

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

WOF SW GGP 1 LLC, a Delaware limited
liability company,

Plaintiff,

v.

QUASAR ENERGY GROUP, LLC, an
Ohio limited liability company,

Defendant.

Case No. _____

COMPLAINT
(Declaratory Relief)

ORS 21.135(1), (2)(f)

NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiff WOF SW GGP 1 LLC alleges as follows:

INTRODUCTION

1.

Plaintiff is a Delaware limited liability company with its principal place of
business in Portland, Oregon.

2.

Defendant, quasar energy group, llc, is an Ohio limited liability company with its
principal place of business in Ohio.

3.

Plaintiff is the owner and developer of a biogas facility located on a dairy farm in
Stanfield, Arizona (the "Project"). The Project was to process over 4,000 tons of cow manure
and over 1,300 tons of non-dairy substances to produce an estimated 1.9 million British Thermal
Units (MMBTUs) per year of natural gas to the open market.

1 4.

2 Defendant was the design-builder for the Project under a modified
3 ConsensusDocs—Standard Design-Build Agreement and General Conditions Between Owner
4 and Design-Builder (the "Design-Build Agreement"). Additionally, Defendant was the
5 operations manager for the Project under an Operations and Maintenance Management Services
6 Agreement (the "O&M Agreement.).

7 5.

8 This suit seeks relief pursuant to the O&M Agreement. Section 17.1 of the O&M
9 Agreement provides that the O&M Agreement will be governed by Oregon law.

10 **VENUE**

11 6.

12 Section 17.1 of the O&M Agreement provides that the parties submit to the
13 jurisdiction of any state or federal court in the State of Oregon with respect to any action or
14 proceeding related to the O&M Agreement. Venue is proper in this Court.

15 **BACKGROUND OF DISPUTE**

16 7.

17 On or about April 5, 2017, Plaintiff and Defendant entered into the Design-Build
18 Agreement whereby Defendant agreed to, among other things, design, engineer, and construct
19 the Project.

20 8.

21 On or about April 19, 2017, the Plaintiff and Defendant entered the O&M
22 Agreement, under which Defendant was to provide certain management services for the Project.

23 9.

24 The Design-Build Agreement required Defendant to substantially complete
25 certain milestone portions (or sub-phases) of the Project by specific critical dates. These
26 "Substantial Completion Dates" were:

- Phase 1A Substantial Completion: December 8, 2017;
- Phase 1B Substantial Completion: March 9, 2018; and
- Phase 1C Substantial Completion: May 25, 2018 (later adjusted to May 27, 2018, for Phase 1C).

10.

The O&M Agreement contemplated a "Ramp Up Term" as well as additional terms following the initial "Ramp Up Term. The "Ramp Up Term" was defined as the term from the effective date of the O&M Agreement until Phase 1C of the Substantial Completion Dates.

11.

Only the "Ramp Up Term" was triggered under the O&M Agreement.

12.

Section 6.1 of the O&M Agreement provides a list of events that constitute an event of default by Defendant and grounds for termination. The list includes, in part:

(a) misappropriation of Plaintiff's funds; (b) Defendant's failure to timely achieve the Substantial Completion Dates; and (c) material breaches of the O&M Agreement. Additionally, failure to meet any milestone, including Substantial Completion of Phase 1A, is grounds for immediate termination under the O&M Agreement, Section 6.1.7; 6.1.8.

13.

Further, Defendant agreed that if during the Ramp Up Term it failed to meet "any milestone date for sub-phases 1A or 1B or the Date of Substantial Completion for sub-phase 1C * * * then [Plaintiff] shall have no obligation to pay [Defendant] any of the fee to be paid during the Ramp Up Term, the Base Fee, or payroll expenses for each day the applicable date extends beyond the designed milestone date or Date of Substantial Completion." (O&M Agreement, Section 8.7.)

1 14.

2 In late 2017, Plaintiff became increasingly concerned about the progress of
3 construction on the Project. At that point, the Project was months behind schedule and over
4 budget.

5 15.

6 Significantly, Defendant failed to achieve any of the above-referenced Substantial
7 Completion Dates.

8 16.

9 In addition, Plaintiff discovered that Defendant was misappropriating Plaintiff's
10 funds related to labor hours under the O&M Agreement by using O&M staff to perform
11 construction work.

12 17.

13 On or about May 31, 2018, Plaintiff notified Defendant that Plaintiff was
14 terminating the O&M Agreement for cause, including in part for failure to meet the Substantial
15 Completion Dates, breaches of the O&M Agreement, and misappropriation of Plaintiff's funds.

16 18.

17 **FIRST CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

19 19.

20 Plaintiff realleges and incorporate by reference the paragraphs above.

21 20.

22 The O&M Agreement provides that Defendant will be considered in default of the
23 Agreement if Defendant (a) misappropriates Plaintiff's funds, (b) fails to timely achieve the
24 Substantial Completion Dates, or (c) materially breaches the O&M Agreement. The occurrence
25 of any of these events are grounds for termination of the O&M Agreement.
26

1 21.

2 Defendant materially breached the O&M Agreement as stated above.

3 22.

4 Because Defendant has materially breached the O&M Agreement, Plaintiff is
5 entitled to declaratory relief in the form of a court order stating that (a) Plaintiff rightfully
6 terminated the O&M Agreement and (b) that Plaintiff has no obligation to pay Defendant any of
7 the fee to be paid during the Ramp Up Term, the base fee, or payroll expenses for each day the
8 applicable date extends beyond the designated milestone date or Date of Substantial Completion.

9 23.

10 There is a justiciable controversy between the parties, and a declaratory judgment
11 is appropriate.

12 **ATTORNEY FEES**

13 24.

14 Plaintiff is entitled to attorney fees, expert fees, and costs. Section 17.11 of the
15 O&M Agreement provides that the prevailing party "in any legal proceeding related to this
16 [O&M] Agreement (including in any bankruptcy proceeding) shall receive as an award its
17 reasonable attorneys' fees, reasonable expert fees, and costs and expenses."

18 WHEREFORE, Plaintiff prays for relief as follows:

19 1. On their first claim for relief, declaratory judgment against Defendant in
20 the form of a Court order stating that Plaintiff rightfully terminated the O&M Agreement for
21 cause and that Plaintiff has no obligation to pay Defendant any of the fee to be paid during the
22 Ramp Up Term, the base fee, or payroll expenses for each day the applicable date extends
23 beyond the designated milestone date or Date of Substantial Completion.

24 2. Costs, disbursements, and reasonable attorney fees and expert fees.
25
26

1 3. For such other relief as this Court deems just and equitable.

2 DATED: July 19, 2018.

3 MILLER NASH GRAHAM & DUNN LLP

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