, specifically incorporates the various NPLA into the Contract.

89. Under each NPLA, NPLA Personnel are paid for wait time and show-up time (collectively, "Wait/Show Up Time") if work days are lost or if the personnel have been ordered to report but have not been provided any tasks to perform. For instance, Section VII of the NPLA with the International Brotherhood of Teamsters deals expressly with "Waiting Time" and is explicit that NPLA Personnel's compensation includes payment for wait time:

> (A) Employees . . . shall be paid waiting time for any day lost during the normal scheduled work week. For any day lost during any one work week, the waiting time payment will be 2 hours to be paid at the applicable . . . straight-time rates, and will include any premium.

90. Similarly, Section IX of the NPLA with the International Brotherhood of Teamsters deals expressly with "Reporting Time Pay" and is explicit that NPLA Personnel's compensation includes payment for show-up time:

> (A) After a person has been hired and ordered to report for work at the regular starting time, and no work is provided for him on the day that he has so reported, he shall receive pay equivalent to four hours at the rate applicable for that day. This pay shall be provided notwithstanding that he has not been ordered to report for work on that particular day, if the person has been working regularly and the Employer has failed to notify him not to report for work at or before 8:00 P.M. the preceding day.
>
> (B) Any person who reports to work and for whom any work is provided, regardless of the time that he works, shall receive the equivalent of not less than four hours pay at the rate applicable for that day.
>
> (C) Any person who reports to work and who works more than four hours in any one day, shall receive the equivalent of not less than eight hours pay for said day.

[6] The four NPLAs in effect at the time of the project are attached hereto as Exhibits 5 through 8, respectively.

91. Section VIII, Article 2.H, states: "The list of benefits which may apply to personnel who are paid pursuant to the NPLA are defined and set forth in Exhibit 4." Exhibit 4 to the Contract is explicit that, in accordance with the NPLA, NPLA Personnel are paid Wait/Show Up Time as part of their "Standard Wages":

Category	Code	Description	Notes
EARNINGS	SHOWL	LABORERS SHOW UP	Standard Wages
EARNINGS	SHOWT	TEAMSTERS SHOW UP	Standard Wages
EARNINGS	STAND	STAND-BY DAY	Standard Wages
EARNINGS	WAITH	WELDER (GRADED) HELPER WAIT TIME	Standard Wages
EARNINGS	WAITO	OPERATORS WAIT TIME	Standard Wages
EARNINGS	WAITU	WELDER'S WAIT TIME	Standard Wages

92. Welded's labor costs also included amounts paid its workers on account of paid time off and holidays (the "Paid Time Off/Holidays").

93. The NPLAs are explicit that NPLA Personnel are entitled to compensation for Paid Time Off/Holidays. For instance, Section VII(D) of the National Pipeline Agreement with the International Brotherhood of Teamsters states that "[i]f no work is performed on a holiday designated by this Agreement, waiting time only shall be paid to" the applicable NPLA Personnel. Section VIII(D) of the NPLA with the International Union of Operating Engineers similarly states that "[i]f no work is performed on a holiday designated by this Agreement, waiting time only shall be paid to" the applicable NPLA Personnel. And Section XIII(C) of the National Pipeline Agreement with the pipefitters union states that "[i]f no work is performed on a holiday designated by this Agreement, Journeymen and Helpers shall be paid waiting time."

94. In addition, as noted above, Section VIII, Article 2.H, Exhibit 4 to the Contract identifies the "list of benefits which may apply to personnel who are paid pursuant to the NPLA . . . ." Exhibit 4 to the Contract is explicit that, in accordance with the NPLA, NPLA Personnel are compensated for Paid Time Off/Holidays as part of their "Standard Wages":

Category	Code	Description	Notes
EARNINGS	HOL	HOLIDAY	Standard Wages
EARNINGS	PTO	PTO	Standard Wages

95. Under the plain language of the Contract, NPLA Personnel receive compensation in accordance with the applicable NPLA and as set forth in Exhibit 4 to the Contract. Each NPLA and Exhibit 4 explicitly provide that NPLA Personnel are entitled to compensation for Wait/Show Up Time and Paid Time Off/Holidays. Accordingly, Wait/Show Up Time and Paid Time Off/Holidays are labor costs that Welded incurred in connection with the actual construction of Williams's pipeline.

96. Similarly, under the plain language of the Contract, Field Personnel receive compensation as set forth in Exhibit 1 to the Contract. Exhibit 1 explicitly provides that Field Personnel are salaried employees whose compensation is fixed regardless of any Wait/Show Up Time or Paid Time Off/Holidays. Accordingly, Welded's actual labor costs for Field Personnel include compensation for Wait/Show Up Time and Paid Time Off/Holidays.

97. In addition to Wait/Show Up Time and Paid Time Off/Holidays, Section VIII, Article 2.F, is explicit that NPLA Personnel and Field Personnel receive specified fringe benefits including travel pay and a per diem (collectively, "Travel Pay/Per Diem"). This stands in contrast to any living or travel expenses incurred by Welded's back-office personnel unrelated to the actual work onsite:

1. NPLA Personnel and Field Personnel. NPLA Personnel and Field Personnel who must temporarily relocate to the Field in connection with the performance of Work shall be paid a per diem in lieu of actual expenses as a part of Labor Costs. Travel expenses shall be paid to NPLA Personnel and Field Personnel as part of Labor Costs.

2. Home Office Personnel. Except as otherwise specifically set forth herein, the Fixed Fee covers all expenses for living and travel which may be incurred by Home Office Personnel in connection with Work performed.

98. Section VIII, Article 2.A, of the Contract explicitly includes "*travel pay, per diem* . . . actually paid to NPLA and Field Personnel in connection with payment for actual Work" as Welded's "Labor Costs."

99. In addition, as noted above, Section VIII, Article 2.H, Exhibit 4 to the Contract identifies the "list of benefits which may apply to personnel who are paid pursuant to the NPLA . . . ." Exhibit 4 to the Contract is explicit that, in accordance with the NPLA, NPLA Personnel receive Travel Pay/Per Diem as part of their "Standard Wages":

Category	Code	Description	Notes
EARNINGS	PDTAX	TAXABLE PER DIEM	Standard Wages
EARNINGS	TRVL	TRAVEL ASSISTANCE (I/O)	Standard Wages

100. As with Travel Pay/Per Diem benefits, Section VIII, Article 2.A, explicitly defines Welded's "Labor Costs" to include "payroll taxes and insurance . . . actually paid to NPLA and Field Personnel in connection with payment for actual Work" (the "Payroll Taxes/Insurance").

C. Welded's equipment costs vary by month and are reimbursed by Williams.

101. The Contract is explicit that Welded is not reimbursed for expenses incurred in connection with the back-office services it provides in support of the actual work on the Atlantic Sunrise pipeline. Rather, those expenses are covered by the Fixed Fee. By contrast, Welded is

entitled to reimbursement for the cost of equipment, materials, and supplies used in connection with its actual work on the pipeline.

102. The Contract provides for different reimbursement mechanisms for (i) Specialty Equipment and (ii) Included Equipment.

103. Specialty Equipment is defined as "equipment not typically owned by contractors performing work similar to this Work," including, among other things, horizontal directional drilling (HDD) rigs. Under the Contract, Welded invoices Williams for Specialty Equipment, and Williams pays for such Specialty Equipment, "at actual cost on a CIF (cost including freight and all taxes) reimbursable basis."

104. The Contract defines Included Equipment at "materials, equipment, supplies, tools, vehicles, machines, offices, office equipment, furnishings, communications and utilities typically owned, leased and/or provided by contractors performing work similar to this Work, such as those shown in Exhibit 2, as well as" other equipment specifically identified in the Contract, including "vehicles, trucks and machinery" and "equipment for cutting, sand-blasting, grinding, drilling, digging, [and] trenching . . . ."

105. Under the Letter of Intent, Welded and Williams agreed that, rather than track every nut and bolt used in construction of the pipeline, Welded would receive an amount equal to half of its labor costs, without any markup, as reimbursement for providing standard equipment and supplies. The Letter of Intent identified examples of the included equipment and supplies under the heading: "Equipment, Fuel, and Supplies – 50% of actual Labor cost."

106. Accordingly, under the Contract, Welded's reimbursement for Included Equipment takes the form of a flat monthly "Equipment Fee" based on the "Labor Costs" associated with the Field Personnel and NPLA Personnel actually constructing the pipeline.

More specifically, the Contract provides that Welded's Equipment Fee is "a flat fee calculated as 50% of Labor Costs payable for actual Work performed by all NPLA Personnel and Field Personnel assigned to the project."

107. As noted above, Section I, Article 1, of the Contract defines "Work" as the "entire construction project" or any parts thereof. And as noted above, the Contract defines "Labor Costs" specifically by reference to the wages and benefits payable to NPLA Personnel under the NPLA or to Field Personnel under Exhibit 1, as well as certain other miscellaneous benefits, to the extent not already covered under the NPLA or Exhibit 1.

108. In certain cases, the "benefits paid to NPLA Personnel pursuant to the NPLA" include payment for vehicles and machinery that the NPLA Personnel provide or require. For instance, Section XVI of the NPLA with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, is devoted specifically to "Welding Rigs" and is explicit that a union welder will provide his or her own welding rig: "[A] Welder Journeyman who is dispatched to a project as a rig Welder will be required to provide a usable rig as a condition of the dispatch." And Welded must pay the Welder Journeyman a "rig rental rate" equal to "the maximum hourly rate determined by the Internal Revenue Service ('IRS') to be non-taxable . . . ."

109. Exhibit 1 to the Contract, titled "Indicative Wages & Benefits by Labor Classification," specifically identified the labor classifications, including "UA – Welder Foreman" and "UA – Welder" that would receive "RIG Rental" as a fringe benefit.

110. In addition, Section VI(E) of the NPLA with the International Union of Operating Engineers provides for Operators to receive a daily payment ranging from $65 to $100 to cover Pickup Rental. Similarly, Section IX(E) of the NPLA with the Laborers' International Union of

North America provides that Stewards will receive truck pay of $65 per day when six or more Laborers are employed on a project and, further, that truck pay for other union members must match the truck pay Operators receive.

111. Exhibit 1 to the Contract, titled "Indicative Wages & Benefits by Labor Classification," specifically identifies the labor classifications, including "Foreman – Operator Craft" and "Laborer Steward," that would receive "Vehicle Rental" as a fringe benefit.

112. As noted above, the definition of Welded's "Labor Costs" under the Contract specifically includes "employee vehicle rental/pay . . . actually paid to NPLA and Field Personnel in connection with payment for actual Work," to the extent that "employee vehicle rental/pay" is not otherwise captured under the NPLA.

113. Accordingly, all of these vehicle and rig-rental payments (collectively, the "Vehicle and Rig Rental Fees") are, by definition, "Labor Costs" under the Contract.

114. As in the case of Wait/Show Up Time and Travel Pay/Per Diem, Exhibit 4 to the Contract is explicit that, in accordance with the NPLA, NPLA Personnel receive Vehicle and Rig Rental Fees as part of their "Standard Wages":

Category	Code	Description	Notes
EARNINGS	EQUIP	EQUIPMENT RENTAL	Standard Wages
EARNINGS	RIGMT	TAXABLE MECHANIC RIG RENTAL	Standard Wages
EARNINGS	RIGWT	TAXABLE WELDER'S RIG RENTAL	Standard Wages
EARNINGS	VEH	VEHICLE RNTL TXBL	Standard Wages

115. The Equipment Fee is calculated based on the "Labor Costs" that Welded actually incurred constructing Williams's pipeline, including Wait/Show Up Time, Travel Pay/Per Diem, Paid Time Off/Holidays, Payroll Taxes/Insurance, and Vehicle and Rig Rental Fees.

