

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BLACKSTONE POWER & NATURAL)
RESOURCES HOLDCO L.P.,)

Plaintiff,)

v.)

NEXTERA ENERGY TRANSMISSION)
INVESTMENTS, LLC)

Defendant.)

C.A. No. N26C-02-149 KMM
CCLD

Date Submitted: February 18, 2026

Date Decided: April 21, 2026

Defendant's Motion to Dismiss – GRANTED

MEMORANDUM OPINION AND ORDER

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Miller, J.

I. INTRODUCTION

Plaintiff Blackstone Power & Natural Resources Holdco L.P. (“Blackstone”) sold its interest in two electric infrastructure companies to Defendant Nextera Energy Transmission Investments, LLC (“Nextera”) pursuant to a purchase and sale agreement. The agreement contemplated earn-out payments if certain defined projects, still in development at the time of the transaction, came to fruition. The parties’ dispute is fueled by their competing views over whether certain projects qualify for earn-out payments. Blackstone asserts that it is now entitled to earn-out payments because certain projects, included within the scope of the earn-out provision, have been excluded by Nextera. To that end, Blackstone seeks a declaratory judgment and brings a claim of breach of contract.

Nextera moved to dismiss (the “Motion”) under Rule 12(b)(1), or in the alternative 12(b)(6). Relevant here, Nextera argues that the Court should refrain from exercising jurisdiction over Blackstone’s claims because they are subject to mandatory alternative dispute resolution through an expert determination. Blackstone contends that its claims are beyond the scope of the expert’s authority because they require contract interpretation.

In assessing the scope of authority granted to an expert, the parties’ contract controls. Here, not only did the parties delegate authority to an expert to determine disputes arising from earn-out payments, but they also crafted a remedy scheme that

simultaneously waived the parties’ ability to bring the type of claims asserted here by Blackstone, while making clear that the expert determination provides the remedy Blackstone seeks. Accordingly, Nextera’s Motion is **GRANTED**.

II. FACTUAL BACKGROUND¹

A. *Nextera purchases GridLiance*

Nextera is an electric power and energy infrastructure company.² In 2020, under a purchase and sale agreement (the “PSA”), Nextera acquired all of Blackstone’s equity interest in two entities, GridLiance Holdco, LP and GridLiance GP, LLC (together “GridLiance”).³ GridLiance specializes in developing and operating electric transmission infrastructure.⁴

As part of the purchase, Nextera acquired GridLiance West (“GLW”), a collection of transmission facilities in southwestern Nevada operated on the California Independent System Operator (“CAISO”) transmission grid.⁵ CAISO is a regional transmission organization responsible for planning and approval of transmission projects within its region.⁶

¹ The facts are drawn from the operative complaint and the documents it incorporates by reference. The Court largely restates, verbatim, the facts from the Court of Chancery’s decision dismissing this action for lack of subject matter jurisdiction. *Blackstone Power & Natural Res. Holdco L.P. v. Nextera Energy Transmission Investments, LLC*, 2026 WL 244471 (Del. Ch. Jan. 29, 2026). The Court has added additional factual background where relevant.

² D.I. 1 (“Compl.”) ¶ 24.

³ *Id.* ¶¶ 1, 27, Ex. A (PSA).

⁴ *Id.* ¶ 2.

⁵ *Id.* ¶¶ 3, 20, 22, 24.

⁶ *Id.* ¶¶ 3, 23.

Prior to Nextera’s acquisition, GridLiance was in the early stages of an expansion of GLW that would connect GLW to southern California (the “Silverado Renewables Connection”).⁷ The Silverado Renewables Connection was to occur over three phases and required approval of CAISO. However, at the time of Nextera’s acquisition it was uncertain whether Phase II and Phase III of the Silverado Renewables Connection would ultimately receive CAISO approval.⁸ If these phases were approved, GridLiance’s value would significantly increase.⁹

B. *The earn-out structure*

To account for that possibility, Nextera and Blackstone agreed to structure the transaction to include for the possibility of earn-out payments (“Earn-out Payments”) tethered to the success of certain projects (“Earn-out Projects”).¹⁰ The parties specifically defined Earn-out Projects on Schedule D to the PSA. Phase II of the Silverado Renewables Connection is defined as:

GLW-sponsored system upgrades between the current GLW system and the area near Bishop, CA. As currently conceived, this involves upgrading transmission capacity between Johnn[ie] Corner (a location on the GLW system) and the Bishop substation. Ultimately, Phase II may connect different locations but still achieve its objective of adding renewable generation to the CAISO region.¹¹

⁷ *Id.* ¶¶ 5, 24.

