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Please respond to New Jersey Location

March 24, 2011

VIA E-MAIL AND REGULAR MAIL

Jamie L. Quebec, Case Manager

American Arbitration Association

950 Warren Avenue

East Providence, RI 02914

RE: Our File No. RVSA-148

Dear Ms. Quebec:

As you know, this law firm represents the Rahway Valley Sewerage Authority ("RVSA"). Enclosed please find RVSA's Demand for Arbitration. A check in the amount of \$15,810 covering our filing fees is enclosed.

Pursuant to Rule 7(a)(i) of the American Arbitration Association, the RVSA is hereby making the application to consolidate this arbitration with the arbitration matter 18 110 01423 10, J.H. Reid General Contractor vs. Rahway Valley Sewerage Authority and Caterpillar Inc. and Foley Power Systems. We are requesting this consolidation because the issues involved with the within matter are inseparable from the Reid matter. With that in mind, we believe that consolidation is a more judicious and efficient way to resolve the matters.

Please be advised that pursuant to Rule 6, the RVSA hereby reserves all rights to make any additional claims against all the parties. Pursuant to Rule 7, the RVSA also hereby reserves all rights to join any additional parties to the existing arbitration.

Should you have any questions, please feel free to contact me. Thank you.

Very truly yours,

WEINER LESNIAK LLP

By: 
Julia O. Donohue
For the Firm

JOD
Enclosure

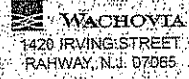
cc: Peter J. Smith, Esq. (Via E-mail & Regular Mail)
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Gary F. Werner (Via E-mail & Regular Mail)
James Meehan, Executive Director - RVSA
Robert J. Materna, Secretary/Treasurer - RVSA
Robert Valent, Superintendent - RVSA
Joanne Grimes-RVSA
All other parties on the attached service list (Via Regular Mail)

THIS DOCUMENT HAS A COLORED BACKGROUND AND FLUORESCENT FIBERS • SEE ADDITIONAL SECURITY FEATURES ON REVERSE SIDE • MISSING A FEATURE INDICATES A COPY



RAHWAY VALLEY SEWERAGE AUTHORITY

1050 East Hazelwood Avenue
Rahway N.J. 07065



No. 002596

56-2
212

BUILDING & EQUIPMENT FUND	DATE	CHECK NO.	AMOUNT
	3/22/2011	2596	\$15,810.00

Fifteen Thousand Eight Hundred Ten And 00/100 Dollars

American Arbitration Assoc.
950 Warren Avenue
East Providence, RI 02914-1414

TO THE
ORDER
OF

F. J. M... CHAIRMAN
James J. ... EXEC. DIRECTOR
Robert J. Materna SECY. / TREASURER

AUTHORIZED SIGNATURE

⑈002596⑈ ⑆021200025⑆2002003369647⑈

SERVICE LIST

Rahway Valley Sewerage Authority

American Arbitration Association

Our File No. RVSA-148

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Rahway Valley Sewerage Authority

American Arbitration Association

Our File No. RVSA-148

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Attorneys for Claimant, Rahway Valley Sewerage Authority
Our File No. RVSA-148

RAHWAY VALLEY SEWERAGE
AUTHORITY,
Claimant,

vs.

AMIN ENGINEERING, P.C., PAULUS
SOKOLOWSKI & SARTOR, LLC,
CONSOLIDATED CONSTRUCTION
MANAGEMENT SERVICES, INC.,
KEYSPAN CORPORATION, NATIONAL
GRID SERVICES, INC., CATERPILLAR
INC., FOLEY POWER SYSTEMS,
KOMLINE-SANDERSON ENGINEERING
CORPORATION, LAGUARDA BIANCHI &
ASSOCIATES, INC., HATCH MOTT
MACDONALD I & E, INC., MACTEC
FEDERAL PROGRAMS, INC. formerly
known as PACIFIC ENVIRONMENTAL
SERVICES, INC., J.H. REID GENERAL
CONTRACTOR, INC., AECOM USA, INC.,
successor by merger to METCALF & EDDY,
INC.,

Respondents.

AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION
RULES

DEMAND FOR ARBITRATION

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST

The named claimant, a party to the Consent Order entered by the Honorable Lisa F. Chrystal, J.S.C., dated January 25, 2010, providing for arbitration under the American Arbitration Association ("AAA") Rules, hereby demands arbitration thereunder. A copy of the January 25, 2010 Consent Order is attached hereto. In addition to those parties to the Consent Order, claimant also hereby

seeks to join other interested and indispensable parties that are set forth herein in accordance with N.J.S.A. 40A:11-50.

You are hereby notified that copies of the Consent Order and of this Demand for Arbitration are being filed with the AAA at its Northeast Case Management Center, located in East Providence, Rhode Island, with the request that it commence administration of this arbitration. Under the Construction Industry Arbitration Rules, you may file an answering statement within fourteen (14) calendar days after notice of the filing of the Demand is sent by the AAA.

Claimant requests a hearing locale of Parsippany, New Jersey.

Claimant seeks recovery of \$36 million, plus interest and costs of arbitration.

THE PARTIES

Claimant, Rahway Valley Sewerage Authority ("RVSA") is a public body corporate and politic of the State of New Jersey, formed pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq., and operates a trunk sewer line and a wastewater treatment plant for its member municipalities consisting of Clark, Cranford, Garwood, Kenilworth, Mountainside, Rahway, Roselle Park, Scotch Plains, Springfield, Westfield, and Woodbridge. This matter relates to a Cogeneration/Sludge Drying Facility (the "Facility") that has been constructed at the RVSA's water treatment plant.

Respondent, Amin Engineering, P.C. ("Amin") is a professional corporation organized under the laws of the State of New Jersey and has its principal place of business at 530 Union Avenue, Middlesex, New Jersey 08846. Amin was a member of the value engineering team ("VE Team") that performed a pre-construction, cost-related study of the proposed Facility.

Respondent, Paulus Sokolowski & Sartor, LLC ("PS&S") is a limited liability company organized under the laws of the State of Delaware and has its principal place of business at 67A Mountain Boulevard Extension, Warren, New Jersey 07059. PS&S performed the economic

analyses and design for the Facility. PS&S also performed engineering services as a subcontractor to the construction oversight engineer.

Respondent, Consolidated Construction Management Services, Inc. ("CCMS") is a corporation organized under the laws of the State of New Jersey and has its principal place of business at 1670 Route 34 North, Wall Township, New Jersey 07727, street address zip code 07719. CCMS was the construction oversight engineer for the Facility and was a member of the VE Team.

Based upon information and belief, respondent, KeySpan Corporation, is a corporation organized under the laws of the State of New York, and respondent, National Grid Services, Inc., is a corporation organized under the laws of the State of Delaware, successor by merger to KeySpan Business Solutions, LLC, formerly a limited liability company organized under the laws of the State of Delaware (collectively the "KeySpan Companies"). Based on information and belief, each KeySpan Company has a place of business at 175 E. Old Country Road, Hicksville, New York 11801. Keyspan Corporation, through one or more of its subsidiaries, was the parent company of respondent, PS&S.

Respondent, Caterpillar Inc., is a corporation organized under the laws of the State of Delaware with its principal executive offices at 100 NE Adams Street, Peoria, Illinois 61629 and respondent, Foley Incorporated, doing business as Foley Power Systems, is a corporation organized under the laws of the State of New Jersey with a place of business at 855 Centennial Avenue, Piscataway, New Jersey 08854 (collectively "CAT/Foley"). CAT/Foley was the manufacturer/supplier of the gas generators for the Facility.

Respondent, Komline-Sanderson Engineering Corporation ("K-S") is a corporation organized under the laws of the State of New Jersey and has its principal place of business at 12 Holland Avenue, Peapack, New Jersey 07977. K-S was the manufacturer of the sludge dryer for the Facility.

Respondent, Laguarda Bianchi & Associates, Inc. ("Laguarda") is a corporation organized under the laws of the State of Delaware and has its principal place of business at 8228 Riding Ridge Place, McLean, Virginia 22102. Laguarda was a member of the VE Team.

Respondent, Hatch Mott MacDonald I & E, Inc ("HMM") is a corporation organized under the laws of the State of New Jersey and has a place of business at 27 Bleeker Street, Millburn, New Jersey 07041-1008. HMM was a member of the VE Team and also provided other engineering services for the Facility.

Respondent, Mactec Federal Programs, Inc., formerly known as Pacific Environmental Services, Inc. c/o Mactec ("PES") is a corporation organized under the laws of the State of California and has a place of business at 21740 Beaumeade Circle, Suite 150, Ashburn, Virginia 27147. PES was a member of the VE Team.

Respondent, J.H. Reid General Contractor, Inc. ("Reid") is a corporation organized under the laws of the State of New Jersey and has its principal place of business at 3230 Hamilton Boulevard, South Plainfield, New Jersey. Reid was the general contractor for the Facility.

Respondent, AECOM USA, Inc., is a corporation organized under the laws of the State of New York, successor by merger to Metcalf & Eddy, Inc. ("M&E"), formerly a corporation organized under the laws of the State of Delaware, and has a place of business at 30 Knightsbridge Road, Suite 520, Piscataway, New Jersey 08854. M&E prepared an evaluation of the RVSA's sludge disposal alternatives.

One or more of the respondents named herein may have changed its name, merged with or into a successor, may have been acquired by a successor, may have become an independent entity, may have reorganized as a different type of entity such as changing from a corporation to a limited liability company and/or changed its state of organization (collectively, a "Modified Entity"). To the extent any respondent has a Modified Entity, the Modified Entity shall be a respondent.

PRELIMINARY STATEMENT

The claims set forth herein relate to the economic feasibility, design, and construction of the Facility at the RVSA's wastewater treatment plant located in Rahway, New Jersey. The concept behind the Facility, as proposed by its designers, was that the RVSA would reduce its operating costs by generating its own power through the use of dual fuel (natural gas and/or digester gas) generators that would serve as the primary source of power to the RVSA's wastewater treatment plant. The RVSA would use the waste heat from the exhaust of the generators to heat a sludge dryer which would reduce the RVSA's sludge hauling costs by reducing its sludge volume. The Facility would also meet a requirement of a Consent Order and Final Judgment ("JCO") entered into between the RVSA, the New Jersey Department of Environmental Protection ("NJDEP") and the American Littoral Society ("ALS") that the RVSA implement an auxiliary power source capable of maintaining the functioning of its upgraded wastewater treatment plant that was to be constructed pursuant to a separate but related contract.

It has now become apparent that, from its very inception, the design and construction of the Facility was plagued with fraud, mismanagement, negligence, breaches of contract, conflicts of interest, and self-dealing in varying degrees on the part of the various respondents. This resulted in the RVSA suffering damages in excess of \$36 million on a Facility that, as designed for its intended use, is grossly over-sized, will not produce the economic benefit that was represented by its designers, and can only be operated at a loss to the RVSA's ratepayers.

The economic analyses that persuaded the RVSA to proceed with the design and construction of the Facility were performed by its consulting engineer, respondent, PS&S, at the time a wholly owned subsidiary of Keyspan Corporation through one or more of its subsidiaries, and Keyspan Energy Management, (hereinafter collectively referred to as "PS&S/Keyspan"). In each economic evaluation that it performed, PS&S/Keyspan represented to the RVSA that it would receive an

operating cost savings of approximately \$1.2 million per year before debt service if it were to build the Facility. PS&S/Keyspan made these representations notwithstanding that the estimated gross capital costs to build the Facility had escalated dramatically from \$16.2 million to \$26 million due to increases in the size of the Facility that were being recommended by PS&S/Keyspan. In fact, during the course of the design, the Facility's power generating capacity grew from 2.8 megawatts ("MW") to 6.2 MW, while the Facility's sludge dryer doubled in size from a 5,000 lbs./hour to a 9,700 lbs./hour machine. Yet, regardless of how large the Facility grew and how much the estimated gross capital costs increased, PS&S/Keyspan continued to represent to the RVSA that it would realize approximately \$1.2 million in annual operating cost savings before debt service if it were to build the Facility and positive cash flow after debt service. It is now clear, however, that the Facility, as it was designed by PS&S/Keyspan and intended to be used, does not reduce operating costs but actually increases them.

Not only did PS&S/Keyspan make numerous misrepresentations regarding the Facility's economic viability but it went so far as to manipulate the numbers by changing the premise upon which the evaluated costs for the Facility were based in order to make it look as if the Facility was economically viable. PS&S/Keyspan engaged in this fraudulent conduct in order to facilitate the construction and maintenance of the Facility and thus obtain a design contract for which it was ultimately paid \$1,637,487. PS&S/Keyspan was also paid an additional \$1,616,999 to perform engineering services as a subcontractor to Consolidated Construction Management Services, Inc. ("CCMS"), the RVSA's construction oversight engineer on the project. Finally, at the early stages of the design, PS&S/Keyspan sought to benefit financially by obtaining a lucrative operations and maintenance contract to run the Facility worth approximately \$28 million over the useful life of the Facility.

The misrepresentations made by PS&S/Keyspan were perpetuated by the misrepresentations and/or negligent behavior on the part of the other respondents to this matter. The VE Team, which was comprised of respondents, HMM, PES, CCMS, Amin and Laguarda, knew, or reasonably should have known, that the Facility is not economically viable as designed for its intended use but failed to recommend to the RVSA that it should not be built. This is not surprising given that two members of the VE Team, HMM and CCMS, were subsequently awarded contracts to perform other services with respect to the Facility. Therefore, it was in their best interests to see that construction of the Facility moved forward.