D. Welded's Subcontractor costs are reimbursed by Williams.

116. Section VIII, Article 2.A, of the Contract defines a "Subcontractor" as "any third party contracted by [Welded] . . . to provide Work, services and/or equipment, materials, supplies or consumables to the Project." The Contract is explicit that "the term 'Subcontractor' includes third parties with whom [Welded] has entered into leases or rental agreements for equipment, machinery and other project/ construction items."

117. Subcontractor invoices were required to state, among other things, "the dates Work was performed or delivered, the location(s) where Work was performed or delivered, the units of Work performed or delivered, the relevant spread number and the price for Work performed or delivered."

118. Again, as noted above, Section I, Article 1, of the Contract defines "Work" as the "entire construction project" or any parts thereof.

119. Also as noted above, the Letter of Intent provided that Transco would reimburse Welded for "Subcontracts, Materials, Specialty Equipment and Outside Services" at "Actual cost."

120. The Letter of Intent elaborated: "The cost for items in this category will be paid on a CIF (cost including freight and all taxes) reimbursable basis. . . . A list of example Subcontracts/Services, Specialty Equipment and Materials and [sic] is attached."

121. Further, the Letter of Intent was explicit that any equipment provided by Subcontractors was not covered by the Equipment Fee. More specifically, the Letter of Intent stated that equipment covered by the Equipment Fee would include: "All owned/leased other construction equipment typically deployed on large-diameter pipeline spreads required for the

project including trucks, pickups and other support equipment (*other than those items deemed Subcontract/Services* or Specialty Equipment as per the examples below)" (emphasis added).

122. The "Examples of Subcontracts and Services" included material hauling, dump truck services, outside trucking, and portable toilets, among other things:

> Clearing, HDD, material hauling, mechanized welding equipment and services (*labor component for main line welding included in labor cost), padding equipment, commercial coating FBE equipment, sanitation (dumpsters), trench boxes, fencing, landscape services, caliper tool services, hauling permits, drug testing, dump truck services, outside trucking, , [sic] road repairs, sanitation (port-a-john), foam equipment & technicians, welding procedures, road boring sheet piling, dewatering, drain tile repair, vacuum excavation.

123. Section II of the Contract concerns the "Scope of Work." Article 3C15 of Section II is titled Site Sanitation and states that "[p]ortable latrines shall be required for each work location. . . . [Welded] shall include the reimbursable cost of these facilities in the bid."

124. Section VIII, Article 2.H, of the Contract is explicit that Welded "shall not be entitled to mark-up on Subcontractor invoices and/or invoices for services, goods, Specialty Equipment nor Materials." Rather, Section VIII, Article D.5, provides that "[c]ompensation for actual Work performed by Subcontractors shall be invoiced and paid in accordance with actual amounts CIF (costs including freight and taxes) invoiced by any such Subcontractors." Similarly, according to Section VIII, Article G.5, to the extent that "Subcontractor personnel . . . are living and traveling in direct connection with the Work," Williams "shall reimburse the actual rental cost of a rental vehicle used in connection with the performance of Work in the Field."

E. The Contract provides Welded with incentives for timely and efficient completion of construction.

125. The Contract also established a two-pronged incentive program. One component of the incentive program encouraged Welded to complete its work below a targeted budget (the

"Cost Incentive Program"). A second component of the incentive program encouraged Welded to complete its work before a targeted completion date (the "Schedule Incentive Program").

126. Originally, the Contract contemplated that work on the pipeline would begin in February 2017 and would be completed before winter weather returned the following year. Under these circumstances, the Contract set forth a target budget of $335,000,000 and a target completion date of October 6, 2017.

127. However, because Williams failed to obtain the necessary permits, construction was unable to begin until September 2017, which would require Welded and its subcontractors to contend with challenging and unpredictable weather. Accordingly, Welded and Transco entered into the Amendment to the Contract. Mr. Hawkins executed the Amendment on behalf of Welded on March 30, 2018, and Mr. Armstrong executed the Amendment on behalf of Transco on May 15, 2018.

128. Among other things, the Amendment increased the targeted budget to $454,500,000 and extended the targeted completion date to June 14, 2018.

129. Under the Cost Incentive Program, Welded was entitled to receive a payment equal to $5 million plus half of any cost savings. For every dollar over the target budget, the payment to Welded would be reduced by $0.25. The amounts that Welded could end up owing under the Cost Incentive Program were capped at $10 million.

130. Under the Schedule Incentive Program, Welded was entitled to receive a payment equal to $5 million plus an additional $1 million for every week that Welded finished before the target completion date. For every week beyond the target completion date, the payment to Welded would be reduced by $500,000. The amounts that Welded could end up owing under the Schedule Incentive Program were uncapped.

131. As noted above, Welded achieved mechanical completion of its segment of the pipeline on September 19, 2018. The final cost of Welded's work on Atlantic Sunrise pipeline, including the Fixed Fee, was approximately $750 million.

132. In September 2018, Welded paid Williams $10 million in connection with the Cost Incentive Program. In addition, Williams has withheld $1,928,571 on account of purported delay damages in connection with the Schedule Incentive Program. However, as set forth in more detail below, the schedule and cost overruns were due to factors outside Welded's control, notably including Williams's own missteps.

IV. Winter weather and Williams's missteps caused schedule and cost overruns.

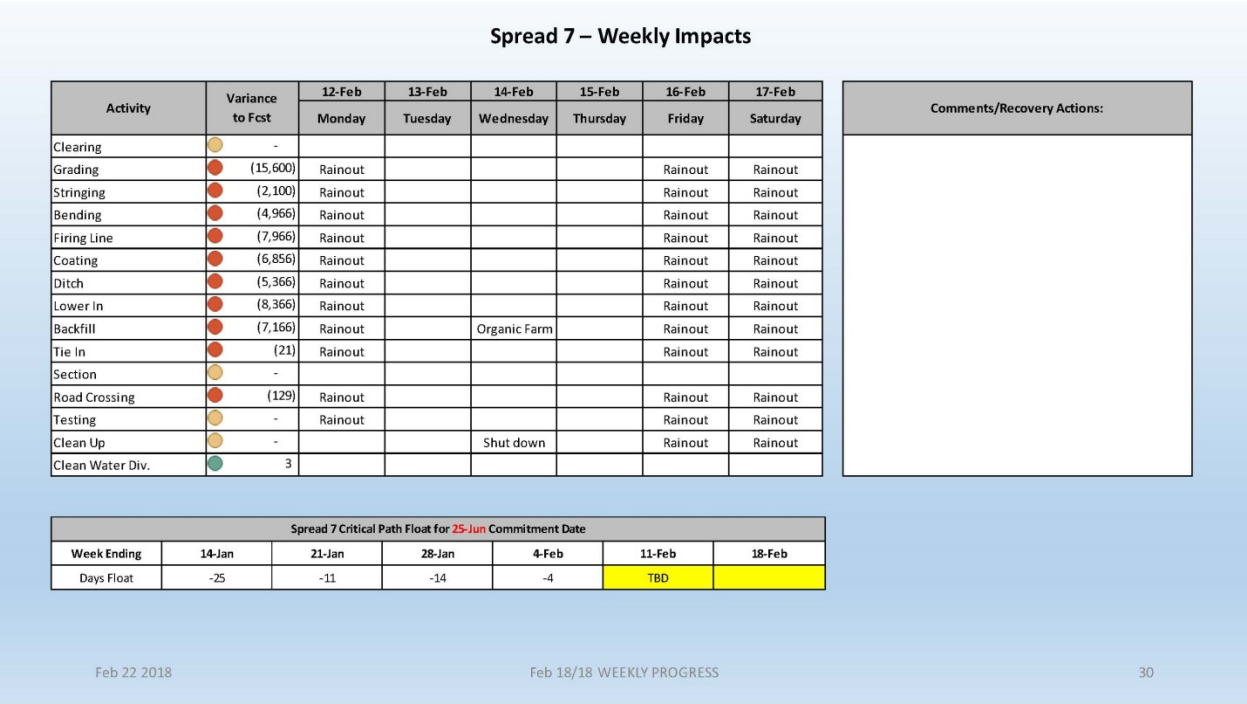
133. As noted above, Williams and Welded amended the original target budget and target completion date to reflect that a September start date would require Welded to contend with more difficult weather conditions than originally anticipated.

134. Accordingly, the amended budget and completion date made allowance for a day of downtime per time. In actuality, however, Welded and the other contractors working on the Atlantic Sunrise project dealt with significantly more difficult weather conditions than even the amended budget and completion target had contemplated.

135. As detailed in Welded's weekly reports to Williams, winter weather severely impaired productivity. For instance, in its report dated January 14, 2018, Welded identified "[l]ost production time due to [i]nclement weather conditions" as one of the "Critical Issues" at Spread 5.[7] The Critical Issues for Spread 6 similarly included "[w]orking in winter conditions, lost productivity." And Spread 7 reported "[g]rade shutdowns due to frozen conditions. Critical waterbody crossings are awaiting grading."

[7] The weekly report dated January 14, 2018, is attached hereto as Exhibit 9.

136. On or around February 11, 2018, Welded began specifically identifying for Williams all of the days of productivity that were being lost due to adverse weather conditions. For example, during the week of February 12, 2018, half a week of productivity was lost at Spread 7:



Spread 7 – Weekly Impacts

Activity	Variance to Fcst	12-Feb Monday	13-Feb Tuesday	14-Feb Wednesday	15-Feb Thursday	16-Feb Friday	17-Feb Saturday
Clearing	-						
Grading	(15,600)	Rainout				Rainout	Rainout
Stringing	(2,100)	Rainout				Rainout	Rainout
Bending	(4,966)	Rainout				Rainout	Rainout
Firing Line	(7,966)	Rainout				Rainout	Rainout
Coating	(6,856)	Rainout				Rainout	Rainout
Ditch	(5,366)	Rainout				Rainout	Rainout
Lower In	(8,366)	Rainout				Rainout	Rainout
Backfill	(7,166)	Rainout		Organic Farm		Rainout	Rainout
Tie In	(21)	Rainout				Rainout	Rainout
Section	-						
Road Crossing	(129)	Rainout				Rainout	Rainout
Testing	-	Rainout				Rainout	Rainout
Clean Up	-			Shut down		Rainout	Rainout
Clean Water Div.	3						

Comments/Recovery Actions:

Spread 7 Critical Path Float for 25-Jun Commitment Date						
Week Ending	14-Jan	21-Jan	28-Jan	4-Feb	11-Feb	18-Feb
Days Float	-25	-11	-14	-4	TBD	

Feb 22 2018 Feb 18/18 WEEKLY PROGRESS 30

Spreads 5 and 6 similarly lost multiple days of productivity from February 12 to February 17, 2018.[8]

137. The following week, adverse weather conditions again cost Welded multiple days of productivity, including at Spread 5 where rain shut down the construction for most of a week:[9]

[8] The weekly report dated February 18, 2018, is attached hereto as Exhibit 10.

[9] The weekly report dated February 25, 2018, is attached hereto as Exhibit 11.

