**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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| SUBURBAN RENEWABLE ENERGY, LLC, | ) | |
| Plaintiff, | ) | C.A. No. N25C-12-457 EMD CCLD |
| v. | ) | |
| EQUILIBRIUM CARBON TRANSITION INFRASTRUCTURE COMPANY LLC, | ) | |
| Defendant. | ) | |

**MEMORANDUM OPINION GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS COUNTERCLAIMS**

*Submitted: July 30, 2026*
*Decided: August 18, 2026*

**DAVIS, P.J.**

This is a civil action assigned to the Complex Commercial Litigation Division of the Court. The litigation arises from a Membership Interest Purchase Agreement ("MIPA") between Suburban Renewable Energy LLC ("Suburban") and Equilibrium Carbon Transition Infrastructure Company LLC ("Equilibrium").[1]

Suburban asserts affirmative claims of: (1) breach of MIPA Article 5.8(b); (2) breach of MIPA Article 6.6; (3) two counts of fraudulent misrepresentation; and (4) fraud in the inducement.[2] Equilibrium responded with counterclaims seeking declaratory judgments that: (1) Suburban breached the implied covenant so Equilibrium does not have to release the Columbus Completion Reserve ("Counterclaim I"); (2) MIPA Section

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[1] *See generally* Countercl. and Answer [hereinafter "Countercl."] (D.I. No. 12).
[2] *See generally* First Am. Compl. [hereinafter "Compl."] ¶¶ 124–169 (D.I. No. 31). Although Suburban amended its complaint, the Parties agreed that the counterclaims are identical and renewed the motion to dismiss the counterclaims without additional briefing (D.I. No. 38).

5.8(b) has not been satisfied, so Equilibrium does not have to release the Reserve ("Counterclaim II"); and (3) Suburban breached MIPA Section 1.8(d) so Equilibrium does not have to release the Reserve ("Counterclaim III").[3] Suburban moved to dismiss (the "Motion") these counterclaims under Superior Court Civil Rule 12(b)(6).[4]

Equilibrium opposes the Motion.[5] Suburban replied on May 8, 2026.[6] The Court held a hearing on the Motion on July 30, 2026.[7] At the conclusion of the hearing, the Court took the Motion under advisement.

For the reasons set forth below, the Motion is **GRANTED** in part and **DENIED** in part.

## I. DISCUSSION

### A. INTRODUCTION

First, the Court finds that Counterclaims I and III state claims upon which relief can be granted. Counterclaims I and III are based on different underlying facts and are not mirror claims of Suburban's affirmative claims. However, Counterclaim II seeks a declaration that Equilibrium did not breach the contract provision that serves as the basis of Suburban's affirmative breach claim against Equilibrium. Because of this, the Court dismisses Counterclaim II for being duplicative of Suburban's breach-of-contract claim.

Second, the Court finds that the implied covenant counterclaim (Counterclaim I) is well-pleaded. As Equilibrium alleges, it is reasonably conceivable that there is a gap to be filled relating to Suburban advancing funds to meet the threshold to obtain the

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[3] *See generally* Countercl., ¶¶ 48–60.
[4] D.I. No. 17.
[5] D.I. No. 26.
[6] D.I. No. 28.
[7] D.I. No. 43.

Columbus Completion Reserve (defined below). The implied covenant also applies when a contract gives a party unfettered discretion and does not always have to be based on a contractual gap. As plead, Suburban might have used this discretion in bad faith when making certain payments.

The Court also finds that Equilibrium's the breach-of-contract counterclaim (Counterclaim III) satisfies Delaware's pleading standard. The Court notes that the counterclaim identifies a potentially breached provision and alleges facts that may constitute a breach of that provision. The resolution here rests with the stage of the proceedings. While it does not appear to be, MIPA Section 1.8(d) arguable is ambiguous. At the pleading stage, the Court must resolve this ambiguity in favor of Equilibrium.