Likewise, the manufacturer/supplier of the gas generators, respondent, CAT/Foley and the sludge dryer, respondent, K-S, knew, or reasonably should have known, that the Facility is substantially over-sized relative to the RVSA's needs yet continued to supply and receive payment for larger and ever increasing quantities of equipment. Finally, the general contractor respondent, Reid, who was responsible for the behavior of its equipment suppliers and who was paid substantial sums for change order work associated with the increases in the size of the Facility, also knew, or reasonably should have known, that the Facility is substantially over-sized relative to the RVSA's needs and yet failed to raise any concerns with the RVSA.

The Facility is not economically feasible as designed for its intended use now, nor was it economically feasible from its inception. The operation of the Facility actually increases the RVSA's operating costs as opposed to generating any operating cost savings. The result is the taxpayers having to pay for a \$30 million dollar-plus Facility rather than the Facility generating the purported cost savings required to service the debt, as was represented by the design engineers. The design, construction, and construction management of the Facility were rife with actual conflicts of interest and self-dealing. This created an environment which ultimately led to the RVSA being fraudulently

induced to enter into contracts and change orders for a Facility that never should have been built under any circumstances. All of this combined caused economic damages to the RVSA in excess of \$36 million.

It is clear that the respondents viewed the Facility as an unending gravy train on which they could all be fed at the expense of the public ratepayers of the RVSA who have been left with a "white elephant".

CLAIMS AGAINST RESPONDENTS, PS&S/KEYSPAN

a. PS&S/Keyspan's Economic Evaluation of the Facility

1. In response to a request from the RVSA on March 29, 2000, PS&S/Keyspan submitted a proposal to perform a "Feasibility Study of Digester Gas Utilization and Onsite Cogeneration" for the RVSA. At the time that PS&S/Keyspan submitted its proposal the RVSA was utilizing its digester gas (methane produced by the wastewater treatment process) as a fuel source for two (2) dual fuel (fuel oil and/or digester gas) engines to drive two (2) aeration blowers.

2. On April 20, 2000 the RVSA's Board of Commissioners adopted Resolution No. 00-26 approving a contract for PS&S/Keyspan to perform the services detailed in its March 29, 2000 proposal at a cost not to exceed \$25,000. The work was to be performed pursuant to the terms and conditions of PS&S/Keyspan's Annual Professional Service Contract for Consulting Engineering Services with the RSVA that was in effect at the time. Pursuant to this authorization, PS&S/Keyspan issued a draft report dated June 13, 2000 recommending that the RVSA simply replace two (2) of its existing dual fuel aeration blower engines with new dual fuel (natural gas and/or digester gas) gas engines that were less noxious and had lower emissions at a base cost of approximately \$2.2 million.

3. Thereafter, on July 14, 2000 PS&S/Keyspan issued a draft study entitled "Feasibility Study of Digester Gas Utilization and Onsite Cogeneration". PS&S/Keyspan suggested that rather

than just replacing the existing dual fuel aeration blower engines with new upgraded gas engines as it had previously recommended, the RVSA should replace the existing gas engines with electric motor drives. The justification was that the RVSA would be generating its own power through the use of two (2) 1.4 MW dual fuel (natural gas and/or digester gas) generators that would serve as the primary source of power to the RVSA's wastewater treatment plant. This was a significant change since the gas blower engines could operate using free digester gas and the electric motor drives would substantially increase the RVSA's utility costs. PS&S/Keyspan proposed that the backup source of power would be provided by two (2) 1.4 MW diesel fuel generators. The July 14, 2000 report also recommended that the RVSA use the waste heat from the exhaust of the generators to operate two (2) redundant indirect sludge steam dryers. Finally, the report advocated that the Facility operate in an "isolated mode" meaning that it be completely independent from the power utility grid.

4. In analyzing the economic feasibility of the RVSA utilizing a cogeneration facility coupled with two (2) sludge dryers, PS&S/Keyspan compared it against a base case of merely replacing the existing dual fuel aeration blower engines with new low emissions gas engines (the "Base Case") as recommended in its June 13, 2000 draft report. PS&S/Keyspan estimated that the net evaluated cost (gross capital cost less the cost to implement the Base Case) for constructing the Facility would be approximately \$8.2 million (\$10.4 million gross capital cost - \$2.2 million for the Base Case) and would result in a net annual savings in operating costs to the RVSA of \$1.4 million per year before debt service and annual positive incremental net cash flow of approximately \$882,932 after debt service. This reflected a 5.86 year simple payback ($\$8.2 \text{ million} \div \1.4 million). Operations and maintenance ("O&M") cost estimates were based on PS&S/Keyspan's affiliate, Keyspan Energy Management ("KEM"), providing all O&M outside of routine maintenance.

5. In evaluating the Base Case against which the Facility was being compared, PS&S/Keyspan made certain erroneous assumptions and failed to recognize certain benefits associated with the Base Case. For example, PS&S/Keyspan failed to consider the potential for heat recovery from the exhaust of the gas blower engines. This is significant since the ability to recover the heat from the gas blower engines for use in the RVSA's plant heating loop would have substantially decreased the net cost of implementing the Base Case. In addition, PS&S/Keyspan significantly overstated the cost of labor associated with the Base Case by assuming that it would require four (4) operators when only contract maintenance would be necessary. Similarly, PS&S/Keyspan also overstated the differential cost between "boiler" gas used to fuel the blowers and "cogeneration" gas used to fuel the Facility. The cumulative effect of overstating the costs of the Base Case was to keep the costs with respect to the Base Case artificially high so that it showed an annual positive net cash flow from operating the Facility.

6. On September 11, 2000 PS&S/Keyspan issued a "Preliminary Draft Screening Study of Digester Gas Utilization and Onsite Cogeneration Alternatives". This report essentially made the same recommendations and conclusions as the July 14, 2000 report except that the gross capital cost had increased from \$10.4 million to \$16.2 million. This was due to the addition of heating equipment for the sludge dryer in the amount of \$840,000 and increased cost estimates on other equipment. Therefore, the net evaluated costs were now \$14 million (\$16.2 million gross capital cost - \$2.2 million for the Base Case). The report also recommended the use of one (1) 5,000 lbs./hour sludge dryer. PS&S/Keyspan estimated the net annual savings in operating costs to be \$1.3 million before debt service and positive incremental net cash flow after debt service of approximately \$375,000 per year. This resulted in a 10.75 year simple payback (\$14 million ÷ \$1.3 million). PS&S/Keyspan again suggested that all O&M be outsourced via a long-term contract to

KEM. PS&S/Keyspan also recommended that the sludge dryers be fitted with a pelletizer which would produce a marketable sludge product that could be beneficially reused as a fertilizer.

7. Thereafter PS&S/Keyspan issued another "Draft Screening Study of Digester Gas Utilization and Onsite Cogeneration Alternatives" dated October 19, 2000 and then a "Final Screening Study of Digester Gas Utilization and Onsite Cogeneration Alternatives" dated January 8, 2001 (the July 14, 2000, September 11, 2000 and October 19, 2000 drafts together with the January 8, 2001 final report are hereinafter collectively referred to as the "Screening Studies"). These two studies essentially made the same recommendations and conclusions as the September 11, 2000 report. In the Final Screening Study PS&S/Keyspan indicated a net annual savings in operating costs of \$1.303 million before debt service and annual positive incremental net cash flow of approximately \$375,000 after debt service. This resulted in a 10.75 year simple payback (\$14 million ÷ \$1.303 million). Once again, PS&S/Keyspan suggested that O&M be performed by KEM pursuant to a long-term contract. Finally, PS&S/Keyspan recommended that the Facility be equipped with one (1) 5,000 lbs/hour sludge dryer.

8. On or about March 13, 2001, PS&S/Keyspan submitted to the RVSA a proposal for engineering services required to design the Facility.

9. On March 15, 2001 the RVSA's Board of Commissioners approved payment of an amount not to exceed \$250,000 to PS&S/Keyspan for the preparation of a schematic conceptual design for the Facility. (PS&S/Keyspan had initially requested payment in the amount of \$1,025,000 but the Board only approved \$250,000 to continue the design work.)

10. On or about October 12, 2001, as a result of a law suit filed by the NJDEP and the ALS relating to the RVSA's New Jersey Pollutant Discharge Elimination System Permit ("NJPDES Permit"), the RVSA entered into the JCO. The JCO required that the RVSA undertake a series of improvements to its facilities which would increase the capacity of its wastewater treatment plant

while at the same time complying with the RVSA's NJPDES permit requirements as modified by the JCO.

11. As part of the series of improvements to be made to the RVSA's facilities, the JCO required that the RVSA develop an auxiliary power source capable of maintaining the functions of the upgraded wastewater treatment plant that was to be constructed pursuant to RVSA Contract No. 155. The JCO did not specify that an on-site, stand-alone energy supply, such as the Facility, was required. However, at the time PS&S/Keyspan represented that the Facility would satisfy this requirement of the JCO while at the same time produce the economic benefit to the RVSA that was being reflected in the Screening Studies.

12. In October 2001, based on the recommendations and conclusions that it had expressed in the various Screening Studies, PS&S/Keyspan issued a "Basis of Design" report. PS&S/Keyspan now proposed that the Facility have 4.2 MW of generating capacity rather than the 2.8 MW proposed in the Screening Studies due to projected increases in power demand associated with the wastewater treatment plant improvements that were to be constructed pursuant to RVSA Contract No. 155. The expanded Facility would be powered by two (2) 1.53 MW Caterpillar G3608 generators and one (1) 1.145 MW Caterpillar G3606 generator. It would also now use two (2) 2.0 MW diesel generators for backup power. Again, PS&S/Keyspan recommended that the RVSA outsource the O&M of the Facility to KEM for the twenty (20) year expected useful life of the Facility. Based on PS&S/Keyspan's annual O&M costs, the total payments proposed to be made to KEM over the 20 year contract would be approximately \$28 million. In addition, PS&S/Keyspan also now recommended that a 9,700 lbs./hour dryer manufactured by respondent, K-S be installed as opposed to the 5,000 lbs./hour dryer proposed in the Screening Studies. Therefore, the Basis of Design reflected a dramatic increase in the size of the Facility over what had been set forth in the Screening Studies.

13. Due to the significant increase in the size of the Facility, the gross capital costs increased from the \$16.2 million that was set forth in the Screening Studies to \$19.2 million in a time period of only ten (10) months from January 8, 2001 to October 2001. However, the net evaluated costs decreased from the \$14 million that was set forth in the Screening Studies to \$13.4 million. This was because PS&S/Keyspan was now suggesting that the cost of implementing the Base Case had to be increased from \$2.2 million to \$5.8 million in order to account for a plant emergency backup system to be constructed at a cost of \$3.6 million purportedly in order to satisfy the requirements of the JCO. (The RVSA eventually installed an emergency backup system in 2010 at a cost of only approximately \$2 million.) **Notwithstanding these significant changes to the economics of the Facility, PS&S/Keyspan continued to conclude that there was a substantial net annual operational cost savings to the RVSA of approximately \$1.27 million before debt service, and positive incremental net cash flow after debt service of approximately \$385,000 per year.** This reflected a simple payback of 10.52 years ($\$13.4 \text{ million} \div \1.27 million).

14. In October of 2001 PS&S/Keyspan's Basis of Design report and economic analysis was sent to the engineering firm of respondent, M&E which had been retained by the RVSA to prepare an evaluation of sludge disposal alternatives. The purpose for this evaluation was to determine whether it would be more cost effective for the RVSA to construct the Facility being recommended by PS&S/Keyspan or to transport thickened sludge off-site for disposal at another wastewater treatment facility.

15. In its final report to the RVSA dated November 7, 2001, M&E concluded that the annualized costs of implementing the alternative plan of transporting thickened sludge off-site was not significantly different than constructing the Facility. Therefore, M&E recommended that the RVSA consider other qualitative factors in determining which direction to proceed.

16. Ultimately, based on the economic analyses performed by PS&S/Keyspan which proposed significant annual cost savings to the RVSA of \$1.27 million by building the Facility, on November 19, 2001 PS&S/Keyspan convinced the RVSA's Board of Commissioners to continue the RVSA's sludge operations and move forward with the construction of the Facility rather than the alternative plan of transporting thickened sludge off-site.

17. Thereafter, on December 20, 2001 the RVSA's Board of Commissioners adopted Resolution No. 01-102 appropriating an additional \$931,599, for a total amount not to exceed of \$1,181,599, for PS&S/Keyspan to proceed with a final design of the Facility.

18. In order for the RVSA to comply with its financing requirements through the New Jersey Environmental Infrastructure Trust ("NJEIT"), a value engineering study was performed on the Facility by respondents, HMM, PES, CCMS, Amin and Laguarda (the "VE Team"). On or about February 20, 2003 PS&S/Keyspan issued another report entitled "Updated Evaluation of Project Economics & Engine Generator Alternatives Assessment" in which it revised the economics of the Facility based upon the recommendations that were made in the value engineering study (the February 20, 2003 PS&S/Keyspan report is hereinafter referred to as the "VE Response"). (The VE Response also purportedly revised the economics based on updated utility costs associated with sludge disposal and cogeneration gas service.) In the VE Response PS&S/Keyspan accepted the VE Team's recommendation regarding the elimination of the two diesel backup generators in favor of utilizing the power utility as the backup power source. The VE Response represents the last economic evaluation that was performed by PS&S/Keyspan before the RVSA's Board of Commissioners approved finalization of the design and construction on the Facility was commenced.