Spread 5 – Weekly Impacts

Activity	Variance to Forecast	19-Feb Monday	20-Feb Tuesday	21-Feb Wednesday	22-Feb Thursday	23-Feb Friday	24-Feb Saturday	Comments/Recovery Actions:
Clearing	-							
Grading	(4,783)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Stringing	(5,009)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Bending	(4,053)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Firing Line	(1,848)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Coating	(3,049)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Ditch	(4,570)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Lower In	(1,018)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Backfill	(999)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Tie In	(12)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Hill	(1,253)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Road Crossing	(124)	Partial Rain Delay			Rain Out	Rain Out	Rain Out	
Testing	-							
Clean Up	-							
Clean Water Div.	-							

Mar 1 2018 Feb 25/18 WEEKLY PROGRESS 6

138. As late as March 19, 2018, Welded's weekly reports informed Williams that snowfall continued to shut down work on the pipeline for days at a time:[10]

Spread 7 – Weekly Impacts

Activity	Variance to Fcst	19-Mar Monday	20-Mar Tuesday	21-Mar Wednesday	22-Mar Thursday	23-Mar Friday	24-Mar Saturday	Comments/Recovery Actions:
Clearing	-							
Grading	(6,666)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out	Snow Out	
Stringing	(2,800)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out	3 Hour Weather	worked Sunday
Bending	(1,100)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out		worked Sunday
Firing Line	(5,966)	2 Hours - Road Restriction	2 Hours / Road Restriction & 1/2 Day Snow Out	Snow Out	Snow Out	Snow Out	1 Hour Weather	
Coating	(5,155)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out		
Ditch	234		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out		worked Sunday
Lower In	(5,766)		1/2 Day Snow Out	Snow Out	Snow Out	Welds Only		worked Sunday
Backfill	(6,166)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out		
Tie In	(3)		1/2 Day Snow Out	Snow Out	Snow Out			worked Sunday (2 crews)
Road Crossing	(44)		1/2 Day Snow Out	Snow Out	Snow Out			worked Sunday
Testing	(21,120)		1/2 Day Snow Out	Snow Out	Snow Out	Snow Out		
Clean Up	(3,000)	3 Hours - Wet Soil	1/2 Day Snow Out	Snow Out	Snow Out	Snow Out	Snow Out	
Clean Water Div.	2							

Mar 30 2018 Mar 25/18 WEEKLY PROGRESS 3

[10] The weekly report dated March 25, 2018, is attached hereto as Exhibit 12.

139. Even after the winter, construction continued to be severely hindered by rain, which was debilitating to the project because the wet and muddy terrain would prevent the necessary machinery from reaching the worksite:[11]

Spread 5 – Weekly Impacts

Activity	Variance to Forecast	16-Apr Monday	17-Apr Tuesday	18-Apr Wednesday	19-Apr Thursday	20-Apr Friday	21-Apr Saturday	Comments/Recovery Actions:
Clearing	(1,283)	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Grading	(1,283)	Rain out	Rain out	1/2 Day Delay	4 hour delay			Building access roads
Stringing	(2,200)	Rain out	Rain out	1/2 Day Delay	4 hour delay			As needed from the yard
Bending	(2,200)	Rain out	Rain out	1/2 Day Delay	4 hour delay			As needed from the yard
Firing Line	(2,196)	Rain out	Rain out	1/2 Day Delay	4 hour delay			Welded in "Hill Section"
Coating	1,792	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Ditch	(1,870)	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Lower In	(1,129)	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Backfill	350	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Tie In	10	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Hill	(941)	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Road Crossing	(50)	Rain out	Rain out	1/2 Day Delay	4 hour delay			Punched out at 901.
Testing	-	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Clean Up	(2,250)	Rain out	Rain out	1/2 Day Delay	4 hour delay			
Clean Water Div.	-	Rain out	Rain out	1/2 Day Delay	4 hour delay			

Apr 26 2018 Apr 22/18 WEEKLY PROGRESS 6

140. As Alan Armstrong, Williams's President, CEO, and Director, explained shortly thereafter on an earnings call on May 3, 2018, the Atlantic Sunrise project was suffering "an extremely wet and extended winter," and there had been "very difficult conditions up there" that needed to be "overcome."

141. On the same earnings call, Micheal G. Dunn, Williams Co.'s Executive VP & COO, reiterated that meeting the target completion date would be "really weather dependent":

> [W]e had a tough winter up there. Anybody that's residing in the Northeast knows how tough it was. And a lot of snow and rain on the right of way, but the contractors have done a great job progressing through the winter. . . . So it's really weather-dependent now. . . . And it's really all driven by getting some good weather in the Northeast, and we'll make some really good progress as soon as the weather breaks up there for us.

[11] The weekly report dated April 22, 2018, is attached hereto as Exhibit 13.

142. The weather did not break as Mr. Dunn had hoped. In July, rain prevented work on the pipeline for large stretches of time:[12]

Spread 5 – Weekly Impacts

Activity	Variance to Forecast	23-Jul Monday	24-Jul Tuesday	25-Jul Wednesday	26-Jul Thursday	27-Jul Friday	28-Jul Saturday	29-Jul Sunday	Comments/Recovery Actions:
Clearing	-								
Grading	-								
Stringing	-	Rain out	Rain out	Rain out					
Bending	-	Rain out	Rain out	Rain out	Rain out				
Firing Line	-								
Coating	-								
Ditch	-	Rain out	Rain out	Rain out	Rain out	Rain out			
Lower In	-	Rain out	Rain out	Rain out	Rain out	Rain out			
Backfill	-	Rain out	Rain out	Rain out	Rain out	Rain out			
Tie In	-	Rain out	Rain out	Rain out	5 of 6 RO	5 of 6 RO			
Hill	-	Rain out	Rain out	Rain out	2 or 3 RO	2 or 3 RO			
Road Crossing	-	Rain out	Rain out	Rain out	Rain out				
Testing	-	Rain out	Rain out	Rain out	Rain out				
Clean Up	-	Rain out	Rain out	Rain out	Rain out	Rain out	Rain out	Rain out	
Restoration	-	Rain out	Rain out	Rain out	Rain out	Rain out	Rain out	Rain out	

Aug 02, 2018 July 29 2018 WEEKLY PROGRESS 6

Spread 6 – Weekly Impacts

Activity	Variance to Forecast	23-Jul Monday	24-Jul Tuesday	25-Jul Wednesday	26-Jul Thursday	27-Jul Friday	28-Jul Saturday	29-Jul Sunday	Comments/Recovery Actions:
Clearing	-								
Grading	-								
Stringing	-								
Bending	-								
Firing Line	-								
Coating	-								
Ditch	-								
Lower In	-								
Backfill	-								
Tie In	-	Rained Out	Rained Out	Rained Out	Shut Down	Shut Down	Shut Down		
Road Crossing	-	Rained Out	Rained Out	Rained Out	Shut Down	Shut Down	Shut Down		
Testing	-	Rained Out	Rained Out	Rained Out	Shut Down	Shut Down	Shut Down		
Clean Up	-	Rained Out	Rained Out	Rained Out	Shut Down	Shut Down	Shut Down		
Restoration	-	Rained Out	Rained Out	Rained Out	Shut Down	Shut Down	Shut Down		

Aug 02, 2018 July 29 2018 WEEKLY PROGRESS 16

[12] The weekly report dated July 29, 2018, is attached hereto as Exhibit 14.

143. On July 29, 2018, Welded reported "17 [inches] of rain since 7-21-18. Wide spread flooding along the [right of way] footprint. Multiple bridge crossings washed away. Loss of previously restored [right of way]."

144. On August 2, 2018, Mr. Armstrong acknowledged on Williams's quarterly earnings call that the Atlantic Sunrise project teams had dealt with "record levels of rainfall with tremendous diligence, professionalism and integrity" but were "still battling the impacts of major flooding in the area last week . . . ."

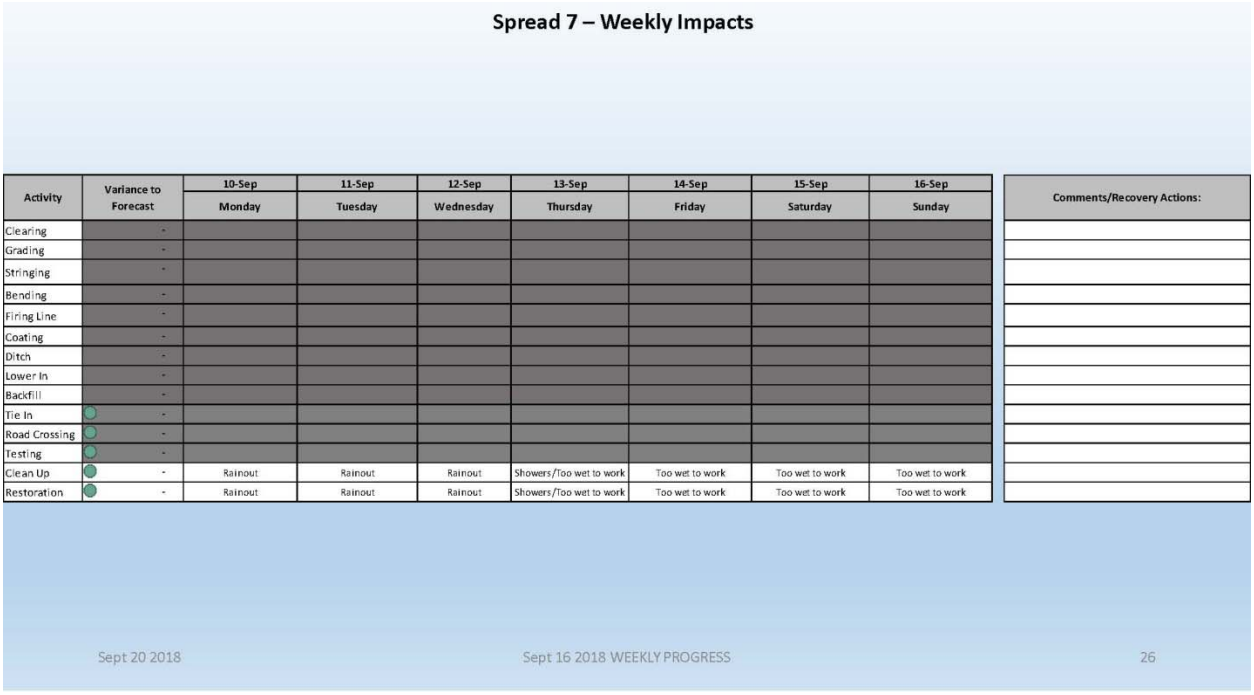
145. Three weeks later, Welded's status report reflected that it was still battling the effects of that flooding. In its report dated August 26, 2018, Welded described a number of "Critical Issues" :

- Over 20" of rain in the past 30 days. Wide spread flooding along the [right of way] footprint.
- Multiple bridge crossings washed away. Ongoing efforts to recover destruction debris off the [Limits of Disturbance].
- Re-work at Mahantango and Mahanoy creek.
- Loss of previously restored [right of way]. Severely hindered clean-up and restoration expectations.[13]

146. Even as construction neared completion, the rainy weather did not abate:[14]

[13] The weekly report dated August 26, 2018, is attached hereto as Exhibit 15.

[14] The weekly report dated September 16, 2018, is attached hereto as Exhibit 16.