⁸ *Id.* ¶¶ 5, 8, 23, 25.

⁹ *Id.* ¶¶ 4, 25.

¹⁰ *Id.* ¶¶ 8, 26.

¹¹ PSA, Schedule D. Phases I and III are not at issue here.

Next to this written definition of the phases is a map labeling Phase I, II, and III. Phase II, as conceived at the time of the PSA's execution, is depicted by a blue oval.¹²

Excluded from Earn-out Payment eligibility are transmission projects that result from a successful bid by Nextera following its acquisition of GridLiance, "in a competitive solicitation conducted pursuant to the requirements of FERC Order No. 1000[.]"¹³

Earn-out Payments comprised both quarterly payments ("Quarterly Earn-out Payments"), made for ten years after Nextera's purchase of GridLiance (the "Earn-out Period"), and a final earn-out payment made at the end of the ten-year period.¹⁴ The PSA required Quarterly Earn-out Payments to be calculated pursuant to a formula that added together

50% of the sum of (i) all expenditures paid by or on behalf of [Nextera]...during such calendar quarter in furtherance of the placement into service of any Earn-out Projects and (ii) all allowances for funds used by or on behalf of [Nextera]...during construction and any other amounts included as additional rate base for any Earn-out Projects actually placed into service during such calendar quarter[.]¹⁵

Together with the Quarterly Earn-out Payments, Nextera was to "deliver to [Blackstone's] Representative a statement setting forth [Nextera's] good faith

¹² *Id.*

¹³ *Id.*, Art. 1 at 5.

¹⁴ Compl. ¶ 28; PSA § 2.06(a)–(b).

¹⁵ PSA, Art. 1 at 13.

determination of the Quarterly Earn-out Payment, together with [] reasonable supporting calculations and documents used in the preparation of such statement” (the “Earn-out Statement”).¹⁶

The parties also agreed to a standard for Nextera’s obligations with respect to the Quarterly Earn-out Payments. The PSA provided “that [Nextera], during the Earn-out Period, [] shall...(i) use Commercially Reasonable efforts to achieve placement into service of such Earn-out Projects and (ii) not take any action the principal purpose of which is to circumvent [Blackstone’s] rights to Earn-out Payments[.]”¹⁷

Section 2.06(c) defines “Commercially Reasonable” as:

those reasonable and diligent efforts or other actions that [Nextera] and its Affiliates would customarily use to accomplish a similar objective under similar circumstances, which are no less than those efforts used by [Nextera] and its Affiliates with respect to pursuit in furtherance of the placement into service of transmission projects of similar market potential, revenue potential, strategic value, stage of development and technical and regulatory profile as the Earnout Projects, taking into account all commercially relevant factors (including without limitation the financial position of [Nextera] and its Affiliates, the then current commercial viability of the project, and other customary factors as [Nextera] would take into account with respect to any development project or investment) at the time such efforts are to be undertaken based on conditions then prevailing. For the avoidance of doubt, [Nextera] shall not be obligated to pursue any proposed action or continue any action with respect to any Earn-out Project for which a [l]aw has been enacted, entered, promulgated or enforced or a legal [p]roceeding is pending or, to the [k]nowledge of [Nextera], threatened,

¹⁶ *Id.* § 2.06(a).

¹⁷ *Id.* § 2.06(c).

which restrains, enjoins or otherwise prohibits, or would reasonably be expected to restrain, enjoin or otherwise prohibit such action.¹⁸

C. *The dispute resolution mechanism*

PSA Section 2.06(f) establishes a dispute resolution mechanism in the event Blackstone “disput[es] any item set forth on any Earn-out Statement” (an “Earn-out Disputed Item”).¹⁹ To initiate such a dispute, Blackstone first serves Nextera written notice of the dispute (the “Earn-out Dispute Notice”).²⁰ The Earn-out Dispute Notice may relate “to any item (or omission thereof) that it reasonably believes would have resulted in an Earn-out Payment if set forth in an Earn-out Statement...”²¹ Items omitted are “deemed to have been delivered” and “reflect[] a calculation of zero” for that item.²²

After Blackstone delivers the Earn-out Dispute Notice, the parties must “negotiate in good faith a resolution of all [Earn-out] Disputed Items” for a period of thirty days.²³ If any Earn-out Disputed Items remain after the parties’ negotiations, either party may submit those remaining items for resolution by an industry expert.²⁴ The PSA defines industry expert as “an individual...who has or

¹⁸ *Id.*

¹⁹ *Id.* § 2.06(f)(i).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* §§ 2.05 (b), 2.06(f)(ii) (“[T]he dispute resolution procedures applicable to...Section 2.05(b)...shall apply to all disputed items set forth in the Earn-out Dispute Notice.”).