19. In all of the previous iterations of the economic analyses set forth in the Screening Studies and Basis of Design PS&S/Keyspan had, in analyzing the economic feasibility of the Facility, compared it against the Base Case of merely replacing the existing dual fuel aeration blower

engines with new low emissions gas engines at a cost of \$2.2 million. In the previous reports PS&S/Keyspan made clear that installing electric motors for aeration blowers should not be implemented unless the RVSA chose to proceed with the Facility. **Now for the very first time in the VE Response, PS&S/Keyspan included electric motor blowers as part of the Base Case even though the design for the Facility had not yet been completed and the RVSA's Board of Commissioners had not made a decision to switch to electric motor blowers or made the final decision to construct the Facility.** This brought the cost of implementing the Base Case to \$3.6 million. Only after the final design was completed did the Board approve the construction of the Facility. (The Board only approved the final conceptual design and a study on noise and air pollution related to the Facility on December 20, 2001. Final design work was ongoing until the bid for construction of the Facility was approved by the Board in February of 2004).

20. By using a different Base Case, together with assumed additional project implementations, PS&S/Keyspan raised the RVSA's purported electric demand and thereby made the Facility appear to be economically viable when it clearly was not. Furthermore, the new but erroneous Base Case failed to consider the use and associated benefit of utilizing digester gas in the aeration blower engines since it no longer contemplated aeration blower engines capable of consuming the digester gas. Compounding the issue was the fact that in the new Base Case PS&S/Keyspan continued to assume the inflated labor costs associated with four (4) operators even though they were now completely unnecessary for the operation of the electric motor blowers. The elimination of the labor alone would have resulted in negative cash flow after debt service. By erroneously reflecting the operators in the Base Case costs with respect to virtually maintenance-free electric blower motors, PS&S/Keyspan was able to continue to represent that there was an annual savings in operating costs of approximately \$1.1 million prior to debt service and \$202,000 after debt service.

21. Without this inappropriate switch in the Base Case and failure to recognize heat recovery on the gas blower engines, PS&S/Keyspan's economic feasibility analysis would have reflected an annual operating cost savings (assuming that the balance of its analysis was correct, which it was not) **which was not enough to service the debt and after debt service would show a loss.** Therefore, in order to continue to misrepresent to the RVSA that the Facility was economically viable, PS&S/Keyspan needed to change the Base Case. Otherwise, the fact that it was not economically viable would have become blatantly obvious. Indeed, there were many other errors made in favor of constructing the Facility in addition to these very basic and blatant ones.

22. While the VE Response essentially made the same recommendations and conclusions set forth in the Basis of Design, PS&S/Keyspan again recommended a still larger Facility. The Facility would have 4.6 MW of power generating capacity rather than the 4.2 MW Facility proposed in the Basis of Design (the Facility would be powered by three (3) 1.53 MW Caterpillar G3608 generators rather than two (2) 1.53 MW Caterpillar G3608 generators and one (1) 1.145 MW Caterpillar G3606 generator). Backup power would come from the utility. PS&S/Keyspan continued to recommend a 9,700 lbs./hour dryer manufactured by respondent, K-S as opposed to the 5,000 lbs./hour dryer proposed in the Screening Studies. The projected gross capital costs for the Facility were reduced from approximately \$19.2 million to approximately \$18 million, however, the net evaluated cost increased from \$13.4 million to \$14.8 million based on the fact that there was no longer a credit shown for the blower engines as opposed to electric motors since the Base Case had already been changed.

23. Once again, **notwithstanding that the economics of the Facility had now changed dramatically, PS&S/Keyspan continued to conclude that there was a net annual operational cost savings which had decreased only slightly from approximately \$1.27 million to \$1.14 million before debt service** and positive incremental net cash flow after debt service of

approximately \$202,000 per year. This reflected a simple payback of 13 years (\$14.8 million ÷ \$1.14 million) as opposed to the 10.52 years represented in the Basis of Design.

24. Thereafter, on or about July 16, 2003 the RVSA entered into a professional services agreement with PS&S/Keyspan in the amount of \$1,266,599 (the "PS&S/Keyspan Design Contract") to perform the services set forth in the PS&S/Keyspan proposal including the design and preparation of plans and specifications for the Facility.

25. Pursuant to a public bid, on or about February 12, 2004, respondent, Reid entered into Contract No. 105 (the "Contract") with the RVSA for the construction of the Facility in the amount of Reid's contract bid price of \$17,133,295.

26. Reid subsequently entered into subcontracts with respondent, CAT/Foley for the furnishing of the three (3) G3608 gas generator sets (the "Caterpillar Engines") and with respondent, K-S for the furnishing of the 9,700 lbs./hour sludge dryer.

b. The 4th Caterpillar Engine

27. After construction of the Facility commenced, PS&S/Keyspan represented that it had underestimated the electrical loads that would be required to run the future wastewater treatment plant once all the improvements that were required by the JCO were implemented. In a report dated July 13, 2004, PS&S/Keyspan recommended that a fourth (4th) 1.53 MW gas generator be installed (the "4th Caterpillar Engine Report") bringing the generating capacity of the Facility to 6.2 MW up from the 4.6 MW recommended by PS&S/Keyspan in the VE Response.

28. Due primarily to the implementation of the 4th Caterpillar Engine, the projected gross capital costs for the Facility had now increased to approximately \$26 million from \$18 million and the net evaluated cost increased from \$14.8 million to \$18.5 million. Once again, **notwithstanding the significant proposed expansion to the Facility, PS&S/Keyspan continued to conclude that there was a net annual operational cost savings to the RVSA by implementing the Facility**

which had now actually increased to approximately \$1.4 million. This reflected a simple payback of 13.23 years ($\$18.5 \text{ million} \div \1.4 million) and close to break-even cash flow after debt service in the first year of operation with increasing amounts of cost savings associated with the Facility thereafter. However, PS&S/Keyspan misstated the net evaluated cost of \$18.5 million. When calculated correctly, the evaluated cost is actually \$20.4 million ($\$26 \text{ million gross capital cost} - \$5.6 \text{ million for the Base Case}$) resulting in a simple payback 14.58 years ($\$20.4 \text{ million} \div \1.4 million) and a negative cash flow after debt service of \$155,835.

29. PS&S/Keyspan was paid by the RVSA an additional \$150,800 to do the design work associated with the 4th Caterpillar Engine. This brought the total paid by the RVSA to PS&S/Keyspan to \$1,481,479.

30. On or about December 29, 2004, the RVSA issued Change Order No. 1 ("C.O. #1") to Reid in the amount of \$2,708,200 for the furnishing and installation of the 4th Caterpillar Engine in accordance with revisions made by PS&S/Keyspan. This brought the total amount of the Contract to \$19,841,495 ($\$17,133,295 \text{ contract bid price} + \$2,708,200$).

31. After C.O. #1 was executed, Reid entered into a subcontract with CAT/Foley for the purchase of the 4th Caterpillar Engine.

32. The RVSA eventually issued a third change order ("C.O. #3") to Reid in the amount of \$476,459 for, among other things, numerous building modifications in order to accommodate the installation of the 4th Caterpillar Engine that had been authorized by C.O. #1. This brought the total amount of the Contract to \$20,721,545. The installation of the 4th Caterpillar Engine contributes to maintenance difficulties since the four Caterpillar Engines are housed in a building that was designed for only three. The 4th Caterpillar Engine occupies space that was originally designed for a maintenance bay.

c. Take-or-Pay Natural Gas Contract and the Flaring Off of Digester Gas

33. PS&S/Keyspan's design for the Facility called for the natural gas connection to be through a low pressure, small diameter gas main that provides service to the RVSA's other site buildings. However, PS&S/Keyspan failed to recognize that the existing natural gas main was inadequate for the proper delivery of natural gas to the Facility based on the volume and pressure that was required. Therefore, it became necessary for the RVSA to arrange for the installation of a new one (1) mile-long, high pressure natural gas main. This oversight is significant because had PS&S/Keyspan properly recognized the need for this capital expenditure at the time it performed its Screening Studies and Basis of Design, it would have changed the economic evaluation of the Facility and may have militated in favor of not proceeding with its construction.

34. On November 22, 2004 the RVSA entered into a contract for natural gas transportation services for the Facility with NUI Utilities, Inc. d/b/a Elizabethtown Gas Company ("E-Town"). Since it was necessary for E-Town to incur the capital expense of installing the new high pressure main, the contract required that the RVSA pay E-Town \$200,000 in eight (8) installments of \$25,000 between January and August of 2005. In addition, the contract was in the form of a "take-or-pay" whereby the RVSA was obligated to take, or pay for if not taken, in each contract year, a Minimum Contract Year Quantity ("MCYQ") of transportation service equal to 180,000 dekatherms ("dth"). If the RVSA failed to take its full MCYQ in any contract year, after the conclusion of such contract year, E-Town would bill the RVSA for the deficiency at the base firm transportation rate of \$0.627 per dth. Under the terms of the contract the take-or-pay obligation was to expire at the earlier of (i) the end of the fifth contract year or (ii) when the RVSA had received and paid for 900,000 dth of transportation service. The RVSA has been required to pay E-Town a minimum of \$564,300 (900,000 dth @ \$0.627 per dth) under the take-or-pay provisions of the contract for natural gas it was not able to use in the Facility because it was still not operable.

35. Based upon PS&S/Keyspan's advice that it should proceed with the Facility, in April 2007 the RVSA decommissioned its old dual fuel aeration blower engines and converted to electric motor drives. PS&S/Keyspan had indicated in the Screening Studies that the RVSA should convert to electric motor drives only if it were to proceed with the Facility so that it could utilize the digester gas that would have otherwise been fed into the aeration blower engines as fuel for the Facility's generators. In the absence of the Facility, however, the electric motor drives unnecessarily and significantly add to the RVSA's electricity demand.

36. Once the conversion to electric motor drives was made the RVSA was compelled to flare-off valuable digester gas that it would have previously used in its blower engines and that it was now unable to use in the Facility because it was still not operable.

d. The Diesel Generators

37. As designed by PS&S/Keyspan, the Facility's Caterpillar Engines were intended to provide the RVSA with its primary source of power for the operation of its wastewater treatment plant. The two (2) 2.0 MW diesel generators were originally proposed to serve as the backup. As indicated above, the value engineering study recommended the elimination of the two (2) diesel generators and proposed that the RVSA use power purchased from the utility as the backup power source. This recommendation was accepted and endorsed by PS&S/Keyspan.

38. In early 2009, when it began to appear that the Facility would not generate operating cost savings, Michael Brinker, the RVSA's Executive Director, began evaluating the propriety of using the Facility as the primary source of power for the RVSA's wastewater treatment plant. Instead, Mr. Brinker considered the use of the power utility as the primary source of power and the Facility as the backup. However, in investigating this scenario further it was discovered that the Caterpillar Engines could never be used as a backup power source because they did not have "black start" capability. This meant that they could not be started without utility power being available. In

addition, the Caterpillar Engines have poor "block loading" capability which means that they cannot ramp up to full power output in sufficient time to maintain the operations of the wastewater treatment plant. In fact, the Caterpillar Engines are not capable of taking on a full load for approximately forty (40) minutes. That period of time is not acceptable as a backup in running a wastewater treatment plant which must be capable of directing and treating incoming sewage flow at all times in order to avoid discharges of untreated effluent and backups of sewage.

39. In order for the Facility to have the flexibility to be operated in a secondary capacity, Mr. Brinker recommended to the RVSA's Board of Commissioners that the diesel generators be purchased that had been taken out of the Facility based on the recommendation contained in the value engineering study that was accepted by PS&S/Keyspan.

40. Thereafter, the RVSA contracted with respondent, HMM, in association with its affiliate Careba Mott MacDonald ("HMM/CMM"), to conduct an independent review of the Facility from the standpoint of proposed operating scenarios. HMM/CMM issued a report dated April 9, 2009 entitled "Cogen Operation Review and Evaluation Report". In the report HMM/CMM concluded that in order for the RVSA to have the most flexibility and reliability it should move forward with the acquisition and installation of the diesel generators. HMM/CMM recognized that under the then existing fuel cost structure (natural gas and electricity) operating the RVSA's wastewater treatment plant with the utility as the primary source of electricity may be more cost effective than operating the Facility to produce power.

41. Thereafter, based upon the conclusions reached in the HMM/CMM report, on May 21, 2009 the RVSA's Board of Commissioners authorized the issuance of Change Order No. 11 ("C.O. #11") to Reid in the amount of \$1,979,314 for the furnishing and installation of two (2) 2.0 MW diesel generators. (In the Basis of Design PS&S/Keyspan had previously suggested that the RVSA construct an emergency backup facility to house the two (2) 2 MW diesel generators if the

Facility was not implemented at a cost of over \$3.6 million). PS&S/Keyspan's Design Contract was amended to provide for an additional \$23,300 for the extra design work associated with C.O. #11, bringing the total on the Design Contract to \$1,637,487.

e. The Facility Produces an Economic Loss to the RVSA

42. In late 2009 the Facility was still not operational due to the potential for further explosions which had previously occurred on several occasions while the Caterpillar Engines were being tested as well as other significant technical, engineering and design deficiencies. Mr. Brinker prepared a budget for the RVSA for the upcoming 2010 year that indicated that **not** operating the Facility would actually save the RVSA approximately \$833,000 for the year. This conclusion was contrary to the representations made by PS&S/Keyspan set forth in the various economic evaluations contained in the Screening Studies, the Basis of Design, the VE Response, and the 4th Caterpillar Engine Report. Those evaluations claimed that the Facility would save the RVSA on an annual basis approximately \$1.14 million to \$1.4 million in operating costs. The budget was ultimately approved by the RVSA's Board of Commissioners on December 27, 2009.