Spread 7 – Weekly Impacts

Activity	Variance to Forecast	10-Sep Monday	11-Sep Tuesday	12-Sep Wednesday	13-Sep Thursday	14-Sep Friday	15-Sep Saturday	16-Sep Sunday	Comments/Recovery Actions:
Clearing	-								
Grading	-								
Stringing	-								
Bending	-								
Firing Line	-								
Coating	-								
Ditch	-								
Lower In	-								
Backfill	-								
Tie In	-								
Road Crossing	-								
Testing	-								
Clean Up	-	Rainout	Rainout	Rainout	Showers/Too wet to work	Too wet to work	Too wet to work	Too wet to work	
Restoration	-	Rainout	Rainout	Rainout	Showers/Too wet to work	Too wet to work	Too wet to work	Too wet to work	

Sept 20 2018 Sept 16 2018 WEEKLY PROGRESS 26

147. The pipeline's other contractors were similarly beset by rain. For instance, Latex Construction Company, Inc., which constructed the pipeline for Spread 4, adjacent to Welded's construction, achieved mechanical construction less than a week before Welded did.

148. As recently as April 4, 2019, Williams was claiming in its submissions to FERC that its labor costs on Latex's and Welded's portions of the pipeline were higher than expected due to winter construction, wet weather impacts, and the installation of substantially more erosion control measures than estimated.

149. In finally announcing the completion of the pipeline on October 4, 2018, Mr. Dunn reiterated on behalf of Williams how "proud" he was that the project was completed in a safe and responsible matter, particularly given that "[e]ven in the final months of construction, . . . some segments of the project area sustained more than 20 inches of rainfall . . . ."

150. On the same day that Mr. Dunn was praising the Atlantic Sunrise project teams, Williams withheld approximately $24 million from Welded, including $1,928,571 allegedly on account of delay damages.

151. The funds withheld by Williams diminished the Fixed Fee payable to Welded, which as set forth in section VIII, Article 2.A, of the Contract, represents the "profit payable to [Welded] in connection with the Project . . . ."

152. Section VIII, Article 2.B, is explicit that that profit "is a fixed, firm negotiated amount which is neither subject to modification nor escalation or reduction, due to . . . costs or delay due to due to unexpected weather or geological conditions experienced over the course of the Project."

153. The Contract does not permit Williams to withhold or reduce Welded's Fixed Fee due to weather-related delay or cost overruns.

154. In addition, the Contract does not permit Williams to withhold or reduce payment to Welded on account of cost and schedule overruns that Williams caused and for which it now blames Welded.

155. On several occasions, Williams specifically directed Welded to hire more personnel. For instance, around April or May 2018, Williams required Welded to hire four more tie-in crews of 25–30 people each to assist with making the final welds between sections of the pipeline. And around July or August of 2018, Williams required Welded to hire another four crews of 25–30 people each to assist in clean-up and restoration efforts.

156. In addition to the above, Williams required Welded to install and maintain additional environmental controls to protect adjacent wetlands and waterbodies and to keep soil and water on the rights-of-way and off the property of adjacent landowners. Williams's increased environmental-control demands forced Welded to retain five additional Environmental Crews, a slope-drain crew, and three Teamsters, causing environmental-related costs to exceed the budgeted amount by more than 40%.

157. Even putting aside Williams's ever-increasing demands, however, the target budget and target completion date were obsolete from the moment the project began because they were computed in the first instance using faulty information supplied by Williams.

158. For instance, Williams's survey data described the terrain that Welded could expect to encounter. According to Williams's survey data, the terrain in Spreads 5, 6, and 7 was mostly dirt, with relatively little rock.

159. Rocky terrain requires blasting, which takes longer than digging and requires additional time, effort, material, and equipment to ensure that the pipe is secure and the surrounding area is cleaned and restored. Accordingly, pipeline construction in rocky terrain takes significantly longer and is significantly more expensive than pipeline construction where the terrain is mostly dirt.

160. Williams's survey data significantly underestimated the amount of rock in Spreads 5, 6, and 7. For instance, the rock footage in Welded's bore estimate for Spread 7 needed to be adjusted from 25% rock to 85% rock. The rock footage for Spread 6 was increased from 40% to 85%. At the end of the day, actual blasting-related expenses were approximately three times the amount budgeted based on Williams's faulty survey data.

161. Similarly, Williams's engineering study for Spreads 5, 6, and 7 significantly underestimated the amount of karst areas that Welded would need to contend with.

162. In karst areas, soluble rocks like sandstone create the risk of a sinkhole or other subsurface void forming under the pipeline. Karst mitigation required Welded to fill voids with grout and put cement piles under the pipeline for support.

163. As with the rock blasting, the actual cost of karst mitigation was nearly three times the amount budgeted based on Williams's faulty engineering study.

164. Williams also dictated the welding protocol for Welded to follow in constructing the pipeline. Welded followed that protocol meticulously, and yet the X-ray imaging performed by JANX, the expert hired by Williams to provide nondestructive-testing and inspections services, continued to identify "transverse indications"—that is, cracks perpendicular to the weld.

165. Williams modified the welding procedures numerous times to try to address the issue identified by JANX. On March 21, 2018, Mr. Hood wrote to Mr. Sztroin that the welds continued to be deemed unacceptable despite significant efforts:

> The SMAW welding process has continued to provide less than desirable results across the project. Since first identified, Welded has taken a number of steps in an effort to improve results, all in consultation with Williams[']s] welding [expert]:
>
> - Additional competency tests performed by welders on 42" pipe
> - Preheat temperature raised
> - Interpass heating applied
> - Post-weld blanketing applied
> - Induction heating performed on Spread 5 mainline welds
> - Detailed instructions on number of passes by pipe gang and firing line implemented.
>
> Even with these mitigating measures, weld acceptance has not significantly improved.
>
> In addition to this, a number of accepted repair welds were recently identified as potential cut-outs.
>
> Welded requests specific guidance on the SMAW process to be followed going forward and a disposition for the newly identified repair welds in question.

166. Mr. Sztroin quickly responded: "We are very aware of the issue, and we will get back with Welded no later than tomorrow. But until then, please proceed with the latest procedures that our [expert] issued to our construction management."

167. Welded even retained its own certified expert in non-destructive evaluation, Mr. David Culbertson with Shaw Pipeline Services, to assess the reported "transverse indications" in the weld.

168. Upon arriving on site, however, Mr. Culbertson was immediately informed by JANX that Bob Comeaux, Williams's Senior Technical Specialist Welding, had instructed JANX not to allow Mr. Culbertson to review any of the X-ray film.

169. After several days and numerous attempts to obtain authorization to allow Mr. Culbertson to review the X-ray film, Welded gave up and sent Mr. Culbertson home. Mr. Culbertson then departed without ever viewing the X-ray film showing transverse indications.

170. Meanwhile, Spread 5 had multiple locations where the pipe was sitting on support skids for more than 30 days, awaiting a determination of whether the welds were acceptable. Beyond simply delaying the project, however, leaving the pipe exposed for that length of time presented a safety hazard.

171. As Welded reported to Williams, "[f]reezing, thawing, melting snow & rain have degraded conditions on [the right of way] so that skids are breaking, separating and creating a potential hazard to crews working nearby." Welded experienced "multiple incidents of pipe falling of skids and causing damage to adjacent equipment[] and materials."

172. Eventually, a few weeks after Welded was forced to send Mr. Culbertson home, Williams itself hired Mr. Culbertson who determined, finally, that there was no integrity issue with the welds after all, and many of the welds were deemed acceptable.

173. Welded received the final list of transverse indications from JANX on June 9, 2018, which revealed that as many as 77 welds had been cut out without any justification at all.

174. Cutting out and replacing all of these welds increased Welded's costs and hindered its progress significantly. Neither Williams nor JANX ever provided any explanation for their errors.

175. Williams's inability to exercise proper oversight over the project did not end there, however. Welded's weekly status reports from June 17 to July 19, 2018, repeatedly lamented the "[a]bsence of Williams Construction Manager to coordinate and resolve critical issues with Williams land, inspection, environmental, security, roads, etc."

176. Williams also failed to provide adequate security to address significant protestor interference in Spread 7 from a group organized specifically to oppose construction of the Atlantic Sunrise pipeline in Lancaster County.

177. For instance, on October 9, 2017, protestors formed a vehicle blockade to obstruct Welded's access to the construction site. And on October 16, 2017, twenty-three people were arrested for defiant trespassing after they blocked Welded's access to construction equipment. On October 21, 2017, six more people were arrested for blocking access to the construction site. Other protests brought other arrests, including five more individuals who were arrested after sitting in front of a working backhoe. By November 18, 2017, less than two months into construction, protester interference had already led to the arrest of 45 individuals.

178. Welded's weekly reports pleaded repeatedly that "additional security measures be taken by Williams" at the site, including a full-time police presence.[15]

179. Welded also repeatedly warned Williams that action was necessary because the pipeline's horizontal directional drilling (HDD) subcontractor "plans to leave the site for the day when protestors arrive."

[15] As noted above, the weekly report dated March 25, 2018, is attached hereto as Exhibit 12.

180. In its weekly report dated March 25, 2018, Welded alerted Williams that "[r]ecent protestor action has become more aggressive," forcing Welded to add daytime security to the site and to consult with local police on multiple occasions.

181. After months of inaction by Williams, Welded's weekly status report dated May 6, 2018, was blunt:

** Welded is awaiting approval to place the constables on site. **[16]

182. Williams's failings were not limited to its neglect of worksite security. Williams also failed to obtain timely permits on numerous occasions, which cumulatively were a significant cause of the project's cost and schedule overruns. As set forth in the table below, in many cases Williams did not obtain the necessary regulatory approvals until just before the June 14 target completion date. Indeed, in many cases, Williams did not obtain regulatory approval until long after the target completion date.

	Variance	Date Received
Spread 5	Industrial/Quaker Run	7/14/2018
Spread 6	Goldmine Road	6/7/2018
	Cavalry Rd	6/29/2018
	Jonestown Rd	6/29/2018
Spread 7	I-76 Bore (include creek)	6/7/2018
	Pequea Creek	6/27/2018
	Chiques Creek	6/12/2018

183. For instance, as early as April 12, 2018, Welded had begun to warn Williams that "[t]he Amtrak Railroad bore permit is not ready and could take 30-60 days for approval after submittal. Approval of the first submittal is not guaranteed and any revisions are subject to the

[16] The weekly report dated May 6, 2018, is attached hereto as Exhibit 17.

same review period."[17] By that point, Welded had already submitted all of the documents that it was responsible for.

184. Throughout April and May 2018, Welded provided Williams with weekly reminders about the Amtrak permit.

185. By the end of May, Welded's concerns were borne out, and Williams was forced to reapply for the Amtrak permit on May 31, 2018—just two weeks before the target completion date.[18]

186. Accordingly, the target completion date had already passed by the time that Williams obtained the Amtrak permit necessary to allow Welded to complete its work.

187. In the 10-Q filed with the SEC for the period ended June 30, 2018, Williams itself acknowledged that its failure to obtain the requisite permits was a gating issue for completion of the pipeline: "We expect to place the full project into service in the second half of August 2018, assuming timely receipt of the remaining regulatory approvals."

V. Transco filed two proofs of claim in these chapter 11 cases.

188. On February 28, 2019, Transco filed two proofs of claim against Welded.

A. Claim 632 should be disallowed in full.

189. Pursuant to claim number 632 ("Claim 632"), Transco contends that it has identified "a number of anomalies/defects covered by Debtor's warranty under the Contract" and seeks damages in the estimated amount of $16,320,000 for costs that Transco contends it will incur in connection with the repair of allegedly defective work performed by Welded.