²⁴ *Id.*

supervises personnel or consultants with appropriate utility industry, construction, engineering[,] and regulatory expertise or financial expertise (as applicable) to resolve any disputes under [the PSA]” (“Industry Expert”).²⁵

Depending on the nature of the remaining disputes, Section 2.06(f)(ii) directs the parties to “instruct the Industry Expert(s) to act as an expert in the utility industry, construction, engineering, regulatory, or accounting fields (as relevant) and not an arbitrator.”²⁶ Within 30 days of the submission of Earn-out Disputed Items, the Industry Expert is to “render a determination of all remaining [Earn-out] Disputed Item[s], which shall [] include a written statement of such findings and conclusions...and [] absent manifest error, be final and binding on the [p]arties[.]”²⁷ The dispute resolution mechanism described “appl[ies] to all disputed items set forth in the Earn-out Dispute Notice.”²⁸

D. *Other relevant provisions*

In Section 8.02(a), the parties agreed to an exclusive remedy and waiver provision; it states in part:

From and after the [c]losing, the remedies provided in Section 2.05, Section 2.06, Section 6.06 and Section 8.01 shall be the sole and exclusive remedies for any and all claims against any [p]arty to the extent arising under, out of, related to or in connection with [the PSA]...[The parties] hereby waive[], to the fullest extent permitted

²⁵ *Id.*, Art. 1 at 7.

²⁶ *Id.* § 2.06(f)(ii).

²⁷ *Id.* § 2.05(b).

²⁸ *Id.* § 2.06 (f)(ii) (emphasis added).

under applicable [l]aw, any and all rights, claims and causes of action that...[they]...may have against the other [p]arty...with respect to the subject matter of [the PSA], whether under any contract, misrepresentation, tort, or strict liability theory, or under applicable [l]aw, and whether at law or in equity.²⁹

Section 10.13 provides a limited exception to the exclusive remedy provision;

it states in part:

Except as expressly provided in [the PSA], the rights and remedies conferred on any [p]arty by or pursuant to, [the PSA] are cumulative and in addition to and not exclusive of, any other rights and remedies available to such [p]arty at law or in equity. The parties agree that irreparable damage would occur in the event that any provision of [the PSA] were not performed in accordance with its specific terms or were otherwise breached or threatened to be breached, and further agree that money damages would be an inadequate remedy therefor. Accordingly, each [p]arty agrees...that, in the event of any non-performance or other breach by any [party]...[the other party]...shall be entitled to seek an injunction, specific performance and other equitable relief, and to enforce specifically the provisions of [the PSA].³⁰

E. *The Beatty-Esmerelda project*

The Beatty-Esmerelda project involves, among other upgrades, improvements to transmission lines between Beatty and Esmeralda, Nevada.³¹ It was a GridLiance development project at the time of Nextera's acquisition.³² Since Nextera's acquisition of GridLiance, Nextera designed its proposal for the Beatty-Esmeralda

²⁹ *Id.* § 8.02.

³⁰ *Id.* § 10.13.

³¹ Compl. ¶ 60.

³² *Id.* ¶¶ 60–61.

project in a manner that will trigger competitive solicitation and because of the competitive solicitation exception, the Beatty-Esmerelda project is exempt from Quarterly Earn-out Payment eligibility.³³

F. *This litigation*

On June 9, 2025, Blackstone commenced this action by filing the Complaint in the Court of Chancery, advancing claims for declaratory judgment (Count I) and breach of contract (Count II).³⁴ On January 29, 2026, the Court of Chancery dismissed the Complaint, finding that the claims failed to invoke equity jurisdiction because Blackstone had an adequate remedy at law.³⁵ On February 11, 2026, pursuant to 10 *Del. C.* § 1902, Blackstone transferred the Complaint to this court.³⁶

The parties dispute whether certain projects (the “Disputed Projects”),³⁷ for which Nextera has received CAISO approval, fall within the PSA’s definition of Phase II and thus, qualify for Quarterly Earn-out Payments.³⁸

Nextera contends that the Disputed Projects are not Earn-out eligible because they fall outside the scope of the definition of Phase II, which is confirmed by the

³³ *Id.* ¶ 62.

³⁴ *Id.* ¶¶ 64–76.

³⁵ *Blackstone*, 2026 WL 244471, at *6.

³⁶ Compl.