### B. Applicable Legal Standard

Suburban seeks dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The governing standard requires the Court to "(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party."[8] The Court need not "accept every strained interpretation of [Equilibrium's] allegations"[9] or conclusory statements "unsupported by allegations of specific facts."[10] Dismissal is appropriate only if Equilibrium "would not

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[8] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).
[9] *Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001)).
[10] *In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999), *aff'd sub nom., Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000).

be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."[11]

### C. DECLARATORY JUDGMENT COUNTERCLAIMS I AND III ARE NOT IMPROPERLY DUPLICATIVE BECAUSE THEY ARE BASED ON DIFFERENT FACTUAL ALLEGATIONS, BUT COUNTERCLAIM II IS DUPLICATIVE AS IT IS A MIRROR IMAGE OF EQUILIBRIUM'S BREACH-OF-CONTRACT CLAIM

Delaware courts will dismiss counterclaims that seek declaratory relief that relates wholly and completely to the claim asserted in the complaint.[12] To dismiss a counterclaim that relates wholly and completely to the complaint's claim, the counterclaim must be identical to the complaint's claims and seek declarations exactly the opposite of the relief sought in the complaint.[13] For instance, if the complaint alleges a breach of contract, a defendant would fall afoul of *RJR Nabisco* and "violate" the Declaratory Judgment Act if a defendant counterclaimed seeking a declaratory judgment that it did not breach the contract.[14] This Court has declined to dismiss a declaratory-judgment counterclaim, in response to a breach-of-contract claim, that seeks a declaration that the plaintiff materially breached a different contract provision.[15]

Here, Suburban argues that Equilibrium's counterclaims are mirror images of Suburban's claim that Equilibrium breached MIPA Section 5.8(b) by refusing to pay the Columbus Completion Reserve.[16] But Counterclaims I and III seek distinct relief.

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[11] *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002); *Priveterra Capital, Mgmt., LLC v. Pixium Vision, LLC*, 2026 WL 940227, at *3 (Del. Super. Apr. 7, 2026).

[12] *In re RJR Nabisco, Inc., Shareholders Litig.*, 1990 WL 80466, at *1 (Del. Ch. June 12, 1990); *IP Network Sols., Inc. v. Nutanix, Inc.*, 2022 WL 369951, at *7 (Del. Super. Feb. 8, 2022).

[13] *Bancroft Prof'l Bldg. Associates, L.P. v. Family Med. at Greenhill, P.A.*, 2012 WL 5928281, at *2 (Del. Com. Nov. 7, 2012).

[14] *Id.*

[15] *DuPont De Nemours, Inc. v. Hemlock Semiconductor Operations LLC*, 2024 WL 3161799, at *11 (Del. Super. June 10, 2024).

[16] Op. Br. at 1; *see also* Compl., ¶ 126.

Counterclaim I seeks a declaration that Suburban breached the implied covenant first.[17] Counterclaim III seeks a declaration that Suburban materially breached a different MIPA provision first.[18] These respective claims involve different MIPA provisions and different underlying facts.[19] Since Counterclaims I and III do not seek mirror-image relief, the Court finds they do not violate the Declaratory Judgment Act. Accordingly, the Court **DENIES** the Motion as to Counterclaims I and III.

Counterclaim II seeks a declaration that MIPA Section 5.8 has not been satisfied, *i.e.*, Equilibrium did not breach the MIPA and does not have to comply with Section 5.8.[20] Counterclaim II seeks a declaration that Equilibrium did not breach MIPA Section 5.8. Suburban's Complaint asserts that Equilibrium breached this exact provision. Counterclaims that are simply a restatement or specification of the answer denying liability must be dismissed as contrary to the purposes of the Delaware Declaratory Judgment Act.[21] This result is justified because counterclaims that are redundant of the original claims will be rendered moot by the adjudication of the affirmative claims.[22] A resolution of Suburban's breach-of-contract claim would wholly resolve the declaratory counterclaim, and there is no "daylight" between these claims.[23]