190. Welded disputes the validity of Claim 632 because, on information and belief, to the extent that any pipeline coating anomalies or defects exist at the locations identified in the

[17] The weekly report dated April 8, 2018, is attached hereto as Exhibit 18.

[18] The weekly report dated May 31, 2018, is attached hereto as Exhibit 19.

documents included within Claim 632, such anomalies or defects are attributable to inadequate or improper coating on pipes provided by Transco's third-party supplier.

191. Section I, Article 22C, of the Contract is explicit that "[a]ll labor and materials necessary to replace or repair items originally furnished by [Transco] that prove to be defective will be paid for by [Transco]."

192. As such, the pipeline-coating anomalies or defects identified by Transco, to the extent that they actually exist (which Welded does not concede), do not constitute "Defective Work" for which Welded may have obligations under the Contract to remedy, repair, or replace at its sole cost and expense.

193. Welded reserves any and all other defenses and rights to object to Claim 632 on any other grounds.

B. Claim 636 should be disallowed in full.

194. Pursuant to claim number 636 ("Claim 636"), Transco contends that Welded is indebted to Transco in the aggregate amount of $94,291,513.58. Transco asserts the following four general categories of damages against Welded: (i) allegedly overbilling Williams ($45,611,991.00), (ii) purportedly violating municipal regulations and billing Williams for allegedly non-reimbursable expenses ($7,605,609.63), (iii) allegedly causing schedule overruns ($1,928,571.00), and (iv) allegedly withholding payments to subcontractors and suppliers ($39,145,341.95).

(i) Transco's claims for "Category I" damages lack merit.

195. *Equipment Fee for Wait/Show Up Time ($2,426,943.00).* Transco claims that the amounts Welded paid its workers for wait time and show-up time were not payments for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

196. The Withheld Funds include at least $2,317,447 that Williams has withheld based on its supposition that the amounts Welded paid its workers for wait time and show-up time were not Labor Costs.

197. As set forth in paragraphs 76–91, 95–96, 101–107, and 115 above, expenses associated with Wait/Show Up Time are Labor Costs for purposes of calculating the Equipment Fee.

198. *Equipment Fee for Travel Pay/Per Diem ($9,153,676.00).* Transco claims that the amounts Welded paid its workers for travel pay and per diem expenses were not payments for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

199. The Withheld Funds include at least $8,037,287 that Williams has withheld based on its supposition that the amounts Welded paid its workers for travel pay and per diem expenses were not Labor Costs.

200. As set forth in paragraphs 76–88, 97–99, 101–107, and 115 above, Travel Pay/Per Diem expenses are Labor Costs for purposes of calculating the Equipment Fee.

201. *Equipment Fee for Paid Time Off/Holidays ($82,932.00).* Transco claims that the amounts Welded paid its workers for paid time off and holidays were not payments for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

202. As set forth in paragraphs 76–88, 92–96, 101–107, and 115 above, expenses associated with Paid Time Off/Holidays are Labor Costs for purposes of calculating the Equipment Fee.

203. *Equipment Fee for Employer's Tax and Insurance Liabilities ($8,584,364.00).* Transco claims that amounts Welded paid on account of its "employer's tax" and "insurance

liabilities" were not payments for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

204. As set forth in paragraphs 76–88, 100–107, and 115 above, expenses associated with the Employer's Tax and Insurance Liabilities are Labor Costs for purposes of calculating the Equipment Fee.

205. *Equipment Fee for Rig Rental ($3,506,778.00).* Transco claims that the rig-rental allowance that Welded paid its workers was not a payment for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

206. The Withheld Funds include at least $3,104,487 that Williams has withheld based on its supposition that the rig-rental allowance that Welded paid its workers was not a Labor Cost.

207. As set forth in paragraphs 76–88 and 101–115 above, expenses associated with the Rig Rental Allowance are Labor Costs for purposes of calculating the Equipment Fee.

208. *Equipment Fee for Vehicle Allowance ($3,888,130.00).* Transco claims that the vehicle allowance that Welded paid its workers was not a payment for "actual work done" and thus should not have been considered when calculating the Equipment Fee.

209. The Withheld Funds include at least $3,330,852 that Williams has withheld based on its supposition that the vehicle allowance that Welded paid its workers was not a Labor Cost.

210. As set forth in paragraphs 76–88 and 101–115 above, expenses associated with the Vehicle Allowance are Labor Costs for purposes of calculating the Equipment Fee.

211. *Charges for Portable Toilets ($1,105,008.00).* Transco claims that Welded billed Transco for the cost of providing portable toilets. According to Transco, offices, site establishment, and facilities are Included Equipment under the Contract.

212. The Withheld Funds include at least $772,752 that Williams has withheld allegedly on account of "Site Utilities."

213. As set forth in paragraphs 116–124 above, costs that Welded incurred in connection with portable toilets are reimbursable under the Contract.

214. *Charges for Dump-Truck Rentals ($534,068.00)*. Transco claims that Welded billed Transco for dump-truck rentals in its Materials Invoices. According to Transco, dump trucks are Included Equipment under the Contract.

215. The Withheld Funds include at least $1,044,000 that Williams has withheld based on its supposition that Welded billed Transco for dump-truck rentals in the Materials Invoices.

216. As set forth in paragraphs 116–124 above, third parties contracted by Welded to provide aggregates and other Materials for the project are Subcontractors, and the costs associated with the Materials provided by these Subcontractors are reimbursable on a CIF (costs including freight and taxes) basis. Accordingly, freight costs associated with the delivery of Materials are fully reimbursable under the Contract, even if the third-party Subcontractor may have used dump trucks to deliver the Materials.

217. *Charges for Subcontractor's Truck Rentals ($3,035,144.00)*. Transco claims that Welded billed Transco for the cost of Subcontractor's truck rentals. According to Transco, trucks are Included Equipment under the Contract.

218. The Withheld Funds include at least $2,406,710 that Williams has withheld based on its supposition that the "Included Equipment" Welded brought to the project should extend to include trucks rented by Subcontractors.

219. As set forth in paragraphs 116–124 above, Subcontractor costs, including costs related to truck rental, are entitled to reimbursement under the Contract.

220. *Charges for Trailers and Site Offices ($621,432.00).* Transco claims that Welded billed Transco for the cost of trailers and site offices. According to Transco, trailers and site offices are Included Equipment under the Contract.

221. The Withheld Funds include $621,432 that Williams has withheld based on its supposition that Welded improperly billed Transco for trailers and site offices.

222. Upon information and belief, Transco's alleged damages relate to an agreement under which Welded leased land for a laydown yard to receive, store, and assemble project equipment and materials.

223. On July 27, 2017, Welded and Transco reached agreement on the Extra Work Request From Contract, Request Number 2017-01-WPG-01-63-1 REV. 2 (the "Side Agreement"), which permitted Welded to lease acreage for a laydown yard at Highridge Travel Plaza for 14 months, at an estimated cost of $781,200. To that end, Welded entered into a lease with Schuylkill Economic Development Corporation for land in the Highridge Business Park Commercial Site.

224. To the extent that Transco is objecting to reimbursing Welded for the cost of Welded's Subcontractors' trailers and site office, such Subcontractor costs are entitled to reimbursement under the Contract, as set forth in paragraphs 116–124 above.

225. *Charges for Included Equipment ($7,387,643.00).* Transco's explanation for this alleged category of damages states in full as follows: "Included Equipment was improperly charged as Specialty Equipment."

226. Upon information and belief, this category of alleged damages is premised on an incorrect or superficial reading of Welded's invoices. For example, Exhibit 2 to the Contract identifies "On-road Dump Trucks" as Included Equipment. Off-road dump trucks, by contrast,

are Specialty Equipment because they are not vehicles "typically owned, leased and/or provided by contractors performing work similar to this Work . . . ."

227. As set forth in paragraphs 101–104 and 116–124 above, the cost of any such Specialty Equipment is fully reimbursable under the Contract.

228. *Charges for the Transportation and Delivery of Included Equipment ($1,518,145.00).* Transco claims that Welded billed Transco for costs associated with the transportation and delivery of Included Equipment. According to Transco, these costs were to be covered by the Equipment Fee.

229. Contrary to Transco's surmise, mobilization costs are fully reimbursable under the Contract. Section VIII, Article 2C, defines "mobilization" as "the activities required to load, secure, transport, and deploy personnel, equipment, supplies, materials, and consumables to the Field upon receipt of written [Transco] authorization to proceed with mobilization."

230. Mobilization is reimbursable Work under the Contract. For instance, the "Scope of Work" under Section II, Article 3C1, is explicit that "[t]he Work for each Spread shall include . . . Mobilization of all required [Welded] personnel and equipment for the entire scope of Work for each Spread." Section VIII, Article 2C, is similarly explicit: "Mobilization and demobilization are included in the Work and compensated under the terms of this Section VIII." Accordingly, mobilization costs are entitled to reimbursement under the Contract.

231. *Double-Payment of Union Dues ($2,767,729.00).* Transco claims that, after the Petition Date, Welded asked Transco to pay outstanding union dues, which Transco did. Transco seeks to recover the amount it paid because, according to Transco, the union dues related to the prepetition period and had already been paid by Transco in the ordinary course.

232. Any union dues that Transco paid postpetition are not duplicative of amounts that Transco paid Welded prepetition. As set forth in paragraphs 22–29 and 51–62 above, Transco has withheld substantial sums related to the prepetition period, and there is no basis for Transco to allocate any payments to Welded to union dues specifically.

(ii) Transco's claims for "Category II" damages lack merit.

233. *Rework/Weld Repair Damages ($6,077,015.00).* Transco claims that Welded charged Transco for repairs to Welded's own "Defective Work," which the Contract allegedly required Welded to correct at its own cost and expense.

234. Section I, Article 22B, of the Contract defines "Defective Work":

> [Transco] may reject defective, deficient, improper, unsound or nonconforming Work or materials, all of which shall be deemed defective Work. For purposes of this Article, all defective, deficient, improper, unsound or nonconforming: (i) Work; or (ii) [Welded] provided materials shall be referred to as "Defective Work."

235. Many of the welds that Welded was required to repair or cut out were not defective, deficient, improper, unsound, or nonconforming, and were thus not "Defective Work" under the Contract.

236. As set forth in paragraphs 164–166 above, JANX, the expert hired by Williams to provide nondestructive-testing and inspections services, continued to identify transverse indications that Welded would have to repair or cut out.

237. As set forth in paragraphs 167–172 above, Williams eventually hired Mr. Culbertson who determined that there was no integrity issue with the welds after all, and many of the welds were deemed acceptable.

238. As set forth in paragraphs 173 and 174 above, Welded received the final list of transverse indications from JANX on June 9, 2018, which revealed that as many as 77 welds had been cut out without any justification at all.

239. In addition, Section I, Article 22C, of the Contract is explicit that Welded is allowed a weld repair rate of 5% over the course of the project: "To the extent [Welded] does not exceed a weld repair rate of 5% over the course of the project, the repair of such welds will not constitute correction of Defective Work that [Welded] must correct at its sole cost and expense."

240. Moreover, "[a]ny repairs or cutouts made as a result of defective material provided by [Transco] shall not be included in the calculation of the 5% weld repair rate."

241. To the extent that weld repairs or cutouts did exceed 5%, the Contract limits Transco's recovery to:

> [$5,000 per weld] x [total number of welds repaired on the Project in excess of the 5% weld repair allowance] or [$7,500 per weld] x [total number of cutouts on the Project in excess of the 5% weld repair allowance].