³⁷ Blackstone describes the Disputed Projects as: (1) The GLW/VEA Area Upgrades, “designed to increase the capacity for renewable generation to the CAISO region by converting an existing 230 kV system to a higher voltage system[;]” and (2) Beatty 230 kV, which will upgrade the transmission system in Nye County, Nevada by installing a new 230 kV transmission line. *Id.* ¶¶ 46, 49.

³⁸ *Id.* ¶¶ 46–59.

projects being located outside the blue oval on the map.³⁹ Blackstone asserts that it does not matter if the projects fall outside the blue oval because Phase II encompasses upgrades *anywhere* between the “‘current [GLW] system’ and the ‘area near’ Bishop, California *for the purpose of adding renewable generation to the CAISO region*”⁴⁰ and the Complaint goes on to explain in technical terms how these projects upgrade transmission to the CAISO region.⁴¹

In Count I, Blackstone seeks “a declaratory judgment that the Disputed Projects qualify as Earn-out Projects under the PSA and that [Nextera] must comply with all attendant obligations and requirements for such projects under the PSA.”⁴²

Count II concerns the Beatty-Esmerelda project. There is no dispute that this project would fall within Phase II and accordingly, be subject to the Earn-out provision, except that it was designed and submitted to CAISO for approval on a competitive basis. The Earn-out provision excludes projects awarded through competitive solicitation. Nextera argues that under applicable regulations, the Beatty-Esmerelda project constitutes “new construction” and not an upgrade, thereby requiring it to be subjected to competitive solicitation.⁴³

³⁹ D.I. 5 Ex. 2 (“Mot.”) at 38–41.

⁴⁰ Compl. ¶ 45 (emphasis added); *see generally* D.I. 5 Ex. 5 (Answering Brief (“AB”)) at 36–44.

⁴¹ Compl. ¶¶ 48–49 (describing the projects in terms of types of transmission lines (500 kV lines) and transformers (500/230 kV) and lines with certain “MVA” ratings to be installed or rebuilt).

⁴² *Id.* ¶ 70.

⁴³ Mot. at 44–46. How CAISO approves projects is governed, in part, by Federal Energy Regulatory Commission Order No. 1000 and the applicable Tarriff. In simple terms, when a project is upgrading existing facilities, CAISO may award it on a noncompetitive basis, but new

Blackstone asserts that Nextera breached its “Commercially Reasonable” efforts obligation because it “unnecessarily” and “needlessly” designed its Beatty-Esmerelda project proposal to trigger competitive solicitation thereby exempting it from the parties’ definition of Earn-out Projects and, consequently, Quarterly Earn-out Payments.⁴⁴ Accordingly, Blackstone asserts a breach of contract claim in Count II.

Nextera moved to dismiss the Complaint for lack of subject matter jurisdiction, contending that Blackstone must abide by the agreed upon dispute resolution mechanism and submit these disputes to the Industry Expert.⁴⁵

In response, Blackstone contends that its claims are outside of the scope of the expert’s authority.⁴⁶ Alternatively, even if its claims were within that scope, the dispute resolution mechanism, it argues, is merely permissive and it cannot be forced into this process.⁴⁷

construction projects are subject to a competitive bidding process. Nextera contends the Beatty-Esmerelda project is a new construction project, not an upgrade.

⁴⁴ Compl. ¶¶ 62, 74. ¶

⁴⁵ Mot. at 23–31.

⁴⁶ AB at 18–23.

⁴⁷ *Id.* at 25, 28.

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 12(b)(1), “[t]he Court ‘need not accept the plaintiff’s factual allegations as true and is free to consider facts not alleged in the complaint.’”⁴⁸ The plaintiff bears the burden to “prove jurisdiction exists.”⁴⁹

“The scope of Rule 12(b)(1) is flexible. It is often used as the mechanism to seek dismissal when the court actually has subject matter jurisdiction, but the parties contractually agreed to submit their dispute to an alternative dispute resolution forum.”⁵⁰ When the court is presented with a 12(b)(1) motion in this circumstance, the relevant inquiry is “not whether the court lacks jurisdiction, but rather, whether it should decline to exercise the jurisdiction it otherwise has.”⁵¹

IV. ANALYSIS

A. *The scope of the Industry Expert’s authority.*

Delaware recognizes a distinction between experts and arbitrators.⁵² When parties agree to arbitration they “intend[] to delegate to the decision maker authority

⁴⁸ *In re Proton Pump Inhibitors Products Liab. Litig.*, 2023 WL 5165406, at *5 (Del. Super. Aug. 11, 2023) (quoting *Appriva S’holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1284 n.14 (Del. 2007)) (cleaned up).