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[17] Countercl., ¶¶ 48–51.
[18] Countercl., ¶¶ 56–60.
[19] *See DuPont De Nemours, Inc.*, 2024 WL 3161799, at *11 ("DuPont's affirmative claims say that Hemlock breached the Side Letter's offset provision and the [Redacted]'s payment obligations, while Hemlock's fourth declaratory judgment request says that DuPont materially breached the Side Letter's [Redacted] dispute resolution provisions prior to any of Hemlock's alleged breaches. Those respective claims involve different provisions of the agreements with different underlying facts. Thus, Hemlock's fourth declaratory judgment request isn't wholly duplicative and won't be dismissed.").
[20] Countercl., ¶¶ 52–55.
[21] *Quantlab Grp. GP, LLC v. Eames*, 2019 WL 1285037, at *4 (Del. Ch. Mar. 19, 2019), *judgment entered,* (Del. Ch. 2019), *aff'd,* 222 A.3d 580 (Del. 2019), and *enforcement denied,* (Del. Ch. 2020), and *aff'd,* 222 A.3d 580 (Del. 2019) (cleaned up).
[22] *Id*.
[23] *Bastion Rest. Grp. LLC v. Gaudelet*, 2024 WL 5135977, at *6 (Del. Super. Dec. 17, 2024).

Accordingly, the Court **GRANTS** the Motion as to Counterclaim II with leave to amend. To the extent that Equilibrium did not already do so by pleading failure to state a claim as an affirmative defense, Equilibrium may amend its affirmative defenses to include this argument as an affirmative defense, instead of a declaratory-judgment seeking counterclaim.[24]

### D. THE IMPLIED-COVENANT COUNTERCLAIM, COUNTERCLAIM I, IS WELL-PLEADED

Every contract contains an implied covenant of good faith and fair dealing.[25] The implied covenant requires "'a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits' of the bargain."[26] "Beyond its gap filling function, the implied covenant applies 'when a party to the contract is given discretion to act as to a certain subject and it is argued that the discretion has been used in a way that is impliedly proscribed by the contract's express terms.'"[27] "Although contracts often grant wide—if not unfettered—discretion to one party, 'the law presumes that parties never accept the risk that their counterparties will exercise their contractual discretion in bad faith.'"[28]

Courts will not infer that an obligation exists that "contradicts a clear exercise of an express contractual right."[29] Express contractual language is more persuasive than a party's actions implementing a contract.[30] Courts will infer an obligation "when the

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[24] See Countercl. at 71. Third Affirmative Defense.
[25] *Priveterra Capital, Mgmt., LLC*, 2026 WL 940227, at *6 (Del. Super. Apr. 7, 2026).
[26] *Dunlap v. State Farm Fire & Cas. Co*., 878 A.2d 434, 442 (Del. 2005) (quoting *Wilgus v. Salt Pond Inv. Co*., 498 A.2d 151, 159 (Del. Ch. 1985)).
[27] *SerVaas v. Ford Smart Mobility LLC*, 2021 WL 3779559, at *10 (Del. Ch. Aug. 25, 2021) (quoting *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 504 n.93 (Del. 2019)).
[28] *Id*. (quoting *Amirsaleh v. Bd. of Trade of City of New York, Inc.*, 2008 WL 4182998, at *1 (Del. Ch. Sept. 11, 2008)).
[29] *Nemec v. Shrader*, 991 A.2d 1120, 1127 (Del. 2010).
[30] *Id*. at 1126.

express terms of the contract indicate that the parties would have agreed to the obligation had they negotiated the issue, [so] the plaintiff must advance provisions of the agreement that support this finding in order to allege sufficiently a specific implied contractual obligation."[31]

The covenant will not allow mere "post contractual rebalancing of the economic benefits flowing to the contracting parties."[32] Instead, the covenant applies "only in that narrow band of cases where the contract as a whole speaks sufficiently to suggest an obligation and point to a result but does not speak directly enough to provide an explicit answer. In the Venn diagram of contract cases, the area of overlap is quite small."[33]