43. Shortly after the RVSA's litigation consultants at Cipolla & Co. CPAs & Litigation Consultants ("Cipolla") were engaged in December 2009, Cipolla concluded that the Facility was probably never economically feasible (even at the design stage) and may never be economically advantageous to run on an "as designed" basis or in any other operational mode. Indeed, in early 2010, Cipolla contacted and interviewed the principal author of HMM's April 2009 report who initially asked if the conversation was being recorded. After he was advised that it was not, he admitted to Cipolla that he felt the RVSA had been "sold a bill of goods" and that the Facility was "not a system that I can support from the outset." Notwithstanding these opinions, HMM nevertheless continued to suggest to the RVSA that the economic issues related solely to the relative pricing for natural gas and electricity. However, it is now clear that this was never, and is still not,

the case. Cipolla also questioned HMM regarding its economic analysis presented in its April 2009 report which suggested that it was economically advantageous to purchase the two back-up diesel engines. The principal author was unable to offer any cogent explanation about the purported economic benefits associated with the diesels, and thereafter his manager unequivocally stated that the acquisition and installation of the diesels were not supported by any economic analysis, and that the sole justification was simply to comply with the mandate of the JCO.

44. The RVSA determined to build the Facility based upon the representations that were made by PS&S/Keyspan regarding its economic viability-specifically the purported \$1.2 million operating cost savings-as reflected in the various economic evaluations that PS&S/Keyspan had performed. However, it is now clear that the Facility, as it was designed by PS&S/Keyspan and intended to be used, does not reduce operating costs but actually increases operating costs. The Facility is substantially over-sized relative to the RVSA's needs. The Facility's power generating capacity far exceeds the RVSA's electricity demand for its new upgraded wastewater treatment plant. In addition, the Facility's sludge dryer is substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume. Had PS&S/Keyspan presented truthful, accurate and reasonable economic analyses, the Facility would have never been built. The RVSA would have simply upgraded its old gas blower engines and incurred a relatively small cost to install two (2) backup diesel generators in order to meet the requirements of the JCO rather than the tens of millions of dollars associated with the design and construction of the Facility that makes no sense to run.

45. Pursuant to its Contract No. 155 the RVSA's wastewater treatment plant's peak hydraulic capacity has been increased from 55 million gallons per day ("mgd") to 105 mgd. However, even with the wastewater treatment plant expansion now completed it is clear that the electricity demand necessary to accommodate a peak flow of 105 mgd is approximately 3 MW of

power. This is not anywhere near the 6.2 MW that the Facility was designed for by PS&S/Keyspan. In addition, the sludge dryer is also twice the size than what is necessary to dry the RVSA's sludge.

46. The Facility, as it was designed by PS&S/Keyspan and intended to be used, does not result in any economic benefit to the RVSA relative to the alternative uses to which the RVSA's digester gas may be put and relative to the fair market value of the Facility's equipment. In fact, **rather than the \$1.2 million benefit represented by PS&S/Keyspan, the Facility produces no cost savings to the RVSA even before taking into account debt service. After debt service the Facility represents an operating cost to the RVSA. Therefore, rather than the RVSA realizing a simple pay back on the Facility of somewhere between 10.52 and 13.23 years as was consistently represented by PS&S/Keyspan, the RVSA will never realize any return on its money.**

47. Since it is not economically beneficial for the RVSA to operate the Facility in the manner in which it was designed and intended by PS&S/Keyspan, and since the RVSA has already switched from its dual fuel aeration blower engines to the electric motor drives pursuant to the recommendations that were made by PS&S/Keyspan, the RVSA has been flaring-off and wasting valuable digester gas that could have otherwise been used in the dual fuel aeration blower engines. To date, the RVSA has flared-off and wasted over \$2 million worth of digester gas. The loss of this valuable resource is exacerbated by the fact that the RVSA is now consuming an excessive amount of electricity to run the electric blower motors than otherwise would have been the case. So far the RVSA has incurred electricity costs in excess of \$2 million associated with the electric blower motors.

48. The RVSA is also incurring additional costs associated with its take-or-pay contract with E-Town whereby it is paying for natural gas that it cannot use because it is not economically beneficial to operate the Facility.

f. Design Deficiencies

49. Even if the Facility were economically feasible to operate at the present time, which it is not, there are numerous deficiencies associated with its design that would have to be addressed before it can be operated on a long-term basis. The rectification of such design deficiencies would require significant additional capital expenditure.

50. One of these design deficiencies is related to the Facility's engine exhaust breeching system (the "System"). In a "Commissioning Report Addendum" dated January 22, 2009 Caterpillar raised a concern that there was too much movement in the System. Caterpillar indicated that such movement in the System will prematurely fatigue its component parts. Therefore, Caterpillar suggested that the System be further restrained. When the RVSA raised this issue with the designer of the Facility, PS&S/Keyspan, and the general contractor, Reid, both refused to take responsibility for the design of the System and suggested that the other was contractually obligated for any redesign that may be necessary in order to address the concern that was raised by Caterpillar. Ultimately, the RVSA was forced to engage the services of a third party to review the existing design of the System. That third party issued a report that made a series of recommendations with respect to the System that would have to be implemented before the Facility could be operated on a long-term basis.

51. In addition to the issues associated with the System, there are a number of other design deficiencies that have become apparent as a result of a temporary start up of the Facility (the "Test"). These design deficiencies would also have to be addressed if the Facility were to be run on a long-term basis.

52. The Test was commenced on October 21, 2010 and concluded on March 7, 2011. The objective of the Test was to evaluate the Facility's equipment, the economics of operating the Facility, and to perform air emissions testing in accordance with the RVSA's Air Operating Permit

(the "Permit") required by NJDEP. During the Test the Caterpillar Engines were operated on all three (3) fuels (natural gas, digester gas and blended fuel). All interested parties to this matter were provided notice of the Test and given the opportunity to witness same. Only PS&S/Keyspan sent a representative to be present during certain days and times of the Test. The design deficiencies that became evident during the Test include, but are not necessarily limited to, the following:

- a) The Caterpillar Engines cannot be operated at their maximum efficiency and still be capable of meeting the requirements set forth in the RVSA's Air Operating Permit (the "Permit") that has been issued by NJDEP. The Permit requires a minimum exhaust temperature of 851° F at the catalyst. This temperature is not attainable with the Caterpillar Engines operating at over 70% load on blended (digester and natural gas) fuel or 60% load on natural gas. Therefore, in order to meet the Permit requirements, the Caterpillar Engines can only be operated at less than their maximum load. When the Caterpillar Engines are operated in this manner, they are less efficient and consume more fuel than is necessary. PS&S/Keyspan should have known that the Caterpillar Engines, as presently designed and configured, are incapable of meeting the limits set forth in the Permit when they are operated at their maximum load. PS&S/Keyspan failed to design a catalyst/engine combination that would permit the Caterpillar Engines to operate at their maximum efficiency and still meet the requirements of the Permit;
- b) The Caterpillar Engines can only run on digester gas for approximately eight (8) hours at full load before the RVSA's supply of digester gas is exhausted;

- c) During a power failure the Facility failed to go into "isolated mode" as it was supposed to due to a coordination issue between the utility breaker set points and the Caterpillar Engine breaker set points; and,
- d) The sizing of the gas treatment system appears to be incorrect. Digester gas samples have indicated sulfur and siloxanes levels that appear to be higher than those used to size the gas treatment system. An on-line monitoring system should have been included in the design.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

53. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

54. Respondents, PS&S/Keyspan, conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 *et seq.*

55. PS&S/Keyspan engaged in unlawful and deceptive practices through the false promises, affirmative misrepresentations, and/or concealment of material relevant facts regarding the economic benefit that the RVSA would achieve from the Facility. The RVSA made the decision to build the Facility based upon the representations that were made by PS&S/Keyspan regarding its economic viability.

56. The Facility that was designed by PS&S/Keyspan is substantially larger than what is required for its intended use and for the RVSA's actual needs.

57. Rather than the annual \$1.2 million benefit that was represented by PS&S/Keyspan the Facility, as designed and for its intended use, does not produce any economic benefit to the RVSA and after debt service represents a significant operating cost.

58. PS&S/Keyspan stood to gain financially by creating a series of false and misleading reports and submitting those reports in order to facilitate the construction and maintenance of the Facility and thus obtain a design contract for which it was ultimately paid \$1,637,487. PS&S/Keyspan was also paid an additional \$1,616,799 to perform engineering services as a subcontractor to CCMS, the construction oversight engineer on the Facility. Finally, at the early stages of the design, PS&S/Keyspan sought to benefit financially by obtaining a lucrative operations and maintenance contract to run the Facility worth approximately \$28 million over the useful life of the Facility.

59. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

60. There is more than a casual nexus between the unlawful conduct engaged in by PS&S/Keyspan and the RVSA's ascertainable loss. The RVSA relied upon the economic evaluation information and design that were prepared by PS&S/Keyspan in making the determination to build the Facility. As a result of that reliance, the RVSA was caused to expend in excess of \$36 million to have the Facility built.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding attorney's fees, filing fees and reasonable costs of suit;
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

61. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

62. Respondents, PS&S/Keyspan, knowingly conducted deceptive practices that constitute fraud.

63. PS&S/Keyspan made material misrepresentations of fact to the RVSA relating to the economic feasibility of the Facility with the knowledge that those facts were false.

64. PS&S/Keyspan made such material misrepresentations of fact to the RVSA with the intent that the RVSA would rely on those facts in deciding to build the Facility.

65. The RVSA reasonably relied on the misrepresentations of fact and determined to build the Facility based upon the misrepresentations made by PS&S/Keyspan regarding its economic viability.

66. PS&S/Keyspan stood to gain financially by creating a series of false and misleading reports and submitting those reports in order to facilitate the construction and maintenance of the Facility and thus obtain a design contract for which it was ultimately paid \$1,637,487. PS&S/Keyspan was also paid an additional \$1,616,799 to perform engineering services as a subcontractor to CCMS, the construction oversight engineer on the Facility. Finally, at the early stages of the design, PS&S/Keyspan sought to benefit financially by obtaining a lucrative operations and maintenance contract to run the Facility worth approximately \$28 million over the useful life of the Facility.

67. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact made by PS&S/Keyspan.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

68. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

69. PS&S/Keyspan issued various incorrect statements that were negligently made regarding the economic benefit that the RVSA would achieve from the Facility.

70. The RVSA justifiably relied upon such incorrect statements regarding the Facility's economic viability in making its decision to build the Facility.

71. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

- A. Awarding the RVSA damages relating to PS&S/Keyspan's negligent misrepresentations through their designs, economic evaluations and reports of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FOUR

MALPRACTICE

72. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

73. PS&S/Keyspan owed a duty to the RVSA to adhere to the accepted standard of care relative to the economic evaluation that was performed that formed the basis and justification for the RVSA to make the determination to proceed with the design and ultimate construction of the Facility.

74. PS&S/Keyspan failed to adhere to this accepted standard of care in many respects including, but not limited to:

- a) PS&S/Keyspan failed to properly evaluate the Base Case engine blower option;
- b) PS&S/Keyspan failed to properly evaluate labor, maintenance and utility costs;
- c) PS&S/Keyspan failed to properly evaluate natural gas supply requirements;
- d) PS&S/Keyspan improperly evaluated the electric load that the RVSA's wastewater treatment plant required;
- e) PS&S/Keyspan improperly changed the Base Case in order to influence the results of its economic evaluation of the Facility;
- f) PS&S/Keyspan changed the cost estimate for the Facility from one study to the next without providing detailed justification for the changes;
- g) PS&S/Keyspan failed to properly assess all project related costs thus arriving at incorrect cost estimates;
- h) PS&S/Keyspan improperly reached an incorrect conclusion that the anticipated net annual operating cost savings would remain essentially unchanged despite increasing the capital cost for the Facility to \$26 million from an initial \$16.2 million;
- i) PS&S/Keyspan improperly designed the System for the Facility; and,
- j) PS&S/Keyspan improperly designed the catalyst system for the Caterpillar Engines which prevents the Caterpillar Engines from being able to run at their maximum load and still meet the requirements of the RVSA's Permit.

75. PS&S/Keyspan was negligent in its performance of the economic evaluations for the Facility.

76. PS&S/Keyspan failed to adhere to the accepted standard of care associated with the economic evaluation of the Facility, failed to provide adequate service commensurate with industry standards and failed to exercise that degree of care that a reasonable engineer would exercise in regard to evaluating the economics of the Facility.

77. PS&S/Keyspan committed malpractice when it breached its duty of care towards the RVSA by failing to properly perform the necessary economic evaluation that was required as a prerequisite for the RVSA in making the determination to proceed with the construction of the Facility.

78. PS&S/Keyspan's breach of duty of care, failure to adhere to the accepted standard of care, and its defective evaluation of the economics of the Facility proximately caused injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

- A. Awarding the RVSA damages relating to PS&S/Keyspan's malpractice, negligence, and defective design of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FIVE

BREACH OF CONTRACT

79. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

80. PS&S/Keyspan entered into two (2) separate contracts with the RVSA for the performance of engineering services regarding the economic feasibility of the Facility and the design of the Facility.

81. PS&S/Keyspan failed to perform its obligations under both of its contracts with the RVSA.

82. The Facility that PS&S/Keyspan recommended and designed pursuant to its contracts with the RVSA is substantially larger than what is required for the RVSA's actual needs and as it was designed and intended to be used, does not produce any economic benefit to the RVSA.

83. PS&S/Keyspan failed to perform various services to the RVSA that were required under its contracts with the RVSA.

84. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

- A. Awarding damages to the RVSA by reason of breach of contract;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT SIX

DISGORGEMENT OF FEES

85. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

86. PS&S/Keyspan entered into contracts with the RVSA for the performance of engineering services regarding the economic feasibility of the Facility and the design of the Facility.