242. *Damage to Materials, Machinery or Equipment ($301,288.00).* Transco claims that Welded improperly charged Transco for replacing damaged materials, machinery or equipment.

243. Welded has not charged Transco for replacing any damaged materials, machinery or equipment that the Contract required Welded to replace at its own cost and expense.

244. *Damages Related to Safety Shutdowns ($585,096.00).* Transco claims that Welded improperly charged Transco for the time workers spent attending safety shutdown meetings.

245. The "Scope of Work" under Section II, Article 3C1, is explicit that "[t]he Work for each Spread shall include . . . Safety training of ALL [Welded] and subcontractor Personnel."

246. As noted in Claim 636, if Transco were to have issued Welded a stop-work notice due to one of three significant safety issues identified in Section I, Article 12, of the Contract, Welded would have borne the cost of any associated corrective actions, safety meetings, or training sessions:

> If [Transco] issues [Welded] a stop work notice due to (i) [Welded's] failure to remediate a previously reported unsafe action, (ii) [Welded's] willful disregard of [Transco's] safety standards as set forth in the Williams Onshore Contractor Safety Handbook . . . or (iii) [Welded's] involvement in a severe safety incident, such a life-threatening injury or death, then all resulting costs of associated corrective actions, safety meetings, safety stand down, and/or safety training sessions will be at [Welded's] sole cost and expense.

247. Transco never issued Welded a stop work-notice due to any of the safety issues identified in Section I, Article 12, of the Contract.

248. Accordingly, in the absence of a stop-work notice from Transco citing one of the conditions specified in the Contract, Welded's safety meetings or training sessions are part of the "Work" and are reimbursable under the Contract.

249. *Damages Related to Environmental-Compliance Incidents ($630,384.00).* Transco's explanation for this alleged category of damages states in full as follows: "The audit identified $620,384.00 worth of impermissible charges to Transco associated with Debtor's environmental compliance incidents that were improperly charged to Transco."

250. Nothing in the Contract provides that Welded would bear the cost of environmental compliance for the project. In fact, as described in paragraph 156 above, Williams specifically approved the increased costs associated with additional environmental controls and crews required by Williams.

251. *Damages Related to Violation of Municipal Regulations ($21,826.63).* Transco seeks to recover from Welded on account of a claim that Union Township, Pennsylvania, has asserted against Transco. According to Transco, Union Township has alleged that Welded or its agents hauled materials across a bridge in excess of the specified weight restriction. The Union Township claim covers (i) labor for traffic control, (ii) inconvenience to the residents and the Township, and (iii) non-routine bridge inspection fees.

252. Transco fails to allege facts sufficient to support a claim for damages related to the Union Township claim. Transco does not provide even *prima facie* evidence of the validity and amount of the alleged damages claim against Welded.

(iii) Transco's claims for "Category III" damages lack merit.

253. *Damages Related to Schedule Overrun ($1,928,571.00).* Transco claims that it is entitled to damages because Welded did not complete construction by June 14, 2018.

254. As set forth in paragraphs 133–187 above, Transco caused or contributed to the schedule overrun, and its actions precluded Welded from completing construction by June 14, 2018.

(iv) Transco's claims for "Category IV" damages lack merit.

255. *Lancaster County Solid Waste Management ("LCSWM") Claim ($182,842.80).* Transco claims that, after the Petition Date, it received a bill from LCSWM for certain prepetition services, which Transco paid. According to Transco, Welded previously billed Transco (and Transco paid) for the same services through a Subcontractor.

256. Any amounts that Transco paid LCSWM postpetition are not duplicative of amounts that Transco paid Welded prepetition. As set forth in paragraphs 22–29 and 51–62 above, Transco has withheld substantial sums related to the prepetition period, and any amounts Welded did receive prepetition are not allocable to LCSWM's services specifically.

257. *Rexroth Equities, LP ("Rexroth") Claim ($2,574.30).* Transco claims that, after the Petition Date, it received a bill from Rexroth for the prepetition storage of rail cars, which Transco paid. According to Transco, Rexroth was a Subcontractor that Welded was responsible for paying.

258. Any amounts that Transco paid Rexroth postpetition are not duplicative of amounts that Transco paid Welded prepetition. As set forth in paragraphs 22–29 and 51–62 above, Transco has withheld substantial sums related to the prepetition period, and any amounts Welded did receive prepetition are not allocable to Rexroth's services specifically.

259. *Outstanding Subcontractor and Supplier Claims (estimated amount of $38,959,924.85).* Transco claims that Subcontractors and suppliers have made claims for payment to Welded's surety and may cause liens to be filed against Transco or the project, or both.

260. As set forth in paragraphs 22–29 and 51–62 above, Transco has withheld substantial sums related to the prepetition period. There is no basis for Transco to assert a claim against Welded for amounts that Welded's surety pays Subcontractors and suppliers on Welded's behalf.

261. Welded reserves any and all other defenses and rights to object to Claim 636 on any other grounds.

Count I

(Against Transco – Breach of Contract)

262. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

263. The Contract constitutes a valid and enforceable agreement between Transco and Welded.

264. Transco breached the Contract by failing to fulfill its payment obligations to Welded under the Contract.

265. Specifically, Transco has breached the Contract through its following actions:

a. Transco breached the Contract by (i) failing to reimburse Welded for $2,317,447 in Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Wait/Show Up Time and (ii) continuing to withhold the $2,317,447 owed to Welded for amounts Welded paid on account of Wait/Show Up Time;

b. Transco breached the Contract by (i) failing to reimburse Welded for $8,037,287 in Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Travel Pay/Per Diem and (ii) continuing to withhold the $8,037,287 owed to Welded for amounts Welded paid on account of Travel Pay/Per Diem;

c. Transco breached the Contract by (i) failing to reimburse Welded for $6,435,339 in Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Vehicle and Rig Rental Fees and (ii) continuing to withhold the $6,435,339 owed to Welded for amounts Welded paid on account of Vehicle and Rig Rental Fees;

d. Transco breached the Contract by (i) failing to reimburse Welded for $2,406,710 that Welded paid to Subcontractors on account of truck rental and (ii) continuing to withhold the $2,406,710 owed to Welded for amounts Welded paid to Subcontractors on account of truck rental;

e. Transco breached the Contract by (i) failing to reimburse Welded for $1,044,000 that Welded paid to Subcontractors on account of dump truck rental for post-delivery hauling and (ii) continuing to withhold the

$1,044,000 owed to Welded for amounts Welded paid to Subcontractors on account of dump truck rental for post-delivery hauling;

f. Transco breached the Contract by (i) failing to reimburse Welded for $772,752 that Welded paid on account of site utilities and (ii) continuing to withhold the $772,752 owed to Welded for amounts Welded paid on account of site utilities;

g. Transco breached the Contract by (i) failing to reimburse Welded $621,432 for amounts that Welded paid to Subcontractors on account of site office trailers and equipment and (ii) continuing to withhold the $621,432 owed to Welded for amounts that Welded paid to Subcontractors on account of site office trailers and equipment;

h. Transco breached the Contract by improperly withholding $1,928,571 from amounts owed to Welded on account of purported delay damages;

i. Transco breached the Contract by (i) failing to reimburse Welded $16,592,432.09 for costs that Welded actually incurred constructing Williams's pipeline in August 2018 and (ii) continuing to withhold the $16,592,432.09 owed to Welded for costs that Welded actually incurred constructing Williams's pipeline in August 2018;

j. Transco breached the Contract by (i) failing to reimburse Welded $17,440,392.90 for costs that Welded actually incurred constructing Williams's pipeline in September 2018 and (ii) continuing to withhold the $17,440,392.90 owed to Welded for costs that Welded actually incurred constructing Williams's pipeline in September 2018; and

k. Transco breached the Contract by (i) failing to reimburse Welded $13,713,655.68 for costs that Welded actually incurred constructing Williams's pipeline in October 2018 and (ii) continuing to withhold the $13,713,655.68 owed to Welded for costs that Welded actually incurred constructing Williams's pipeline in October 2018.

266. Transco's failure to remit the Withheld Funds to Welded constitutes a material violation of the Contract and has deprived Welded of the benefit of its bargain.

267. Moreover, as Welded informed Williams on several occasions, withholding the reimbursement of such substantial amounts—funds that Welded had already expended—destroyed Welded's ability to make payroll and to continue operations in the ordinary course. Transco's (and Williams's) actions pitched Welded into severe financial distress, causing loss of business opportunities and the filing of these chapter 11 cases, and ultimately resulting in the destruction of Welded's business.

268. Welded has suffered a material reduction in enterprise value and other consequential damages as a result of Transco's breaches of the Contract, including, but not limited to, financial injury and lost business opportunities.

269. Accordingly, Welded is entitled to an award of damages in an amount to be determined at trial incurred as a result of Transco's breaches of the Contract and its (or Williams's) intentional and wrongful retention of the Withheld Funds, and such additional amount as is determined by the Court in order to sufficiently and fully compensate Welded for the damages and losses suffered as result of Transco's (or Williams's) actions, including, but not limited to, financial injury, lost business opportunities, and the destruction of Welded's business.

Count II

(Against Transco – Breach of Implied Covenant of Good Faith and Fair Dealing)

270. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

271. The Contract constitutes a valid and enforceable agreement between Transco and Welded.

272. Under applicable state law, which governs the Contract, the covenant of good faith and fair dealing is an implied term of every contract.

273. Transco has breached the implied covenant of good faith and fair dealing contained in the Contract by purposely waiting until Welded had performed all work necessary to achieve mechanical completion of the Atlantic Sunrise project, thereby enabling Transco to obtain final FERC approval, before it abruptly notified Welded that Williams was withholding reimbursement of approximately $24 million that Welded had paid to construct Williams's pipeline over the previous 10 months. Coupled with that improper withholding, Transco, without any warning or prior discussion with Welded, filed a lawsuit in Oklahoma state court asserting a breach-of-contract claim against Welded in the approximate amount of $24 million.

274. Transco thereafter withheld the Additional Withholdings which amounts are due and owing to Welded under the Contract for amounts that Welded paid out of its own pocket to construct Williams's pipeline, notwithstanding that mechanical completion and been achieved and Transco was receiving substantial earnings from the Atlantic Sunrise pipeline.

275. Moreover, as Welded informed Williams on several occasions, withholding the reimbursement of such substantial amounts—funds that Welded had already expended—destroyed Welded's ability to make payroll and to continue operations in the ordinary course.

Transco's (and Williams's) actions pitched Welded into severe financial distress, causing loss of business opportunities and the filing of these chapter 11 cases, and ultimately resulting in the destruction of Welded's business.

276. Welded has suffered a material reduction in enterprise value and other consequential damages as a result of Transco's intentional actions, including, but not limited to, financial injury and lost business opportunities.

277. As a result of Transco's actions, Welded has suffered damages and losses and it is entitled to an award of damages in an amount to be determined at trial incurred as a result of Transco's (or Williams's) intentional and wrongful retention of the Withheld Funds, and such additional amount as is determined by the Court in order to sufficiently and fully compensate Welded for the damages and losses suffered as result of Transco's (or Williams's) actions, including, but not limited to, financial injury, lost business opportunities, and the destruction of Welded's business.