⁴⁹ *Id.* (internal quotation marks and citations omitted).

⁵⁰ *Quinlan v. O’Brien*, 2026 WL 93395, at *2 (Del. Super. Jan. 13, 2026) (citing *Gandhi-Kapoor v. Hone Capital LLC*, 307 A.3d 328, 340–45 (Del. Ch. 2023)).

⁵¹ *Id.* (first citing *Gandhi-Kapoor*, 307 A.3d at 340–45; and then citing *Buzzfeed Media Enterprises, Inc. v. Anderson*, 2024 WL 2187054, at *4 (Del. Ch. May 15, 2024)).

⁵² *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 618 (Del. 2023).

to decide all legal and factual issues necessary to resolve the matter.”⁵³ Conversely, an expert’s authority “is limited to deciding a specific factual dispute concerning a matter within the special expertise of the decision maker.”⁵⁴ Here, Section 2.06(f)(ii) states that the Industry Expert “shall...act as an expert...and not an arbitrator.”⁵⁵ While courts are often left to wrestle with whether the parties agreed to an expert or arbitrator, the parties here agree that the dispute resolution mechanism is an expert determination, explicitly stating so.⁵⁶

The parties have competing views over whether the Court or an expert should decide the claims raised here. Thus, as a threshold inquiry, the Court must determine the scope of the expert’s authority, which is grounded in the PSA’s delegation of authority.⁵⁷ The Court applies ordinary contract interpretation principles.⁵⁸

“Delaware adheres to the ‘objective’ theory of contracts, i.e. a contract’s construction should be that which would be understood by an objective, reasonable third party.”⁵⁹ Delaware courts “will not read a contract to render a provision or

⁵³ *Id.* (quoting *Penton Bus. Media Holdings, Inc. v. Informa, PLC*, 252 A.3d 445, 464 (Del. Ch. 2018)).

⁵⁴ *Id.*

⁵⁵ PSA § 2.06(f)(ii).

⁵⁶ Mot. at 26; AB at 18–19; *see also Penton*, 252 A.3d at 464 (reasoning a contractual provision with similar language “explicitly calls for the role of an ‘expert’ while disclaiming the role of ‘arbitrator.’”).

⁵⁷ *Penton*, 252 A.3d at 465 (internal quotations marks and citations omitted).

⁵⁸ *Terrell*, 297 A.3d at 617.

⁵⁹ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010).

term meaningless or illusory.”⁶⁰ “The basic business relationship between parties must be understood to give sensible life to any contract.”⁶¹

As explained, at the time of Nextera’s acquisition of GridLiance there existed uncertainty as to whether certain projects would ultimately find success. To account for that uncertainty, the parties agreed to an earn-out structure that included Quarterly Earn-out Payments. But the parties did not stop there, they anticipated disputes over Quarterly Earn-out Payments and the projects that trigger them.

Beginning with Section 2.06(f), the dispute resolution mechanism is triggered when Blackstone “deliver[s] written notice to [Nextera]...disputing any item set forth on any Earn-out Statement.”⁶² The scope of an Earn-out Dispute Notice encompasses “any item (or omission thereof) that [Blackstone] reasonably believes would have resulted in a[] [Quarterly] Earn-out Payment if set forth in an Earn-out Statement....”⁶³ If mandatory negotiations fail to resolve the items raised in the Earn-Out Dispute Notice, the remaining items—Earn-out Disputed Items—are delegated to the Industry Expert for determination.⁶⁴

The Industry Expert is “an individual...who has or supervises personnel or consultants with appropriate utility industry, construction, engineering[,] and

⁶⁰ *Id.* (cleaned up).

⁶¹ *Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co, LLC*, 166 A.3d 912, 927 (Del. 2017).

⁶² PSA § 2.06(f)(i).

⁶³ *Id.*

⁶⁴ *Id.* § 2.06(f)(ii).

regulatory expertise or financial and accounting expertise (as applicable) to resolve any disputes under [the PSA.]”⁶⁵ To resolve an Earn-out Disputed Item (including items on an Earn-out Statement or an omission therefrom), the parties “depending on the nature of the dispute...shall instruct the Industry Expert(s) to act as an expert in the utility industry, construction, engineering, regulatory or accounting fields (as relevant)...”⁶⁶

The parties made clear in Section 8.02(a) that the remedies it (the dispute resolution mechanism) provides are “the sole and exclusive remedies” for all claims arising from an Earn-out Dispute.⁶⁷ To be sure, Section 8.02(a) further provides that the parties “waive[, to the fullest extent permitted under applicable [l]aw any and all rights that [they] have...with respect to the subject matter of [the PSA], whether under any contract, misrepresentation, tort, or strict liability...and whether at law or in equity.”⁶⁸ The only limited exception is found in Section 10.13, which allows the parties “to seek an injunction, specific performance[, and other equitable relief...to enforce specifically the...provisions of” the PSA.⁶⁹

⁶⁵ *Id.*, Art. 1 at 7.