PS&S/Keyspan also received fees as a consultant to CCMS who was the construction oversight engineer on the Facility.

87. PS&S/Keyspan breached its contractual and fiduciary obligations to the RVSA by recommending a Facility that is substantially larger than what is required for its intended use and for the RVSA's actual needs.

88. PS&S/Keyspan received fees in excess of \$3,254,286 for the services that it performed for the RVSA with respect to the Facility.

89. PS&S/Keyspan must disgorge all of the fees that it received from the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against PS&S/Keyspan as follows:

A. Compelling PS&S/Keyspan to disgorge all fees and awarding those fees to the RVSA in the amount of \$3,254,286, plus all applicable interest thereon;

B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and

C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENTS, HMM, PES, CCMS, AMIN AND LAGUARDA

90. RVSA incorporates herein by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

91. Once PS&S/Keyspan was authorized to proceed with a final design for the Facility, the RVSA pursued financing through the NJEIT. In order to obtain financing through the NJEIT the RVSA was required to have a value engineering study performed for purposes of identifying areas of potential cost savings on the Facility.

92. In response to the RVSA's Request for Proposals to provide value engineering services respondent, HMM, in association with respondents, PES and CCMS, submitted a proposal to provide such services. Thereafter, on November 25, 2002 the RVSA's Board of Commissioners

adopted Resolution No. 02-71 approving the award of a contract to HMM in an amount not to exceed \$88,500.

93. In December 2002 HMM submitted its value engineering report to the RVSA. The study was facilitated by PES with a seven (7) person, multi-disciplined engineering team that included members from respondents, Amin and Laguarda in addition to HMM and CCMS (the "VE Team"). The resumes of the individuals that were on the VE Team submitted as part of HMM's proposal reflected that none of them had any prior experience with cogeneration facilities.

94. The value engineering study was performed at a time when the Facility was at the 40% design submission stage and had an estimated cost of \$21,000,000. The stated purpose of the study was to "identify areas in a design that potentially have unnecessary costs, to formulate ideas or alternative methods for achieving beneficial changes in these areas, and to develop recommendations which are cost-effective and/or improve performance and reliability".

95. One of the original cost savings recommendations contained in the value engineering study was the elimination of the proposed Facility altogether in favor of the RVSA purchasing power from the utility and utilizing diesel generators for emergency power and dewatering sludge as was the current practice. In conjunction with this recommendation the study suggested that the RVSA replace its existing gas engine blowers with newer ones. This recommendation was consistent with what PS&S/Keyspan had originally recommended in its initial draft report dated June 13, 2000 before PS&S/Keyspan started to urge the RVSA to proceed with the implementation of the Facility. The estimated capital cost savings based on this recommendation was \$15,189,000; however, based solely on information supplied by PS&S/Keyspan, the VE Team concluded that this option would result in a total present worth savings of negative (loss) \$6,316,000 and, therefore, was not cost effective.

96. The VE Team knew, or reasonably should have known, that the Facility was not economically viable as designed for its intended use and failed to recommend to the RVSA that it should not be built.

97. Ultimately, the VE Team recommended a total of \$3,850,000 in capital cost savings on the Facility resulting in a total present worth savings in the amount of \$4,621,000. Of this amount, by far the largest recommended cost savings measure was the elimination of the two (2) diesel generators that had been proposed in the original design to be used for backup power. Instead, the VE Team recommended that the RVSA use power purchased from the utility as the backup. This recommendation alone accounted for \$1,617,000 in capital cost savings and reflected a total present worth savings of \$2,310,000. (Approximately eight (8) years later, as a result of the problems and issues associated with the Facility, the RVSA determined to install the two (2) diesel backup generators at a cost of under \$2 million.)

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

98. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

99. Respondent, the VE Team, conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

100. The VE Team performed the unlawful practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts contained in the value engineering study that it rendered to the RVSA regarding the Facility.

101. The VE Team acted in concert with other parties to this matter in order to perpetrate a fraud on the RVSA for purposes of economic gain. (Two members of the VE Team, HMM and

CCMS, subsequently benefited financially from contracts that were awarded by the RVSA to perform other services with respect to the Facility).

102. The VE Team knew, or should have known, that the value engineering study it rendered to the RVSA failed to provide justification for the recommendations that it was making with respect to the Facility and its economic viability.

103. Based on information and belief, the VE Team failed to reveal material facts to the RVSA regarding the Facility and its economic viability and intended that the RVSA rely on that concealment.

104. The RVSA has an ascertainable loss in excess of \$36 million that it spent to build the Facility.

105. There is more than a casual nexus between the unlawful conduct performed by the VE Team and the RVSA's ascertainable loss. The RVSA relied upon the information and expert knowledge provided by the VE Team in making the determination to build the Facility. As a result of that reliance, the RVSA was caused to expend in excess of \$36 million to build a Facility that, as designed and intended to be used, is excessively overbuilt and from which it will not derive any economic benefit.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against the VE Team as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding attorney's fees, filing fees and reasonable costs of suit;
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

106. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

107. The VE Team knowingly conducted deceptive practices that constitute fraud.

108. The VE Team made material misrepresentations of fact in its value engineering study regarding the Facility and its economic viability with the knowledge that those facts were false.

109. The VE Team intended that the RVSA would rely on those facts in making decisions with respect to the Facility.

110. The RVSA reasonably relied on the misrepresentations of fact and/or the concealment thereof in determining to proceed with building the Facility.

111. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact and/or the concealment thereof by the VE Team.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against the VE Team as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

112. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

113. The VE Team issued various incorrect statements that were negligently made regarding the Facility.

114. The RVSA justifiably relied upon such incorrect statements regarding the Facility in making its decision to build it.

115. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against the VE Team as follows:

- A. Awarding the RVSA damages relating to the VE Team's negligent misrepresentations through its value engineering study of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FOUR

MALPRACTICE

116. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

117. The VE Team owed a duty to the RVSA to adhere to the accepted standard of care relative to the performance of the value engineering study which, together with the economic evaluations that were performed by PS&S/Keyspan, formed the basis and justification for the RVSA to make the determination to proceed with the final design and ultimate construction of the Facility.

118. The VE Team failed to adhere to this accepted standard of care in many respects including, but not limited to:

- a) improperly evaluating the economics of the Facility;
- b) improperly evaluating the information supplied to it by PS&S/Keyspan;
- c) improperly concluding that its original cost savings recommendation to eliminate the proposed Facility altogether in favor of the RVSA purchasing

power from the utility and utilizing diesel engine generators for emergency power and dewatering sludge as was the current practice, was not economically beneficial and would result in a total present worth savings of negative \$6,316,000 and, therefore, was not cost effective.

119. The VE Team was negligent in its performance of the value engineering study for the Facility.

120. The VE Team failed to adhere to the accepted standard of care associated with the value engineering study of the Facility, failed to provide adequate service commensurate with industry standards, and failed to exercise that degree of care that a reasonable engineer would exercise in regard to performing a value engineering study of the Facility.

121. The VE Team committed malpractice when it breached its duty of care towards the RVSA by failing to properly perform the necessary value engineering study that was required as a prerequisite for the RVSA in making the determination to proceed with the construction of the Facility.

122. The VE Team's breach of duty of care, failure to adhere to the accepted standard of care and its defective value engineering study of the Facility proximately caused injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against the VE Team as follows:

- A. Awarding the RVSA damages relating to the VE Team's malpractice, negligence, and defective value engineering study of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FIVE

BREACH OF CONTRACT

123. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

124. The VE Team entered into a valid contract with the RVSA to prepare a study of the design of the Facility.

125. The stated purpose of the study was to "identify areas in [the] design that potentially have unnecessary costs, to formulate ideas or alternative methods for achieving beneficial changes in these areas, and to develop recommendations which are cost-effective and/or improve performance and reliability".

126. The performance of the value engineering study, together with the economic evaluations, formed the basis and justification for the RVSA to make the determination to proceed with the final design and ultimate construction of the Facility.

127. The VE Team breached the contract since it failed to conclude that the construction of the Facility presented an unnecessary cost to the RVSA and that the most cost-effective recommendation was to eliminate the proposed Facility altogether in favor of the RVSA purchasing power from the utility and utilizing diesel engine generators for emergency power and dewatering sludge as was the current practice.

128. As a direct, proximate, and foreseeable result of the VE Team's breach of contract, the RVSA has been damaged.

129. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against the VE Team as follows:

- A. Awarding the RVSA damages relating to the VE Team's malpractice, negligence, and defective value engineering study of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT SIX

DISGORGEMENT OF FEES

130. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

131. The VE Team entered into a contract with the RVSA to provide value engineering services in connection with the Facility. The VE Team breached its contractual and fiduciary obligations to the RVSA by failing to recommend to the RVSA that the construction of the Facility would result in unnecessary costs to the RVSA and that the most cost effective recommendation was to eliminate the Facility altogether.

132. The VE Team received \$85,000 in fees paid by the RVSA.

133. The VE Team must disgorge all of the fees that it received from the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against VE Team as follows:

- A. Compelling the VE Team to disgorge all fees and awarding those fees to the RVSA in the amount of \$85,000, plus all applicable interest thereon;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENT, HMM

134. In addition to being a member of the VE Team, respondent, HMM was also involved in many other aspects of the Facility. In June of 2003, HMM issued a report to the RVSA entitled "Cogeneration Facility Evaluation on the Proposed Sludge Drying Process and the Dried Solids Conveying Process". One of the recommendations in the report was for the RVSA to utilize an indirect type dryer manufactured by respondent, K-S as the sludge dryer for the Facility. Based upon this recommendation the K-S dryer became part of the final design for the Facility that eventually went out to bid.

135. The RVSA also contracted with HMM, in association with its affiliate Careba Mott MacDonald ("CMM"), to conduct an independent review of the Facility from the standpoint of proposed operating scenarios. HMM/CMM issued a report dated April 9, 2009 entitled "Cogeneration Operation Review and Evaluation Report". HMM/CMM concluded that in order for the RVSA to have the most flexibility and reliability in operating the Facility, it should move forward with the acquisition and installation of two (2) 2.0 MW diesel generators. These same diesel generators had previously been removed from the design of the Facility based on the recommendation of the VE Team of which HMM had been a member. HMM/CMM noted that under the then existing fuel cost structure, (natural gas and electricity), operating the RVSA's wastewater treatment plant with the utility as the primary source of electricity may be more cost effective than operating the Facility to produce power. Although its April 9, 2009 report contained an economic evaluation purporting to support its conclusions, HMM/CMM later admitted that the economic evaluation was really bogus and that the only real justification for the purchase of the diesel generators was so that the RVSA could comply with the requirement of its JCO that it have a backup source of power for its wastewater treatment plant.

136. In the April 9, 2009 report HMM/CMM also admitted, for the first time, that the generating capacity of the Facility, which was to be powered by four (4) 1.53 MW Caterpillar Engines for a total of 6.2 MW of power, was clearly excessive. HMM/CMM stated that, at best, one (1) Caterpillar Engine could be economically feasible provided that it could be run primarily on digester gas. HMM/CMM made this admission even though it had been involved in the Facility as early as December of 2002 when it was a member of the VE Team and never raised an issue with respect to the size of the power generating portion of the Facility.

137. Based upon the conclusions reached in the HMM/CMM report, the RVSA's Board of Commissioners authorized the issuance of C.O. #11 to Reid in the amount of \$1,979,314 for the furnishing and installation of two (2) 2.0 MW diesel generators.

138. Thereafter, HMM/CMM was hired by the RVSA to be an expert witness in the lawsuit which precipitated the present matter. It had been filed by respondent, CAT/Foley against the RVSA and respondent, Reid. During consultations with the RVSA and/or its other consultants, HMM admitted that the RVSA had been "sold a bill of goods" and that the RVSA "should never have built [the Facility]". HMM/CMM made these admissions even though, as part of the VE Team, it had failed to recommend that the RVSA not proceed with the Facility. Ultimately, the RVSA determined that HMM/CMM would have to be discharged as an expert witness in the case due its conflict of interest in being a member of the VE Team against which the RVSA had determined it had significant claims. During the course of its engagement as an expert witness by the RVSA HMM was paid a fee of \$352,205.93 for services which never resulted in any substantive work product.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

139. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

140. Respondent, HMM conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

141. HMM performed unlawful practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts made through its various reports and other services that it rendered to the RVSA regarding the Facility.

142. HMM acted in concert with other parties to this matter in order to perpetrate a fraud on the RVSA for purposes of economic gain.

143. HMM knew, or should have known, that the various reports and services that it rendered to the RVSA failed to provide justification for the recommendations that it was making with respect to the Facility.

144. HMM knowingly concealed material facts from the RVSA regarding the Facility and its economic viability with the intent that the RVSA rely on the concealment.

145. The RVSA has an ascertainable loss in excess of \$36 million it spent to build the Facility.

146. There is more than a casual nexus between the unlawful conduct performed by HMM and the RVSA's ascertainable loss. The RVSA relied upon the information and expert knowledge provided by HMM. Because of that reliance, the RVSA has lost a considerable amount of money and has a Facility that, as designed and for its intended use, is excessively overbuilt and from which it will not derive any economic benefit.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against HMM as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding attorney's fees, filing fees and reasonable costs of suit;
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

147. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

148. HMM knowingly conducted deceptive practices that constitute fraud.

149. HMM made material misrepresentations of fact relating to its reviews of the Facility with the knowledge that those facts were false.

150. HMM intended that the RVSA would rely on those facts in making decisions with respect to the Facility.

151. The RVSA reasonably relied on the misrepresentations of fact and/or the concealment thereof in determining to proceed with building the Facility.

152. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact and/or the concealment thereof by HMM.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against HMM as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

153. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

154. HMM issued various incorrect statements that were negligently made regarding the Facility.

155. The RVSA justifiably relied upon those statements and made the decision to build the Facility.

156. The RVSA has an ascertainable loss in excess of \$36 million it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against HMM as follows:

- A. Awarding the RVSA damages relating to HMM's negligent misrepresentations regarding the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FOUR

MALPRACTICE

157. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

158. HMM owed a duty to the RVSA to adhere to the accepted standard of care relative to the performance of its reports, economic evaluations and reviews of the Facility which helped to provide the basis and justification for the RVSA to make the determination to proceed and continue with the final design and construction of the Facility.

159. HMM failed to adhere to this accepted standard of care in many respects including, but not limited to:

- a) inadequately reviewing the design of the Facility;
- b) inadequately reviewing the proposed operating scenarios for the Facility;
- c) inadequately reviewing the process of sludge drying for the Facility;
- d) improperly evaluating the economics of the Facility;

160. HMM was negligent in its performance of the reviews, economic evaluations and reports for the Facility.

161. HMM failed to provide adequate service commensurate with industry standards, and failed to exercise that degree of care that a reasonable engineer would exercise in regard to performing such services.

162. HMM committed malpractice when it breached its duty of care towards the RVSA.

163. HMM's breach of duty of care, failure to adhere to the accepted standard of care and its defective reviews, economic evaluations and reports of the Facility proximately caused injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against HMM as follows:

- A. Awarding the RVSA damages relating to HMM's malpractice, negligence, and defective reviews, economic evaluations and reports of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FIVE

BREACH OF CONTRACT

164. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

165. HMM entered into contracts with the RVSA for the preparation of the value engineering study, the June 2003 report, the April 6, 2009 report, and to provide litigation support services.

166. HMM failed to perform its obligations under its various contracts with the RVSA.

167. As a result of the failure by HMM, the RVSA has sustained damages.

168. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against HMM as follows:

- A. Awarding damages to the RVSA by reason of breach of contract;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT SIX

DISGORGEMENT OF FEES

169. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

170. HMM entered into contracts with the RVSA for the preparation of the value engineering study, the June 2003 report, the April 6, 2009 report, and to provide litigation support services.

171. HMM failed to perform its obligations under its various contracts with the RVSA.

172. During the course of its engagement as an expert witness by the RVSA HMM was paid a fee of \$352,205.93 by the RVSA for services which never resulted in any substantive work product.

173. HMM must disgorge all fees that were paid to it by the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against HMM as follows:

- A. Compelling HMM to disgorge all fees and awarding those fees to the RVSA in the amount of \$352,205.93 paid to HMM, plus all applicable interest thereon;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENT, M&E

174. RVSA incorporates herein by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

175. In October of 2001, PS&S/Keyspan's Basis of Design report and economic analysis was sent to respondent, M&E who had been retained by the RVSA to prepare an evaluation of its sludge disposal alternatives. The purpose for the sludge disposal evaluation was to determine whether it would be more cost effective for the RVSA to continue with its plans to rehabilitate its digesters, improve its dewatering operations, and to construct the Facility being recommended by PS&S/Keyspan or to abandon those plans in favor of shutting down the existing digesters and dewatering facility, and implement an alternative plan of transporting thickened sludge off-site for disposal at another wastewater treatment facility. On November 7, 2001 M&E issued a final report to the RVSA in which it concluded that the annualized costs of implementing the alternative plan of transporting thickened sludge off-site was not significantly different than the RVSA continuing with

its practice of dewatering sludge and constructing the Facility. M&E recommended that the RVSA consider other qualitative factors in determining which direction to proceed.

176. On November 8, 2001, Andrew L. Doyle ("Doyle"), the Assistant Executive Director of the RVSA at the time, prepared a memo for the RVSA's Board of Commissioners summarizing his opinions of the M&E report and the PS&S/Keyspan Basis of Design for the Facility. In his memo, Doyle indicated that the M&E report made clear that there was no real cost advantage in disposing of thickened non-digested liquid sludge off-site versus constructing the Facility, rehabilitating the RVSA's anaerobic digesters, and installing an additional centrifuge. Therefore, based on various qualitative considerations, Doyle recommended that the RVSA not proceed with the alternative plan of off-site sludge disposal and instead proceed with the construction of the Facility.

177. Although Doyle had concluded that he was generally in favor of the RVSA proceeding with the construction of the Facility, in his review of PS&S/Keyspan's Basis of Design, he indicated that in arriving at the "Project Cash Flow After Debt Service", PS&S/Keyspan had failed to account for the salaries of two (2) RVSA personnel. Doyle noted that when the labor cost is properly taken into account, the resulting annualized savings is less than \$20,000. In light of this, Doyle recommended that PS&S/Keyspan re-examine the economics of the Facility. Therefore, Doyle concluded that he would only recommend that the RVSA proceed with the Facility if the "Project Cash Flow After Debt Service" showed an annualized economic savings to the RVSA.

178. Ultimately, based on the fact that the M&E report concluded that there was no real cost advantage in disposing of thickened non-digested liquid sludge off-site and that the economic analyses performed by PS&S/Keyspan proposed significant annual cost savings to the RVSA of \$1.27 million by building the Facility, on November 19, 2001 the RVSA's Board of Commissioners

were convinced to continue with the RVSA's sludge operations and move forward with the construction of the Facility rather than the alternative plan of transporting thickened sludge off-site.

179. Thereafter, on December 20, 2001 the RVSA's Board of Commissioners adopted Resolution No. 01-102 appropriating an additional \$931,599, for a total amount not to exceed of \$1,181,599, for PS&S/Keyspan to proceed with a final design of the Facility.

COUNT ONE

MALPRACTICE

180. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

181. M&E owed a duty to the RVSA to adhere to the accepted standard of care relative to the preparation of its report regarding the evaluation of sludge disposal alternatives for the RVSA. M&E failed to adhere to this accepted standard of care in many respects including, but not limited to:

- a) improperly evaluating the economics of the sludge operation;
- b) improperly evaluating the information supplied to it by PS&S/Keyspan;
- c) improperly concluding that the annualized costs of implementing the alternative plan of transporting thickened sludge off-site was not significantly different than the RVSA continuing with its practice of dewatering sludge and constructing the Facility.

182. M&E was negligent in its performance of the evaluation of the RVSA's sludge disposal alternatives.

183. M&E failed to adhere to the accepted standard of care associated with the services that it provided to the RVSA, failed to provide adequate service commensurate with industry standards and failed to exercise the degree of care that a reasonable engineer would exercise with

regard to the services that it performed with respect to the evaluation of the RVSA's sludge disposal alternatives.

184. M&E committed malpractice when it breached its duty of care towards the RVSA by failing to properly perform the evaluation of sludge disposal alternatives upon which the RVSA relied in making the determination to proceed with the construction of the Facility rather than implementing an alternative plan of transporting thickened sludge off-site for disposal at another wastewater treatment facility.

185. M&E's breach of duty of care, failure to adhere to the accepted standard of care and its defective evaluation of sludge disposal alternatives proximately caused injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against M&E as follows:

- A. Awarding the RVSA damages relating to M&E's malpractice, negligence, and defective evaluation of sludge disposal alternatives;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

BREACH OF CONTRACT

186. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

187. M&E entered into a contract with the RVSA for the preparation of an evaluation of sludge disposal alternatives.

188. M&E failed to perform its obligations under its contract with the RVSA by failing to properly evaluate the alternative plan of transporting thickened sludge off-site for disposal at another

wastewater treatment facility versus constructing the Facility, rehabilitating the RVSA's anaerobic digesters, and installing an additional centrifuge.

189. As a result of M&E's failure, the RVSA has sustained damages.

190. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against M&E as follows:

- A. Awarding damages to the RVSA by reason of breach of contract;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

191. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

192. M&E issued various incorrect statements that were negligently made regarding the evaluation of sludge disposal alternatives for the RVSA.

193. The RVSA justifiably relied upon such incorrect statements in making its decision to build the Facility.

194. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against M&E as follows:

- A. Awarding the RVSA damages relating to M&E's negligent misrepresentations through its evaluation of sludge disposal alternatives;

- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FOUR

DISGORGEMENT OF FEES

195. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

196. On November 7, 2001 M&E prepared an evaluation for the RVSA of its sludge disposal alternatives.

197. M&E breached its contractual and fiduciary obligations to the RVSA by failing to properly evaluate such sludge disposal alternatives.

198. M&E received a \$4,950 fee for its services paid by the RVSA.

199. M&E must disgorge the fees it received from the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against M&E as follows:

- A. Compelling M&E to disgorge all fees and awarding those fees to the RVSA in the amount of \$4,950.00, plus all applicable interest thereon;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENTS, CAT/FOLEY

200. RVSA incorporates herein by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

201. Pursuant to a public bid, on or about February 12, 2004, respondent, Reid entered into Contract No. 105 (the "Contract") with the RVSA for the construction of the Facility in the amount of Reid's contract bid price of \$17,133,295.

202. Based upon information and belief, Reid subsequently entered into a subcontract with respondents, CAT/Foley for the furnishing of the three (3) G3608 Caterpillar Engines that were called for in the Basis of Design and required to power the Facility.

203. Pursuant to the Contract specifications, the Caterpillar Engines were required to have various operational capabilities including the ability to operate on either natural gas or digester gas with any adjustments necessary in order to switch from one fuel to another to be performed within 15 minutes.

204. After construction of the Facility commenced, PS&S/Keyspan determined that it had miscalculated the electrical loads that would be required to run the future wastewater treatment plant once all the improvements that were required by the JCO were implemented. Therefore, PS&S/Keyspan determined that additional electrical generation capability was needed. In a report dated July 13, 2004, PS&S/Keyspan recommended that a fourth (4th) 1.53 MW Caterpillar Engine be installed bringing the generating capacity of the Facility to 6.2 MW up from the 4.6 MW recommended by PS&S/Keyspan in the VE Response.

205. On or about December 29, 2004, the RVSA issued C.O. #1 to Reid in the amount of \$2,708,200 for the furnishing and installation of the 4th Caterpillar Engine in accordance with revisions made by PS&S/Keyspan, bringing the total amount of the Contract with Reid to \$19,841,495.

206. After C.O. #1 was executed Reid entered into a subcontract with CAT/Foley for the furnishing of a fourth G3608 Caterpillar Engine.

207. During construction, a number of problems were identified regarding the requirement in the Contract specifications that the engines be capable of being operated on either digester gas or natural gas with a means of automatically switching from one fuel to the other.

208. CCMS recommended a design enhancement in the form of a fuel blending system that would provide for a steady, blended gas in lieu of the two different fuel trains. Although this fuel blending system was not included in the original design, the need for this system became apparent because of the daily requirement to switch fuels in order to maintain the systems operations was not considered by PS&S/Keyspan until after the equipment provided by Caterpillar demonstrated in a test program that better automatic, rather than manual, operation and fuel switching was needed.

209. On or about March 9, 2006, the RVSA issued a second change order ("C.O. #2") to Reid in the amount of \$403,591 for the furnishing and installation of the gas blending system recommended by CCMS. This would provide a steady, consistent fuel feed, thereby allowing the engines to run more efficiently and eliminate the need for fuel switches as well as any engine shut downs which could potentially result in spikes in the utility power. C.O. #2 brought the total amount of the Contract to \$20,245,086 (\$17,133,295 contract bid price + \$2,708,200 C.O. #1 + \$403,591 C.O. #2).

210. Thereafter, the RVSA issued a third change order ("C.O. #3") to Reid in the amount of \$476,459 for, among other things, numerous building modifications in order to accommodate the installation of the 4th Caterpillar Engine that had been authorized by C.O. #1. This brought the total amount of the Contract to \$20,721,545 (\$17,133,295 contract bid price + \$2,708,200 C.O. #1 + \$403,591 C.O. #2 + \$476,459 C.O. #3). Even though such building modifications were made, the installation of the 4th Caterpillar Engine contributes to maintenance difficulties since the four Caterpillar Engines are housed in a building that was designed for only three. The 4th Caterpillar Engine occupies space that was originally designed for a maintenance bay. The result is increased maintenance costs for the RVSA.

211. On or about April 30, 2007 and May 10, 2007, during the startup of Caterpillar Engine Nos. 1 and 3, while they were in the control and possession of CAT/Foley, malfunctions occurred which resulted in engine explosions that caused significant damage to the Facility, engine exhaust breeching, structural steel framing and other support systems.

212. On or about October 1, 2007, Reid and CAT/Foley entered into an agreement regarding remedial work to be performed in the aftermath of the engine explosions, (the "Repair Agreement"). The Repair Agreement called for Industrial Technology Group ("ITG") to prepare plans for certain work entitled "Cogeneration/Sludge Drying Facility Rupture Disc & Relief Piping Installation", revised August 11, 2007, to be performed on the Facility by Reid to address concerns relating to the Caterpillar Engine explosions.

213. Pursuant to paragraph 2 of the Repair Agreement, ITG certified that the work to be performed has been "determined by ITG to be reasonably adequate to and suitable to address exhaust and venting of the four Caterpillar generators and related systems installed as part of Contract 105 in the event of any future engine incidents similar" to the explosions of April 30, 2007 and May 10, 2007.

214. Thereafter, Caterpillar proposed that rupture discs be installed in the exhaust systems of all four (4) Caterpillar Engines in accordance with plans prepared by ITG in order to contain any future explosion incidents and to prevent any future damage to surrounding property. Reid subsequently repaired the damage that had been sustained by the Facility and installed the rupture discs.

215. On September 24, 2008, November 4, 2008, November 6, 2008, and November 22, 2008, the Caterpillar Engines experienced individual explosions. Because of the non-reseating characteristics of the rupture discs they had to be replaced at significant expense.