Count III

(Against Williams Partners and Williams Co. – Tortious Interference with Contractual Relationships)

278. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

279. Transco and Welded entered into the Contract.

280. The Contract constitutes a valid and enforceable agreement between Transco and Welded.

281. Williams Partners, as the sole member of Transco, and Williams Co., as the sole member of Williams Partners, had and have knowledge of the Contract and the respective rights and obligations of Transco and Welded under the Contract.

282. Upon information and belief, Williams Partners and/or Williams Co. wrongfully and intentionally interfered with the contractual relationships between Welded and Transco by directing or otherwise causing Transco—a closely held company they control and dominate—to, among other things, improperly withhold the Withheld Funds from Welded.

283. Moreover, as Welded informed Williams on several occasions, withholding the reimbursement of such substantial amounts—funds that Welded had already expended—destroyed Welded's ability to make payroll and to continue operations in the ordinary course. Williams Partners and/or Williams Co. caused Transco to take actions that pitched Welded into severe financial distress, causing loss of business opportunities and the filing of these chapter 11 cases, and ultimately resulting in the destruction of Welded's business.

284. Welded has suffered a material reduction in enterprise value and other consequential damages as a result of Williams Partners and/or Williams Co.'s interference with Welded's rights under the Contract, including, but not limited to, financial injury and lost business opportunities.

285. As a result of Williams Partners and/or Williams Co.'s tortious interference with the contractual relationships between Transco and Welded, Williams Partners and/or Williams Co. have caused Welded to suffer damages, including, but not limited to, the Withheld Funds, financial injury and lost business opportunities, in an amount to be determined by the Court in order to sufficiently and fully compensate Welded for the damages and losses suffered as result of Williams Partners and/or Williams Co.'s actions, including, but not limited to, financial injury, lost business opportunities, and the destruction of Welded's business.

Count IV

(Against Williams – Turnover of Property of the Estate – 11 U.S.C. § 542)

286. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

287. Williams possesses, has custody of, or controls the Withheld Funds.

288. Specifically, Williams possesses, has custody of, or controls (i) the $2,317, 447 owed by Transco to Welded on account of Labor Costs that Welded paid for Wait/Show Up Time, (ii) the $8,037,287 owed by Transco to Welded on account of Labor Costs that Welded paid for Travel Pay/Per Diem, (iii) the $6,435,339 owed by Transco to Welded on account of Labor Costs that Welded paid for Vehicle and Rig Rental Fees, (iv) the $2,406,710 owed by Transco to Welded for amounts that Welded paid to Subcontractors on account of truck rentals, (v) the $1,044,000 owed by Transco to Welded for amounts that Welded paid to Subcontractors on account of dump truck rental for post-delivery hauling, (vi) the $772,752 owed by Transco to Welded for amounts that Welded paid on account of site utilities, (vii) the $621,432 owed by Transco to Welded for amounts that Welded paid to Subcontractors on account of site office trailers and equipment; (viii) the $1,928,571 improperly withheld from Welded on account of purported delay damages; (ix) the $16,592,432 owed by Transco to Welded for costs that Welded actually incurred constructing Williams's pipeline in August 2018; (x) the $17,440,392 owed by Transco to Welded for costs that Welded actually incurred constructing Williams's pipeline in September 2018; and (xi) the $13,713,655 owed by Transco to Welded for costs that Welded actually incurred constructing Williams's pipeline in October 2018.

289. In retaining possession of the funds due and owing by Transco to Welded under the Contract, Williams is in possession, custody, and control of property that Welded may use or sell under section 363 of the Bankruptcy Code.

290. The Withheld Funds constitute property of Welded's estate under section 541 of the Bankruptcy Code.

291. For the reasons set forth above, Williams has no claim or right to continue withholding the Withheld Funds.

292. Williams should be compelled to immediately deliver the Withheld Funds (plus interest) to Welded pursuant to section 542(a) of the Bankruptcy Code.

Count V

(Declaratory Judgment Against Williams – Violation of the Automatic Stay)

293. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

294. Williams possesses, has custody of, or controls the Withheld Funds.

295. The Withheld Funds constitute property of Welded's estate under section 541 of the Bankruptcy Code.

296. For the reasons set forth above, Williams has no claim or right to continue withholding the Withheld Funds.

297. Williams has refused to turn over the Withheld Funds to Welded and has not sought relief from the automatic stay set forth in section 362(a) of the Bankruptcy Code with respect to the Withheld Funds.

298. Welded is entitled to a declaration that Williams has violated the automatic stay of section 362(a)(3) of the Bankruptcy Code by (i) obtaining (and maintaining) possession of and

exercising control over property of Welded's estate and (ii) refusing to remit the Withheld Funds to Welded.

299. Upon information and belief, Williams has actual knowledge of the Debtors' chapter 11 cases, and Williams's violations of the automatic stay were and are willful. Accordingly, Williams's actions constitute "appropriate circumstances" for the imposition of punitive damages and sanctions against Williams under sections 105(a) and 362(k) of the Bankruptcy Code, and Welded is entitled to recover punitive damages from Williams in an amount and manner to be determined by the Court.

300. An actual controversy exists between the parties regarding Williams's right to continue withholding the Withheld Funds and its refusal to remit such funds to Welded.

301. There exists a substantial controversy between Welded and Williams of sufficient immediacy and reality to warrant the issuance of a declaratory judgment under 28 U.S.C. § 2201. A prompt judicial determination of the respective rights and duties of the parties in these respects is necessary and appropriate.

Count VI

(Declaratory Judgment Against Williams – Impermissible Setoff)

302. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein

303. Williams possesses, has custody of, or controls the Withheld Funds.

304. The Withheld Funds constitute property of Welded's estate under section 541 of the Bankruptcy Code.

305. For the reasons set forth above, Williams has no claim or right to the Withheld Funds.

306. Williams has refused to turn over the Withheld Funds to Welded and has not sought relief from the automatic stay set forth in section 362(a) of the Bankruptcy Code with respect to the Withheld Funds.

307. If and to the extent that Williams performed a postpetition offset of any amounts that Welded allegedly owes to Transco under the Contract against the amounts Transco owes to Welded, Williams effectuated an impermissible setoff in violation of the automatic stay.

308. As a result, to the extent applicable, any postpetition setoff exercised by Williams in respect of the Withheld Funds should be declared void *ab initio*.

309. To the extent applicable, an actual controversy exists between the parties regarding Williams's right to offset any amounts that Welded allegedly owes to Transco under the Contract against the amounts Transco owes to Welded.

310. To the extent applicable, there exists a substantial controversy between Welded and Williams of sufficient immediacy and reality to warrant the issuance of a declaratory judgment under 28 U.S.C. § 2201. A prompt judicial determination of the respective rights and duties of the parties in these respects is necessary and appropriate.

Count VII

(Against Williams – Unjust Enrichment)

311. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

312. By the acts described above, Williams has wrongfully retained possession, custody, or control of the Withheld Funds despite the facts that (i) Welded provided the services it was contractually obligated to perform under the Contract, (ii) the Project has been completed, (iii) the pipeline is fully operational and is being operated by Williams as part of its business

operations, (iv) Williams is receiving (and will continue to receive) substantial income from the operation of the pipeline, and (v) Welded has no outstanding service obligations to Williams in connection with the Contract or any other agreement.

313. Welded has suffered a substantial detriment as a result of Williams's retention of the Withheld Funds. Specifically, Welded has suffered a substantial detriment because (i) it has already performed the services required under the Contract, (ii) it has already paid third parties the amounts for which it seeks reimbursement from Transco under the Contract, and (iii) the Withheld Funds have not been available for Welded's use or distribution to creditors of the Debtors' estates. Indeed, as detailed in the *Declaration of Frank Pometti in Support of the Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4, Case No. 18-12378 (KG)], Williams's abrupt and improper withholding of the Withheld Funds deprived the Debtors of the necessary liquidity to sustain their business operations outside of chapter 11 proceedings.

314. Based on the foregoing, Williams has been unjustly enriched by its receipt of the benefits of Welded's services under the Contract and its failure and refusal to deliver the Withheld Funds to Welded, and Welded has suffered a substantial detriment as a result of Williams's actions. As such, Williams is liable to Welded for an amount not less than $71 million (plus accrued interest), and for Welded's reasonable attorneys' fees and the costs of prosecuting this action.

Count VIII

(Against Transco – Objection to Claim 632)

315. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

316. Transco filed Claim 632 on February 28, 2019.

317. Welded hereby objects to Claim 632 pursuant to section 502 of the Bankruptcy Code on the grounds that Claim 632 should be disallowed in its entirety because to the extent that any pipeline coating anomalies or defects exist at the locations identified in the documents included within Claim 632, such anomalies or defects are attributable to inadequate or improper coating on pipes provided by Transco's third-party supplier.

318. Section I, Article 22C, of the Contract is explicit that "[a]ll labor and materials necessary to replace or repair items originally furnished by [Transco] that prove to be defective will be paid for by [Transco]." Transco contracted with the third-party pipe supplier, and therefore, the pipes for the Atlantic Sunrise project were furnished by Transco, not Welded. As such, the pipeline-coating anomalies or defects identified by Transco in Claim 632, to the extent that they actually exist (which Welded does not concede), do not constitute "Defective Work" for which Welded may have obligations under the Contract to remedy, repair, or replace at its sole cost and expense.

319. Welded is therefore entitled to judgment that Claim 632 is disallowed in its entirety because Transco has no amounts owed to it under the Contract.

320. Alternatively, to the extent it is determined that Welded owes any amounts to Transco on account of or in connection with Claim 632, then, pursuant to section 558 of the Bankruptcy Code and applicable state law, Welded is entitled to judgment that it is permitted to offset the amounts Transco owes to Welded under the Contract against Welded's liability on account of Claim 632.

321. Welded reserves any and all other defenses and rights to object to Claim 632 on any other grounds.

Count IX

(Against Transco – Objection to Claim 636)

322. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

323. Transco filed Claim 636 against Welded on February 28, 2019.

324. Transco fails to allege facts sufficient to support a legal basis for Claim 636. Claim 636 does not provide even *prima facie* evidence of the validity and amount of the alleged claim against Welded.

325. Welded hereby objects to Claim 636 pursuant to section 502 of the Bankruptcy Code on the grounds that Claim 636 should be disallowed in its entirety.