⁶⁶ *Id.* § 2.06(f)(ii). Because an Earn-out Dispute Notice includes omission of an item in an Earn-out Statement, it follows then that an Earn-out Disputed Item will also include “any item (*or omission thereof*) that [Blackstone] reasonably believes would have resulted in a[] [Quarterly] Earn-out Payment....” *Id.* (emphasis added).

⁶⁷ *Id.* § 8.02(a).

⁶⁸ *Id.*

⁶⁹ *Id.* § 10.13.

Blackstone argues that the Industry Expert lacks the authority to determine the contractual interpretation issues underpinning the parties' disputes.⁷⁰ On the surface, its argument is appealing. Generally, an expert's "authority is limited to its mandate to use its specialized knowledge to resolve a specified issue of fact."⁷¹ But merely because a party pleads claims that raise the specter of contract interpretation does not automatically place the dispute beyond the scope of an expert's expertise.⁷² Nor must a court "construe every word in a provision before the expert can do its work."⁷³ Indeed, "it may be necessary for the expert, in order to decide the point which has been referred to him, to decide a disputed point of interpretation of the contract between the parties."⁷⁴ And "[t]he more closely related the term or provision is to the expert's area of expertise, the more likely it is that an expert can interpret the term without judicial assistance."⁷⁵

Those concepts were on display in the Court of Chancery's decision *Stone v. Nationstar Mortgage LLC*.⁷⁶ In *Stone*, defendant purchased all of the equity from members of a mortgage services company.⁷⁷ The purchase agreement required a

⁷⁰ AB at 19.

⁷¹ *Terrell*, 297 A.3d at 618 (internal quotations and citation omitted).

⁷² See *Stone v Nationstar Mortgage LLC*, 2020 WL 4037337, at *7–8 (Del. Ch. July 6, 2020).

⁷³ *Archkey Intermediate Holdings Inc. v. Mona*, 302 A.3d 975, 997 (Del. Ch. 2023).

⁷⁴ *Id.* at 997–98 (quoting Clive Freedman & James Farrell, *Kendall on Experts Determination* 411 (5th ed. 2015)).

⁷⁵ *Id.* at 998.

⁷⁶ *Stone*, 2020 WL 4037337, at *1.

⁷⁷ *Id.*

“Closing Payment Amount” calculated pursuant to a formula that depended on the value of “the members’ equity of the [c]ompany as of immediately prior to the [c]losing determined with the accounting practices, policies, and methodologies set forth in an exhibit to the purchase agreement.”⁷⁸ That exhibit set forth the “transaction accounting principles to be used” in valuing the member’s equity and thus the Closing Payment Amount.⁷⁹

Prior to closing, the company was to prepare and deliver a closing statement setting forth its estimate of the Closing Payment Amount.⁸⁰ Within 60 days after closing, defendant was to prepare and deliver an “Adjustment Statement” setting forth its calculations of the Closing Payment Amount.⁸¹ If plaintiff disagreed with any item set forth in the Adjustment Statement, the parties agreed to submit the dispute to an “Independent Accountant.”⁸²

The parties’ disputed the Adjustment Statement and both ultimately brought claims in the Court of Chancery.⁸³ Defendant’s counterclaims took issue with the accounting methodology used by the company in its Closing Payment Amount and sought an order of specific performance directing plaintiff to submit a revised calculation in accordance with the accounting methodologies set forth in the

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at *2.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at *3–5.

purchase agreement.⁸⁴ To resolve the dispute, the Court of Chancery was tasked with determining the scope of the Independent Accountant’s authority and whether that scope included the authority to resolve the accounting methodology disputes set forth in defendant’s counterclaims.⁸⁵ Defendant, seeking a limited scope of expert authority, invoked the general principles of distinction between experts and arbitrators and argued that because its counterclaims required contract interpretation, its claims were beyond the Independent Accountant’s scope of authority.⁸⁶

Beginning with the contract, the court noted that the purchase agreement delegated to the Independent Accountant the authority to make determinations of the appropriate amount of each disputed item and that a “disputed item” was any item set forth on the Adjustment Statement with which plaintiff disagreed.⁸⁷ Read together, the court found that the parties “confer[ed] upon the Independent Accountant the authority to determine the amount of any item set forth in the Adjustment Statement with which the [plaintiff] disagree[d].”⁸⁸ Thus, defendant’s counterclaims that involved accounting methodology issues and spoke to the amount of the disputed items, were within the scope of the Independent Accountant’s authority.⁸⁹ And as stated by the court:

⁸⁴ *Id.* at *5.