The Court finds that there is both a viable counterclaim for a contractual gap to be filled and an overarching bad-faith counterclaim. In Counterclaim I, Equilibrium alleges that Suburban breached the implied covenant in MIPA Section 5.8(b) by manipulating payments to the Columbus Gas Conversion Project to speed up its extraction of the Columbus Completion Gas Reserve.[34] Section 5.8(b) provides:

> Seller shall, at Closing, reserve an additional $3,000,000 from the Cash Consideration . . . to be applied to potential capital expenditures of Assets that are required to complete the Columbus Renewable Gas Conversion Project (the "***Columbus Completion Reserve***") and shall not, between the Closing Date and December 31, 2024 (the "***Columbus Funding Period***") draw any funds form the Columbus Completion Reserve, except as set forth in this Section. Seller shall, upon Buyer's written request during the Columbus Funding Period, promptly draw on the Columbus Completion Reserve and fund expenditures for the Columbus Renewable Gas Conversion Project requested by Buyer; ***provided, however,*** that Buyer may not request that Seller fund expenditures for the Columbus Renewable Gas Conversion Project unless and until Buyer, AssetCo or any of their respective Affiliates have funded, in the aggregate, at least $12,000,000 . .

[31] *Cantor Fitzgerald, L.P. v. Cantor, et al.*, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998) (footnote omitted).
[32] *Nemec,* 991 A.2d at 1128.
[33] *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 146 (Del. Ch. 2009).
[34] Countercl., ¶¶ 48–51.

> . in expenditures for the Columbus Renewable Gas Conversion Project pursuant to this Section 5.8(b).[35]

Equilibrium agreed to set aside a portion of the sale proceeds (the "Columbus Completion Reserve") to incentivize construction and completion of the Columbus Renewable Gas Conversion Project. The Columbus Completion Reserve could apply to capital expenditures Suburban had to make to complete the Columbus Renewable Gas Conversion Project provided, however, that capital expenditures of at least $12,000,000 were made before December 31, 2024 (the "Columbus Funding Period").

It is reasonably conceivable that MIPA Section 5.8(b) has an implied provision that Suburban may not pay costs that are not due or owed to meet the $12,000,000 threshold to allow it to access the Reserve. To the extent that MIPA Section 5.8(b) gives Suburban unfettered discretion to use the funds for the Columbus Renewable Gas Conversion Project, it is reasonably conceivable that Suburban used that discretion in bad faith to injure Equilibrium by pumping unnecessary costs before the end of 2024 to exhaust the Reserve. The Court, therefore, **DENIES** the Motion on Counterclaim I.

### E. THE BREACH OF MIPA SECTION 1.8(D), COUNTERCLAIM III, STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

To prevail on a breach-of-contract claim, one must show: (1) a contractual obligation; (2) a breach of that obligation; and (3) resulting damages.[36] A court generally gives priority to the parties' intentions in the four corners of the contract.[37] "In upholding the intentions of the parties, a court must construe the agreement as a whole,

[35] Compl., Ex. A [hereinafter "MIPA"] § 5.8(b) (D.I. No. 1).
[36] *See VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003); *Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at *5 (Del. Super. Feb. 18, 2026).
[37] *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009); *PPG Holdco, LLC v. RAC PPG Buyer LLC*, 2026 WL 1210271, at *6 (Del. Ch. Apr. 23, 2026).

giving effect to all provisions therein."[38] "The meaning inferred from a particular provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan."[39] "Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one."[40] "When construing a contract, and unless a contrary intent appears, [courts] will give words their ordinary meaning."[41]

Where the contract's language is plain and unambiguous, it must be enforced as written.[42] "If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."[43]

To resolve a contractual question of law at this stage, unambiguous contract terms must support the motion.[44] To dismiss, the movant's interpretation must be "the *only* reasonable construction as a matter of law."[45] But absent ambiguity, Delaware courts will not manipulate the contract's language under the guise of construing it.[46]

Here, Equilibrium maintains that Suburban breached MIPA Section 1.8(d)'s obligation to "operate the Companies in a commercially reasonable manner" after closing by agreeing to pre-pay contracts where deliverables had not been met, milestones had not