326. Specifically, Claim 636 should be disallowed because, among other reasons: (i) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Wait/Show Up Time; (ii) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Travel Pay/Per Diem; (iii) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Paid Time Off/Holidays; (iv) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Employer's Tax and Insurance Liabilities; (v) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Vehicle and Rig Rental Fees; (vi) Welded is entitled under the Contract to reimbursement for Equipment Fees owed to Welded for Labor Costs that Welded paid on account of Vehicle Allowance costs; (vii) Welded is entitled to reimbursement under the Contract for costs that Welded incurred in

connection with portable toilets; (viii) Welded is entitled under the Contract to reimbursement for amounts that Welded paid to Subcontractors on account of dump truck rental for post-delivery hauling; (ix) Welded is entitled under the Contract to reimbursement for amounts that Welded paid to Subcontractors on account of truck rentals; (x) Welded is entitled under the Contract to reimbursement for amounts that Welded paid to Subcontractors on account of site office trailers and equipment; (xi) Welded is entitled under the Contract to reimbursement for any costs Welded incurred for Specialty Equipment; (xii) Welded is entitled under the Contract to reimbursement for mobilization costs Welded incurred in connection with the Atlantic Sunrise project; (xiii) the amounts that Transco paid to Welded on account of union dues after the Petition Date are not duplicative of the amounts it paid prior to the Petition Date; (xiv) the amounts Transco is seeking on account of purported "Rework/Weld Repair Damages" do not relate to Defective Work by Welded and, even if they did, the number of repairs or cutouts needed were within the weld repair rate allowed under the Contract; (xv) contrary to Transco's assertions, Welded has not charged Transco for replacing any damaged materials, machinery or equipment that the Contract required Welded to replace at its own cost and expense; (xvi) Welded is entitled under the Contract to reimbursement for costs Welded incurred in connection with safety meetings or training sessions given that Transco never issued Welded a stop-work notice due to any of the safety issues identified in Section I, Article 12, of the Contract; (xvii) Welded is entitled under the Contract to reimbursement for costs Welded incurred on account of environmental compliance issues in connection with the Atlantic Sunrise project; (xviii) Williams has failed to allege facts sufficient to support a claim for damages related to the alleged violation of municipal regulations; (xix) Williams erroneously asserted purported delay damages against Welded in the amount of $1,928,571; (xx) the amounts that

Transco paid to LCSWM after the Petition Date are not duplicative the amounts it paid to Welded prior to the Petition Date; (xxi) the amounts that Transco paid to Rexroth after the Petition Date are not duplicative the amounts it paid to Welded prior to the Petition Date; and (xxii) there is no basis for Transco to assert a claim against Welded for amounts that Welded's surety pays Subcontractors and suppliers on Welded's behalf.

327. Alternatively, to the extent it is determined that Welded owes any amounts to Transco on account of or in connection with Claim 636, then, pursuant to section 558 of the Bankruptcy Code and applicable state law, Welded is entitled to judgment that it is permitted to offset the amounts Transco owes to Welded under the Contract against Welded's liability on account of Claim 636.

328. Welded is therefore entitled to judgment that Claim 636 is disallowed in its entirety.

329. Welded reserves any and all other defenses and rights to object to Claim 636 on any other grounds.

Count X

(Declaratory Judgment Against Transco – No Amounts Owed to Transco in Connection with Postpetition Reconciliation)

330. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

331. Transco and Welded entered into three Court-approved Commitment Letters, whereby Transco agreed to pay for Welded's postpetition work on the Atlantic Sunrise project during specified time periods.

332. Under the Commitment Letters, Transco agreed to pre-fund $8,050,000, in the aggregate, for "Welded's internal costs and expenses of providing work, as well as Welded third-

party subcontractor, vendor, materialmen, and supplier costs, expenses, profit and invoices for work, labor, material and rentals" on spreads 5, 6, and 7 of Transco's Atlantic Sunrise project.

333. Under the Third Commitment Letter, Welded agreed to provide Transco "a reconciliation of all remaining amounts for obligations that were accrued or were incurred for forecasted work versus actual cost of work." To the extent that any advanced funds remained after that reconciliation, the funds would be returned to Transco within one business day.

334. Overhead costs were not subject to reconciliation: "fixed overhead costs of $25,000 per week from the Petition Date through December 8, 2018, . . . shall be available to the Debtors for general use, not subject to reconciliation, to offset the significant overhead costs not captured in the project cost estimate."

335. Welded provided Transco with its reconciliation on January 17, 2019, demonstrating that all advanced funds had been used on the project and that no remainder was due to Transco. In short, no amounts are owed by Welded to Transco in connection with the postpetition work performed by Welded on the Atlantic Sunrise project. In support of its reconciliation, Welded attached approximately 25 pages of line-item expenses.

336. More than three months later, on April 18, 2019, Transco's counsel sent a Demand Letter identifying purported revisions to Welded's postpetition reconciliation and demanding that Welded pay a $2,399,279.48 refund within one business day.

337. Transco sent its demand for immediate payment of a multi-million dollar refund without any notice to, or discussion with, Welded and without any supporting documentation or identification of the specific bases for Transco's alleged refund.

338. On April 19, 2019, Welded's counsel responded to the Demand Letter, stating that Welded believes its reconciliation is factually correct and consistent with the terms of the

Commitment Letters. Welded's counsel indicated, however, that Welded would endeavor to review Transco's revised reconciliation expeditiously. Welded's counsel also requested that Transco identify the specific items it viewed as problematic, explaining that that information would aid Welded's review considerably.

339. To date, Transco has not responded.

340. Based on the foregoing, Welded is entitled to entry of a judgment declaring that Welded does not owe any amounts to Transco under the Commitment Letters or on account of any postpetition work performed by Welded on Transco's Atlantic Sunrise project.

Count XI

(Against Transco – Violation of Pennsylvania Contractor and Subcontractor Payment Act, 73 Pa. Cons. Stat. §§ 501–516)

341. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

342. Welded, as contractor, performed construction work subject to the Pennsylvania Contractor and Subcontractor Payment Act ("CASPA"), 73 Pa. Cons. Stat. §§ 501–516, on behalf of Transco, the owner.

343. Under 73 Pa. Cons. Stat. § 515, CASPA applies to any "construction contracts" executed on or after April 18, 1994. Section 502 of CASPA defines "construction contract" as any "agreement, whether written or oral, to perform work on any real property located within th[e] Commonwealth" of Pennsylvania.

344. The Contract is an agreement to perform work on real property located within the Commonwealth of Pennsylvania.

345. Section 514 of CASPA precludes enforcement of any forum-selection or choice-of-law provision in the Contract: "Making a contract subject to the laws of another state or

requiring that any litigation, arbitration or other dispute resolution process on the contract occur in another state, shall be unenforceable."

346. In compliance with the terms of the Contract, Welded timely requested payment from Transco for the Initial Withholdings each month through October 5, 2018, and for the Additional Withholdings on March 5, 2019.

347. Welded has performed in accordance with the terms of the Contract, or if it has not strictly performed, its ability to do so was the fault of Transco and is excused. Welded, therefore, was entitled to payment in full for its work.

348. Transco has violated CASPA by withholding payment for work that was completed according to the specifications of the Contract.

349. Transco failed and refused to pay Welded strictly in accordance with the terms of the Contract, in violation of 73 Pa. Cons. Stat. § 505(a).

350. Under 73 Pa. Cons. Stat. § 505(c), payment of invoices is due 20 days after the end of the billing period or 20 days after delivery of the invoice, whichever is later, or as otherwise agreed by the parties.

351. Transco's withholding of payments due to Welded is in contravention of the terms of the Contract and is thus in violation of 73 Pa. Cons. Stat. § 506.

352. The amounts that Transco has withheld are not reasonable, in violation of 73 Pa. Cons. Stat. § 506.

353. Transco failed to provide proper notice of any alleged deficiency items, in violation of 73 Pa. Cons. Stat. § 506. Among other things, Transco failed to notify Welded of any alleged deficiency items by a written explanation of its good-faith reason within 14 calendar days of receiving Welded's invoices.

354. Under 73 Pa. Cons. Stat. § 506(b)(2), Transco's failure to provide the notice required under CASPA constituted a waiver of any basis to withhold payment and necessitated payment to Welded in full for the invoice.

355. Transco withheld payment from Welded in violation of the Contract and CASPA and, further, failed to remit payment to Welded for each other item that Welded satisfactorily completed under the Contract, in violation of 73 Pa. Cons. Stat. § 506(b)(3).

356. Under 73 Pa. Cons. Stat. § 505(d), Transco is required to pay Welded, beginning on the eighth day after payment was due on an invoice, interest at the rate of 1% per month, or fraction of a month, on the balance that is at the time due and owing.

357. Under 73 Pa. Cons. Stat. § 512(a)(1), Transco's failure to comply with CASPA's payment terms requires that Welded be awarded, in addition to all other damages due, a penalty equal to 1% per month of the amount that was wrongfully withheld.

358. Under 73 Pa. Cons. Stat. § 512(b), Transco's failure to comply with CASPA's payment terms requires that Welded be awarded a reasonable attorney fee in an amount to be determined by the Court, together with expenses.

Count XII

(Against Williams – Attorneys' Fees)

359. Welded repeats and incorporates by reference its allegations contained in the foregoing paragraphs as if fully set forth herein.

360. Welded has made several demands for the return of the Withheld Funds, but Williams has refused to deliver or otherwise remit those funds to Welded.

361. As a result of Williams's refusal to deliver or otherwise remit the Withheld Funds to Welded, Welded should be awarded its attorneys' fees and costs and incurred in bringing this action.

Prayer for Relief

WHEREFORE, by reason of the foregoing, Welded demands judgment against Williams as follows:

A. An award of damages, in an amount to be determined at trial, incurred as a result of Transco's breaches of the Contract (and/or the implied covenant of good faith and fair dealing contained therein) and Williams's intentional and wrongful retention of the Withheld Funds and such additional amount as is determined by the Court in order to sufficiently and fully compensate Welded for the damages and losses suffered as result of Williams's actions, including, but not limited to, financial injury, lost business opportunities, and the destruction of Welded's business.

B. An award of damages in an amount to be determined at trial incurred as a result of Williams Partner and Williams, Co.'s tortious interference with the contractual relationships among Transco and Welded, and such additional amount as is determined by the Court in order to sufficiently and fully compensate Welded for the damages and losses suffered as result of Williams Partners and Williams, Co.'s actions, including, but not limited to, financial injury, lost business opportunities, and the destruction of Welded's business.

C. An order requiring Williams to immediately turnover the Withheld Funds to Welded, plus any accrued interest and penalty.

D. An order declaring that Williams has violated the automatic stay of section 362(a)(3) of the Bankruptcy Code by (i) obtaining (and maintaining) possession of and

exercising control over property of Welded's estate and (ii) refusing to remit the Withheld Funds to Welded, and an award of damages (including punitive and exemplary damages) in an amount to be determined at trial on account of Williams's willful violations of the automatic stay.

E. To the extent applicable, an order declaring that Williams's setoff of Transco's alleged damages under the Contract against the amounts due and owing to Welded under the Contract (i.e., the Withheld Funds) violated the automatic stay and is void *ab initio*.

F. Judgment against Williams, jointly and severally, in favor of Welded that Williams has been unjustly enriched at Welded's expense by the assertion of control over and retention of the Withheld Funds for Williams's benefit to the detriment of Welded and its estate and creditors.

G. An order declaring that Claim 632 is disallowed in its entirety because Transco has no claims or other amounts owed to Transco in connection with the Contract or any other agreement entered into between Transco and Welded.

H. Alternatively, to the extent necessary, an order declaring that Welded is permitted to offset the amounts Transco owes to Welded under the Contract against Welded's liability, if any, on account of Claim 632.

I. An order declaring that Claim 636 is disallowed in its entirety because Transco has no claims or other amounts owed to Transco in connection with the Contract or any other agreement entered into between Transco and Welded.

J. Alternatively, to the extent necessary, an order declaring that Welded is permitted to offset the amounts Transco owes to Welded under the Contract against Welded's liability, if any, on account of Claim 636.

K. An order declaring that Welded does not owe any amounts to Transco under the Commitment Letters or on account of any postpetition work performed by Welded on Transco's Atlantic Sunrise project.

L. An award of damages, in an amount to be determined at trial, incurred as a result of Transco's violation of CASPA, plus any interest, penalties, attorneys' fees, and expenses provided for under the statute.

M. Payment of Welded's attorneys' fees and expenses incurred in connection with this adversary proceeding.

N. An award of pre- and post-judgment interest.

O. Such other or further relief as the Court finds just and equitable.

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Dated: May 3, 2019
Wilmington, Delaware

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