⁸⁵ *Id.* at *6.

⁸⁶ *Id.* at *7.

⁸⁷ *Id.* at *6.

⁸⁸ *Id.*

⁸⁹ *Id.* at *8.

It is true that the Independent Accountant is an expert not an arbitrator.... It is further true that, as drafted [defendant's counterclaims] appear to raise legal issues...beyond the scope of the independent accountant's authority.... Although all of the premises of [defendant's] argument are true, the result [it] seeks does not follow. At bottom, [defendant's] argument elevates form over substance. In substance, [the counterclaims] raise issues necessary to determine the amount of any disputed items, an issue contractually delegated to the Independent Accountant for resolution. They all involve accounting methodology issues that fall squarely within an accounting firm's expertise.⁹⁰

Ultimately, the *Stone* court found the defendant's attempts to plead around that scope to be nothing more than "couching delegable disputes in questions of law."⁹¹

The same result follows here. Just as the defendant in *Stone*, Blackstone relies on the distinction between experts and arbitrators and contends that the Industry Expert does not have authority here because its claims require contract interpretation.⁹² Blackstone's claims, however, arise out of the Disputed Projects and the Beatty-Esmerelda project being omitted from Earn-out Statements and seek higher Quarterly Earn-out Payments. That falls squarely within the Industry Expert's delegated authority because the projects are Earn-out Disputed Items. That is, they are omitted items that Blackstone reasonably believes would have resulted in Quarterly Earn-out Payments.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² AB at 18–23.

To be sure, the Industry Expert will need to consider the PSA. But that necessity alone does not deprive the Industry Expert of its authority. And more to the point, resolution of the parties' disputes requires factual analysis that utilizes the exact specialized knowledge of the contemplated Industry Expert. Specifically, the Industry Expert would be tasked with deciding whether or not the Disputed Projects fall within the parties' definition of Phase II projects. This determination will require an understanding of a highly regulated industry, industry specific technical terminology and practices, and the phases of complex electrical transmission projects.

The Industry Expert will also be called upon to decide whether Nextera unnecessarily designed the Beatty-Esmerelda proposal to trigger competitive solicitation. As Blackstone alleges, this determination will consider whether Nextera violated its Commercially Reasonable obligation, which takes into account actions "customarily use[d] to accomplish similar objective[s] under similar circumstances" using efforts "with respect to pursuit in furtherance of the placement into service of transmission projects of similar market potential, strategic value, stage of development and technical and regulatory profile" and "other customary

factors.”⁹³ The Industry Expert is well-suited to apply the expertise needed to resolve the disputes.

While Blackstone tries to place its disputes outside of the Industry Expert’s authority, to allow Blackstone to claim breach of contract and contract interpretation “when confronted with the very category of dispute contractually delegated to the” Industry Expert would render the dispute resolution mechanism meaningless.⁹⁴ Thus, just as the court found in *Stone*, Blackstone’s contentions are nothing more than an attempt to couch delegable disputes into a question of law.⁹⁵

B. *The parties’ remedy scheme*

The parties’ remedy scheme and narrow exception for claims asserting equitable relief, support this conclusion. Under Section 8.02(a), the parties

⁹³ PSA § 2.06(c); *see also* Compl. ¶ 63 (“Structuring the Beatty-Esmeralda Upgrade proposal in a manner that would avoid competitive solicitation process *would have been consistent with common industry practice...*”) (emphasis added).

⁹⁴ *Stone*, 2020 WL 4037337, at *9.

⁹⁵ Blackstone’s argument that Section 10.09 controls is unavailing. Section 10.09, entitled “Consent to Jurisdiction and Service of Process” provides that the parties’ chosen forum is the “Delaware Court of Chancery or, ...any state or federal court located in the State of Delaware for the purpose of any [p]roceeding directly or indirectly arising out of...[the PSA] or the transactions contemplated hereby, *and the interpretation and enforcement of the rights and duties of the [p]arties under [the PSA].*” PSA § 10.09 (emphasis added). Blackstone argues that Section 10.09 controls here because the parties delegated contract interpretation to Delaware courts. But, as explained, if the Court allowed Blackstone to bring Earn-out Disputed Items, expressly delegated to the Industry Expert (disguised as legal claims) it would render the dispute resolution mechanism illusory at best. And “general terms of the contract must yield to more specific terms.” *Sunline Commercial Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 846. (Del. 2019). The dispute resolution mechanism under Section 2.06(f) controls here because the substance of Blackstone’s claims fall within the Industry Expert’s delegated authority. Because Section 10.09 must yield to Section 2.06(f), Blackstone’s argument fails.

simultaneously waived the right to bring the type of claims Blackstone asserts here and made clear that Section 2.06(f)'s dispute resolution mechanism provides the remedy it seeks.