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[38] *E.I. du Pont de Nemours and Co., Inc. v. Shell Oil Co.,* 498 A.2d 1108, 1113 (Del. 1985).
[39] *Riverbend Community, LLC v. Green Stone Engr., LLC*, 55 A.3d 330, 334-35 (Del. 2012) (citation omitted).
[40] *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 256 n. 42 (Del. 2017), *as revised* (Mar. 28, 2017) (quoting *DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005)).
[41] *Citadel Hldg. Corp. v. Roven*, 603 A.2d 818, 824 (Del. 1992).
[42] *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 740 (Del. 2006); *Conlon v. CGI Mfg. Buyer LLC*, 2026 WL 1831266, at *7 (Del. Super. June 15, 2026).
[43] *City Investing Co. Liquidating Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993).
[44] *Blue Cube Spinco LLC v. Dow Chem. Co.*, 2021 WL 4453460, at *7 (Del. Super. Sept. 29, 2021).
[45] *Id*. (quoting *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003)).
[46] *Id*.; *Illinois Nat'l Ins. Co. v. Harman Int'l Indus., Inc.*, 2026 WL 204209, at *6 (Del. Jan. 27, 2026).

been achieved, or delivery of equipment had not been made.[47] Again, it is reasonably conceivable that Suburban failed to act commercially reasonably by making certain payments that it knew were not actually due.

Suburban insists that Equilibrium's reading of MIPA Section 1.8(d) is unreasonable since that provision only relates to earnout payments. MIPA Section 1.8(d) states that Suburban shall operate the Companies commercially reasonably and shall not take actions in bad faith to dodge an earnout:

> Buyer shall, between the Closing Date and December 31, 2025, (i) operate the Companies in a commercially reasonable manner and consistent with its and its Affiliates' obligations under the Transaction Documents (in each case to the extent applicable to the operation of the Companies), and not, directly or indirectly, take any actions in bad faith that would have the purpose of avoiding or reducing any of the Earn-out Payments hereunder, (ii) permit Affiliates of Seller to operate the Companies in compliance with the AssetCo MSA and (iii) not dispose of any material assets of the Companies, except in the case of (i), (ii) and (iii), (x) to the extent that Seller consents in advance in writing or (y) if Buyer pays or causes the Companies to pay Seller the Maximum Earn-out Payment, provided that Buyer shall pay the Maximum Earn-Out Payment to Seller no later than 30 days following a disposal of material assets contemplated by clause (c). In the event Buyer elects not to develop the Companies in a manner consistent in all material respects with the Columbus Development Plan and/or the Stanfield Development Plan, Buyer and Seller agree to negotiate in good faith regarding a commensurate adjustment to the Earn-out Payment to allow Seller to receive compensation for any reduction in the Earn-out Payment that is reasonably foreseeable from such change of operations. For clarity's sake, nothing in Section 1.8(b) shall limit Seller's right to bring a claim with respect to this Section 1.8(d) under Section 9.9.[48]

There is nothing in this section that says the commercially reasonable efforts clause applies solely to earnouts and does not apply to Suburban running the Companies. At this stage, the Court finds that this provision provides that Suburban's obligation to commercially reasonably operate the Companies applies to all Suburban actions in

[47] Countercl., ¶¶ 56–60.
[48] MIPA § 1.8(d).

operating the Companies. If this provision is ambiguous as to whether it only applies in relation to the earnout, the Court must resolve all contract ambiguities in favor of the nonmoving party.[49] This is so even if the trial court considers one party's interpretation to be more reasonable.[50] Thus, the Court **DENIES** the Motion as to Counterclaim III.

## II. CONCLUSION

For the reasons above, the Motion is **GRANTED** in part and **DENIED** in part. Only Count II is dismissed. But Equilibrium may amend its affirmative defenses to include the same argument as an affirmative defense.

**IT IS SO ORDERED.**

August 18, 2026
Wilmington, Delaware

*/s/ Eric M. Davis*
Eric M. Davis, President Judge

cc: File&ServeXpress

[49] *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1143–44 (Del. 2025).
[50] *Id*. at 1144.