216. On May 28, 2009, approximately 2.5 days into a ten (10) day operational period required by the Contract, malfunctions occurred in Caterpillar Engine No. 2 which resulted in another engine explosion that again caused significant damage to the Facility. Once again the rupture discs had to be replaced at significant expense to the RVSA.

217. Thereafter, Reid requested that both CAT/Foley and ITG investigate the explosions and confirm the reasonable adequacy of the ITG "rupture disc and relief piping installation" revised August 11, 2007, intended to address the "exhaust and venting of the four Caterpillar generators and related systems". Reid subsequently repaired the damage caused by the May 28, 2009 engine explosion.

218. As designed by PS&S/Keyspan, the Facility's Caterpillar Engines were intended to provide the RVSA with its primary source of power for the operation of its wastewater treatment plant and two (2) 2.0 MW diesel generators were proposed to serve as the backup. However, the value engineering study recommended the elimination of the two (2) diesel generators and instead proposed that the RVSA use power purchased from the utility as the backup power source. This recommendation was accepted by PS&S/Keyspan.

219. In early 2009 Michael Brinker, who had by then become the RVSA's Executive Director, began evaluating the propriety of using the Facility as the primary source of power in light of significantly declining electricity prices. Mr. Brinker considered using the utility as the primary source of power and the Facility as the backup. In investigating this scenario further, however, it was discovered that the Caterpillar Engines did not have a "black start" or appropriate "block loading" capability. This meant they could not be started and then immediately be capable of taking on a full energy load. In fact, the Caterpillar Engines are not capable of taking on a full load for approximately forty (40) minutes. Therefore, the Caterpillar Engines are not an acceptable source of backup power for a wastewater treatment plant.

220. Due to the inability of the Caterpillar Engines to provide backup power in the event of loss of utility power, and in order for the Facility to have the flexibility to be operated in a secondary capacity, the RVSA eventually issued C.O.#11 to Reid in the amount of \$1,979,314 for the furnishing and installation of the two (2) 2.0 MW diesel generators that had previously been taken out of the Facility based on the recommendation of the value engineering team.

221. As designed and intended to be used, the Facility is substantially over-sized and can only be operated at a loss to the RVSA. The Facility's power generating capacity with its four (4) Caterpillar Engines for a total of 6.2 MW, far exceeds the RVSA's electricity demand for its new upgraded wastewater treatment plant. In fact, since the wastewater treatment plant expansion has been completed it has become evident that the electricity demand necessary to handle a peak flow of 105 mgd is only approximately 3 MW of power, not anywhere near the 6.2 MW that the Facility has.

222. Based on information and belief respondent, Caterpillar presents seminars throughout the United States on the utilization of its products in cogeneration facilities such as the RVSA's Facility.

223. Based on information and belief Caterpillar holds itself out as having expertise in the area of cogeneration.

224. CAT/Foley knew, or reasonably should have known, that the four (4) Caterpillar Engines were excessive for the RVSA's power generating needs and that the RVSA could not utilize all of the waste heat produced by the Caterpillar Engines for other purposes and still sold the Caterpillar Engines for installation in the Facility.

225. CAT/Foley concealed material relevant facts from the RVSA relative to the operational capabilities of the Caterpillar Engines for purposes of its own economic gain.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

226. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

227. Respondents, CAT/Foley, conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

228. CAT/Foley performed unlawful practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts that it made regarding the number, size, type and operational capabilities of the Caterpillar Engines that were appropriate for the Facility.

229. CAT/Foley acted in concert with other parties to this matter in order to perpetrate a fraud on the RVSA for purposes of economic gain in the form of the sale of its Caterpillar Engines for installation at the Facility.

230. Based on information and belief, CAT/Foley knew that the type of Caterpillar Engines that it had recommended for the Facility is not typically used for the application proposed at the Facility and was not suitable to the RVSA's needs.

231. CAT/Foley knew, or should have known, that the power generating capacity of the Facility based upon the four (4) Caterpillar Engines that it furnished for installation in the Facility was excessive given the RVSA's power generating needs.

232. CAT/Foley knew, or should have known, that the installation of four (4) generators at the Facility rendered the Facility uneconomical to operate as a cogeneration facility.

233. The RVSA has an ascertainable loss in the form of the money spent to acquire the Caterpillar Engines and loss of any economic benefit associated with the Facility.

234. There is more than a casual nexus between the unlawful conduct performed by CAT/Foley and the RVSA's ascertainable loss. The RVSA relied upon the information and expert knowledge provided by CAT/Foley regarding the number, size, type and operational capabilities of the Caterpillar Engines that were appropriate for the Facility. Because of that reliance, the RVSA has lost a considerable amount of money and has a Facility that is excessively overbuilt and from which it will not derive any economic benefit as it was designed and intended to be used.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CAT/Foley as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

235. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

236. Respondents, CAT/Foley, knowingly conducted deceptive practices that constitute fraud.

237. CAT/Foley made material misrepresentations of fact relating to the number, size, type and operational capabilities of the Caterpillar Engines that were appropriate for the Facility with the knowledge that those facts were false.

238. CAT/Foley made such material misrepresentations of fact to the RVSA with the intent that the RVSA would rely on those facts in deciding to build the Facility.

239. The RVSA reasonably relied on the misrepresentations of fact and determined to build the Facility based upon the misrepresentations made by CAT/Foley regarding the Caterpillar Engines.

240. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact made by CAT/Foley.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CAT/Foley as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

241. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

242. CAT/Foley issued various incorrect statements that were negligently made regarding the number, size, type and operational capabilities of the Caterpillar Engines that were appropriate for the Facility.

243. The RVSA justifiably relied upon such incorrect statements in making its decision to purchase the Caterpillar Engines and to build the Facility.

244. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against CAT/Foley as follows:

A. Awarding the RVSA damages relating to CAT/Foley's negligent misrepresentations made regarding the number, size, type and operational capabilities of the Caterpillar Engines that were appropriate for the Facility;

B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and

C. Granting such other relief as the interests of justice may require.

COUNT FOUR

NEGLIGENCE

245. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

246. As supplier of the Caterpillar Engines for the Facility, CAT/Foley owed a duty to the RVSA to adhere to the accepted standard of care relative to the number, size, type and operational capabilities of the Caterpillar Engines that it sold for installation at the Facility.

247. CAT/Foley breached this accepted standard of care in many respects including, but not limited to:

- a) improperly evaluating the design of the Facility;
- b) improperly evaluating the information supplied to it by PS&S/Keyspan;
- c) recommending systems that were inappropriate for the Facility;
- d) failing to recognize that the power generating capacity of the Facility based upon the four (4) Caterpillar Engines that it furnished for installation in the Facility was excessive given the RVSA's power generating needs;
- e) failing to recognize that the installation of four (4) Caterpillar Engines at the Facility rendered the Facility uneconomical to operate as a cogeneration facility;

- f) failing to design an appropriate relief piping system suitable to address exhaust and venting of the Caterpillar Engines in the event of any future explosions; and,
- g) improperly designing the catalyst system for the Caterpillar Engines which prevents the Caterpillar Engines from be able to run at their maximum load and still meet the requirements of the RVSA's Permit.

248. CAT/Foley was negligent in its role as supplier of the Caterpillar Engines and as a result it breached its duty to the RVSA which resulted in significant damages to the RVSA.

249. CAT/Foley failed to adhere to the accepted standard of care, failed to provide adequate service commensurate with industry standards and failed to exercise that degree of care that a reasonable supplier of gas generators would exercise with regard to the Facility.

250. CAT/Foley's negligence proximately caused substantial injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CAT/Foley as follows:

- A. Awarding the RVSA damages relating to CAT/Foley's negligence;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENT, K-S

251. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

252. In the various Screening Studies prepared by PS&S/Keyspan it recommended that the RVSA use the waste heat from the exhaust of the gas generators in order to operate a 5,000 lbs./hour sludge dryer in conjunction with a sludge pelletizer. It was anticipated that the sludge dryer and

pelletizer would reduce the RVSA's sludge hauling costs and also produce a marketable sludge product that could be beneficially reused as a fertilizer. However, in its October 2001 Basis of Design PS&S/Keyspan increased the size of the sludge dryer to 9,700 lbs./hour and recommended that the design be based around a dryer manufactured by respondent, K-S.

253. In June 2003 HMM produced a report entitled "Cogeneration Facility Evaluation on the Proposed Sludge Drying Process and the Dried Solids Conveying Process" which also recommended, among other things, that the RVSA utilize an indirect type dryer manufactured by respondent, K-S.

254. Pursuant to a public bid, on or about February 12, 2004, respondent, Reid entered into Contract No. 105 (the "Contract") with the RVSA for the construction of the Facility in the amount of Reid's contract bid price of \$17,133,295. Reid subsequently entered into a subcontract with K-S for the furnishing of the sludge dryer that was called for in the Basis of Design and recommended by HMM for the Facility.

255. According to the Contract specifications, the sludge dryer is required to produce a sludge product that is free from dust. Rather than producing a dust-free product, the sludge dryer produces dried sludge that is excessively dusty. As a consequence of the dusty sludge product and concerns over its potential for explosiveness, the RVSA is required to add dedusting oil at a cost of approximately \$8 per gallon. The RVSA must add approximately 3 gallons of the dedusting oil for every ton of dried sludge.

256. It is now clear that the Facility as it was designed by PS&S/Keyspan and intended to be used does not reduce operating costs but actually increases operating costs and is substantially over-sized relative to the RVSA's needs. The Facility's 9,700 lbs./hour sludge dryer in particular is substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume.

257. K-S knew, or reasonably should have known, that the sludge dryer it furnished for installation in the Facility was excessive for the RVSA's needs and still sold the sludge dryer for installation in the Facility.

258. K-S concealed material relevant facts from the RVSA relative to the operational capabilities of the sludge dryer for purposes of its own economic gain.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

259. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

260. Respondent, K-S, conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

261. K-S performed unlawful practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts that it made regarding the size and operational capabilities of the sludge dryer that would adequately meet the needs of the Facility.

262. K-S acted in concert with other parties to this matter in order to perpetrate a fraud on the RVSA for purposes of economic gain in the form of the sale of its dryer for installation at the Facility.

263. K-S knew, or should have known, that the sludge dryer that it furnished for installation in the Facility was substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume.

264. K-S knew, or should have known, that the installation of its sludge dryer at the Facility rendered the Facility uneconomical to operate as a cogeneration facility.

265. K-S misrepresented that the sludge dryer would produce a dust-free sludge product which it does not. K-S also failed to inform the RVSA that in order to reduce the risk of the

spontaneous combustion of the dried sludge it is necessary to apply dedusting oil at significant expense.

266. The RVSA has an ascertainable loss in the form of the money spent to acquire the sludge dryer and loss of any economic benefit associated with the Facility.

267. There is more than a casual nexus between the unlawful conduct performed by K-S and the RVSA's ascertainable loss. The RVSA relied upon the information and expert knowledge provided by K-S regarding the size of the sludge dryer that was appropriate for the Facility. Because of that reliance, the RVSA has lost a considerable amount of money and has a Facility that is excessively overbuilt and from which it will not derive any economic benefit as it was designed and intended to be used.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against K-S as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

268. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

269. Respondents, K-S, knowingly conducted deceptive practices that constitute fraud.

270. K-S made material misrepresentations of fact relating to the size and operational capabilities of the sludge dryer that was appropriate for the Facility with the knowledge that those facts were false.

271. K-S made such material misrepresentations of fact to the RVSA with the intent that the RVSA would rely on those facts in deciding to build the Facility.

272. The RVSA reasonably relied on the misrepresentations of fact and determined to build the Facility based upon the misrepresentations made by K-S regarding the sludge dryer.

273. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact made by K-S.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against K-S as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

274. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

275. K-S issued various incorrect statements that were negligently made regarding the size and operational capabilities of the sludge dryer that would adequately meet the needs of the Facility.

276. The RVSA justifiably relied upon such incorrect statements in making its decision to build the Facility.

277. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against K-S as follows:

A. Awarding the RVSA damages relating to K-S's negligent misrepresentations regarding the size and operational capabilities of the sludge dryer that would adequately meet the needs of the Facility;

B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and

C. Granting such other relief as the interests of justice may require.

COUNT FOUR

NEGLIGENCE

278. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

279. As supplier of the sludge dryer for the Facility, K-S owed a duty to the RVSA to adhere to the accepted standard of care relative to the size and operational capabilities of the sludge dryer that it sold for installation at the Facility.

280. K-S breached this accepted standard of care in many respects including, but not limited to:

- a) improperly evaluating the design of the Facility;
- b) improperly evaluating the information supplied to it by PS&S/Keyspan;
- c) recommending a sludge dryer that was inappropriate for the Facility;
- d) failing to recognize that the sludge dryer that it furnished for installation in the Facility was substantially larger than what is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume; and,
- e) failing to recognize that the installation of the sludge dryer at the Facility rendered the Facility uneconomical to operate as a cogeneration facility.

281. K-S was negligent in its role as supplier of the sludge dryer and as a result it breached its duty to the RVSA which resulted in significant damages the RVSA.

282. K-S failed to adhere to the accepted standard of care, failed to provide adequate service commensurate with industry standards, and failed to exercise that degree of care that a reasonable supplier of sludge dryers would exercise with regard to the Facility.