Blackstone responds that the parties' remedy scheme is inapplicable here for two reasons. First, because the dispute resolution mechanism is a procedure, not a remedy.⁹⁶ And, second, because the dispute resolution mechanism is permissive, ultimately giving Blackstone the choice between the Industry Expert and the court.⁹⁷ The problem with Blackstone's position is, if it was correct, Blackstone would have no recourse to rectify an Earn-out Statement in the manner it seeks. As noted, Section 10.13 provides a limited exception for a party seeking equitable relief, not applicable here. Thus, the parties' contractual waiver applies and the legal claims Blackstone brings cannot find recourse here.⁹⁸

In any event, the Court addresses each argument in turn. As to the first contention, the parties did not define remedy; thus, the Court strives to ascertain its plain meaning.⁹⁹ Black's Law Dictionary defines remedy as "[t]he means of

⁹⁶ AB at 24–27.

⁹⁷ *Id.* at 25, 28–29.

⁹⁸ *Azadian Group, LLC v. TenX Group, LLC*, 2019 WL 5699371, at *2 (Del. Super. Nov. 4, 2019) (“This Court respects the principle of freedom of contract and will enforce the voluntary agreements of sophisticated parties; even if those agreements include a waiver of claims or defenses.”).

⁹⁹ *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006) (“When interpreting a contract, the role of a court is to effectuate the parties' intent. In doing so, we are constrained by a combination of the parties' words and the plain meaning of those word where no special meaning is intended.”).

enforcing a right or preventing or redressing a wrong; legal or equitable relief.”¹⁰⁰ The Court does not depart from that definition here. The dispute resolution mechanism in Section 2.06(f) is the remedy the parties intended to be the sole and exclusive means “of enforcing a right or preventing or redressing a wrong” upon a Earn-out Dispute.¹⁰¹

Turning to the second contention, under Blackstone’s view, the language that Blackstone “*may* deliver a[n]” Earn-out Dispute Notice and “[i]f [Blackstone] delivers an Earn-out Dispute Notice...then the dispute resolution procedures...shall apply” supports a finding that the parties intended to give Blackstone the option of using the dispute resolution mechanism.¹⁰²

Blackstone is correct, “may” and “if” is permissive language. But it is permissive because it is ultimately Blackstone’s decision whether or not to provide notice of an Earn-out Dispute. So, Blackstone “may” dispute an Earn-out Statement but “if” it does, the dispute resolution mechanism “shall” apply. The exclusive remedy provision makes this clear. The remedies provided to Blackstone—as it

¹⁰⁰ *Remedy*, Black’s Law Dictionary (12th ed. 2024); *Lorillard*, 903 A.2d at 740 (“When a term’s definition is not altered or has no gloss in the relevant industry it should be construed in accordance with its ordinary dictionary meaning.”).

¹⁰¹ In an attempt to further distinguish remedies as found in Section 8.02(a) from the dispute resolution mechanism under Section 2.06(f) Blackstone points to other contractual obligations in Section 2.06 that the Industry Expert would not have the expertise to solve. AB at 26. But the Industry Expert is not the remedy for all disputes arising under Section 2.06, its authority is limited to Earn-out Disputed Items.

¹⁰² PSA §§ 2.06(f)(i)–2.06(f)(ii) (emphasis added); AB at 25, 28.

pertains to Earn-out Disputes—are those provided for in the dispute resolution mechanism. Thus, the dispute resolution mechanism is permissive only to the extent that Blackstone may choose to dispute an Earn-out Statement. But, upon such a dispute, it is mandatory.

V. CONCLUSION

Blackstone's claims raise issues the parties delegated to a dispute resolution mechanism, including a contractually defined Industry Expert. The parties' remedy scheme makes clear that they intended such issues to be resolved by that mechanism. While those issues may require interpretation of the PSA, the parties' delegation of authority (and waiver of other claims) is broad enough to permit the Industry Expert to resolve such issues. Accordingly, Nextera's Motion is GRANTED.

IT IS SO ORDERED.

Kathleen M. Miller
Kathleen M. Miller, Judge