283. K-S's negligence proximately caused substantial injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against K-S as follows:

- A. Awarding the RVSA damages relating to K-S's negligence;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENT, CCMS

284. On or about February 19, 2004, the RVSA entered into a professional services agreement with respondent, CCMS (the "CCMS Contract") to perform the professional engineering construction phase services required to implement the Facility, including serving as construction oversight engineer during its construction. Specifically, the CCMS Contract required that CCMS be responsible for, among other tasks, reviewing and responding to all the contractor's submittals; reviewing laboratory and shop test reports of materials and equipment; reviewing and responding to monthly progress payment requests submitted by the contractor and providing recommendations to the RVSA for payment; performing monthly visits to the site to review the contractor's progress; providing monthly project status reports to the RVSA; providing full time onsite resident staff for oversight services during the contractor's onsite activities to monitor the contractor's work on a daily basis, and to evaluate it for compliance with the contract documents. Pursuant to the terms of the CCMS Contract the RVSA has paid CCMS \$2,708,994 for these services.

285. During the course of the construction a number of problems developed regarding the design of the Facility as well as the failure of certain items of equipment installed, most notably the

Caterpillar Engines and the K-S dryer, to meet the Contract specifications. After construction of the Facility commenced, PS&S/Keyspan realized that it had miscalculated the electrical loads that would be required to run the future wastewater treatment plant once all the improvements that were required by the JCO were implemented. Therefore, PS&S/Keyspan determined that additional electrical generation capability was needed. In a report dated July 13, 2004, PS&S/Keyspan recommended that a fourth (4th) 1.53 MW Caterpillar Engine be installed bringing the generating capacity of the Facility to 6.2 MW up from the 4.6 MW recommended by PS&S/Keyspan in the VE Response.

286. On or about December 29, 2004, the RVSA issued Change Order No. 1 ("C.O. #1") to Reid in the amount of \$2,708,200 for the furnishing and installation of the 4th Caterpillar Engine in accordance with revisions made by PS&S/Keyspan, bringing the total amount of the Contract to \$19,841,495. After C.O. #1 was executed Reid entered into a subcontract with CAT/Foley for the furnishing of the 4th G3608 Caterpillar Engine.

287. Also, during construction, a number of problems were identified regarding the requirement in the Contract specifications that the engines be capable of being operated on either digester gas or natural gas with a means of automatically switching from one fuel to the other. CCMS recommended a design enhancement in the form of a fuel blending system that would provide for a steady, blended gas in lieu of the two different fuel trains. Although this fuel blending system was not included in the original design, the need for this system became apparent because the impact of daily fuel switching and of running the engines for periods of time solely on digester fuel were not considered by PS&S/Keyspan until after the equipment provided by Caterpillar demonstrated in a test program that better automatic, rather than manual, operation and fuel switching was needed.

288. On or about March 9, 2006, the RVSA issued a second change order ("C.O. #2") to Reid in the amount of \$403,591 for the furnishing and installation of the gas blending system recommended by CCMS to blend the natural gas and digester gas to be used in the Caterpillar Engines in order to provide a steady, consistent fuel feed. This would allow the engines to run more efficiently and eliminate the need for fuel switches as well as any engine shut downs which could potentially result in spikes in the utility power. C.O. #2 brought the total amount of the Contract to \$20,245,086 (\$17,133,295 contract bid price + \$2,708,200 C.O. #1 + \$403,591 C.O. #2).

289. Thereafter, the RVSA issued a third change order ("C.O. #3") to Reid in the amount of \$476,459 for, among other things, numerous building modifications in order to accommodate the installation of the 4th Caterpillar Engine that had been authorized by C.O. #1. This brought the total amount of the Contract to \$20,721,545 (\$17,133,295 contract bid price + \$2,708,200 C.O. #1 + \$403,591 C.O. #2 + \$476,459 C.O. #3). Even though such building modifications were made, the installation of the 4th Caterpillar Engine contributes to maintenance difficulties since the four Caterpillar Engines are housed in a building that was designed for only three. The 4th Caterpillar Engine occupies space that was originally designed for a maintenance bay. The result is increased maintenance costs for the RVSA.

290. According to the Contract specifications, the sludge dryer was required to produce a sludge product that was free from dust. Rather than producing a dust-free product, the sludge dryer supplied by K-S produces dried sludge that is excessively dusty. As a consequence of the dusty sludge product and concerns over its potential for explosiveness, the RVSA is required to add dedusting oil at a cost of approximately \$8 per gallon. The RVSA must add approximately 3 gallons of the dedusting oil for every ton of dried sludge.

291. It is now clear that the Facility as it was designed by PS&S/Keyspan and intended to be used does not reduce operating costs but actually increases them and is substantially over-sized

relative to the RVSA's needs. The Facility's 6.2 MW of power generating capacity far exceeds the RVSA's electricity demand for its new upgraded wastewater treatment plant. In addition, the Facility's 9,700 lbs./hour sludge dryer is substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume.

292. As the RVSA's construction oversight engineer, CCMS knew, or reasonably should have known, that the Facility as it was designed by PS&S/Keyspan and intended to be used is substantially over-sized relative to the RVSA's needs and can only be operated at a loss to the RVSA.

293. CCMS concealed material relevant facts from the RVSA relative to the size and operational capabilities of the Facility for purposes of its own economic gain.

294. As the RVSA's construction oversight engineer CCMS had a fiduciary obligation to inform the RVSA that the Facility that was being constructed was substantially over-sized as it was designed and for its intended use by the RVSA. However, based on information and belief, CCMS' inherent conflict of interest by virtue of it being both a member of the VE Team and the RVSA's construction oversight engineer prevented it from fulfilling its contractual and fiduciary obligations to the RVSA with respect to the Facility.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

295. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

296. Respondent, CCMS, conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

297. CCMS engaged in unlawful and deceptive practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts that it made while

serving as construction oversight engineer for the construction of the Facility relative to the size and operational capabilities of the Facility, and the economic benefit that the RVSA would achieve from the Facility.

298. The RVSA continued with its decision to build the Facility based upon the representations that were made by CCMS before and during its role as construction oversight engineer for the construction of the Facility.

299. CCMS oversaw the construction of the Facility that is substantially larger than what is required for the RVSA's actual needs.

300. CCMS oversaw the construction of the Facility that has equipment that is not appropriate for the RVSA's actual needs.

301. Rather than the annual \$1.2 million benefit that was represented by the design, the Facility does not produce any economic benefit to the RVSA and after debt service represents a significant operating cost.

302. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

303. There is more than a casual nexus between the unlawful conduct engaged by CCMS and the RVSA's ascertainable loss. The RVSA relied upon the expert knowledge of CCMS as construction oversight engineer for the construction of the Facility. As a result of that reliance, the RVSA was caused to expend in excess of \$36 million to have the Facility built.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CCMS as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

304. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

305. Respondent, CCMS, knowingly conducted deceptive practices that constitute fraud.

306. CCMS made material misrepresentations and concealed material relevant facts relating to the Facility with the knowledge that those facts were false.

307. CCMS made such material misrepresentations of fact to the RVSA with the intent that the RVSA would rely on those facts in deciding to build the Facility.

308. The RVSA reasonably relied on the misrepresentations of fact and determined to build the Facility based upon the misrepresentations made by CCMS regarding the appropriate size and operational capabilities of the Facility.

309. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact made by CCMS.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CCMS as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

310. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

311. CCMS issued various incorrect statements that were negligently made during its role as construction oversight engineer for the construction of the Facility.

312. The RVSA justifiably relied upon such incorrect statements regarding the construction of the Facility.

313. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against CCMS as follows:

- A. Awarding the RVSA damages relating to CCMS's negligent representations that were made during its role as construction oversight engineer for the construction of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FOUR

MALPRACTICE

314. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

315. Pursuant to the CCMS Contract with the RVSA, CCMS owed a duty to the RVSA to exercise the requisite degree of care relative to providing "Professional Engineering Construction Phase Services" required for the implementation of PS&S designs and specifications which included onsite oversight/management services as well as the administration of claims and the supervision of Reid in the construction of the Facility.

316. CCMS failed to oversee the construction of the Facility effectively and was negligent in its oversight and management of the construction of the Facility.

317. CCMS oversaw the construction of the Facility that is substantially larger than what is required for the RVSA's actual needs.

318. CCMS oversaw the construction of the Facility that has equipment that is not appropriate for the RVSA's actual needs.

319. CCMS failed to adhere to the accepted standard of care associated with the oversight, management, and supervision of the Facility commensurate with industry standards, and failed to exercise that degree of care that a reasonable construction oversight engineer would exercise in regard to the construction of the Facility.

320. CCMS committed malpractice when it breached its duty of care under its agreement with the RVSA by failing to perform adequate construction oversight engineering duties.

321. CCMS's breach of its duty of care as well as its failure to adequately oversee/manage the construction of the Facility proximately caused injuries and damages to the RVSA.

WHEREFORE, the Claimant, RVSA demands judgment against Respondent, CCMS as follows:

- A. Awarding damages to the RVSA relating to CCMS malpractice, negligence, and inadequate construction oversight of the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FIVE

BREACH OF CONTRACT

322. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

323. CCMS entered into the CCMS Contract with the RVSA to perform the professional engineering construction phase services required to implement the Facility, including serving as

construction oversight engineer during its construction. Specifically, the CCMS Contract required that CCMS be responsible for, among other tasks, reviewing and responding to all the contractor's submittals; reviewing laboratory and shop test reports of materials and equipment; reviewing and responding to monthly progress payment requests submitted by the contractor and providing recommendations to the RVSA for payment; performing monthly visits to the Facility site to review the contractor's progress; providing monthly project status reports to the RVSA; providing full time onsite resident staff for oversight services during the contractor's onsite activities to monitor the contractor's work on a daily basis and to evaluate it for compliance with the contract documents.

324. CCMS breached the CCMS Contract by not properly overseeing the construction of the Facility.

325. CCMS oversaw the construction of the Facility that is substantially larger than what is required for the RVSA's actual needs and for its intended use.

326. CCMS oversaw the construction of the Facility that has equipment that is not appropriate for the RVSA's actual needs.

327. The Facility as it was designed and intended to be used does not produce any economic benefit to the RVSA and after debt service represents a significant operating cost.

328. As a direct, proximate, and foreseeable result of CCMS' breaches of the CCMS Contract, the RVSA has been damaged.

329. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against CCMS as follows:

- A. Awarding damages to the RVSA by reason of breach of contract;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and

C. Granting such other relief as the interests of justice may require.

COUNT SIX

DISGORGEMENT OF FEES

330. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

331. CCMS entered into a contract with the RVSA to provide construction oversight engineering services in connection with the construction of the Facility.

332. CCMS breached its contractual and fiduciary obligations to the RVSA by failing to properly oversee the construction of the Facility.

333. CCMS received \$2,708,994 in fees paid by the RVSA.

334. CCMS must disgorge all of the fees it received from the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against CCMS as follows:

- A. Compelling CCMS to disgorge all fees and awarding those fees to the RVSA in the amount of \$2,708,994, plus all applicable interest thereon;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

CLAIMS AGAINST RESPONDENT, REID

335. RVSA incorporates herein by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

336. Pursuant to a public bid, on or about February 12, 2004, respondent, Reid entered into Contract No. 105 (the "Contract") with the RVSA for the construction of the Facility in the amount of Reid's contract bid price of \$17,133,295.

337. Reid subsequently entered into a subcontracts with respondents, CAT/Foley for the furnishing of the three (3) G3608 gas generator sets, and K-S for the furnishing of the 9,700 lbs./hour dryer, that were called for in the Basis of Design.

338. During the course of construction the RVSA issued the following twelve (12) change orders to Reid in the total amount of \$7,084,218.70 much of which were designer initiated:

Change Order 1: Furnish and installation of fourth gas generator set; \$2,708,200.00.

Change Order 2: Furnish and installation of gas blending system; \$403,591.

Change Order 3: Building modifications required by NJ DCA, engine number 4 Ancillary modifications, and extended overhead; \$476,459.00.

Change Order 4: Purchase of two (2) Centrisys model CS2I-4 centrifuges; \$581,900.00.

Change Order 5: Electric service for overhead doors, additional lighting at dewatering building, purchase of Fenwal explosion mitigation, roof breaching changes, and gas blending flash file; \$206,882.61.

Change Order 6: The painting of added steel; electric for cooling water pumps; installing miscellaneous conduits; deleted hopper/chutes; deleted booster pumps; control changes; changes in breeching elbows; insulation on cooling pipe; additional pipe hangars; intertie extension; thermal oil relief valve header changes; adding a telephone manhole; additional roof penetrations; grating platform changes; installing a Fenwal explosion mitigation system (mechanical portion); gas blending filters; adding platforms on engines; black stop/start capability; precast panels credit; adding emergency stops on all doors; adding a 1" gas dump line; relocation of oil fill tank; adding a mezzanine door; and consideration of a roof credit; \$290,306.22.

Change Order 7: Piping/installation for pipe between expansion tanks and heat exchangers, gas train venting, crankcase ventilation, additional steel for carbon absorbers, Fenwal explosion system – electrical costs, and engine preservation inspection; \$106,039.00.

Change Order 8: Supports for thermal oil expansion tank, dryer control changes – electrical costs, additional thermal oil; \$156,535.74.

Change Order 9: Credit for breeching insulation, power feed to EDU-1 duct heater, addition of 30 parameters to SCADA, control wiring changes between gen sets, pressure switch for thermal oil expansion tank, plant start up temporary power, and power supply for exhaust fan EF-6; \$46,000.00.

Change Order 10; credit for the deletion in the scope of work on the Dewatering Building Lighting, the addition of explosion proof lighting fixtures in the compressor room required by NJDCA, additional emergency lights and exit signs required by Woodbridge Township, and the addition of an enclosure between the dewatering and CoGen Buildings to protect the piping and conveyors from freezing; \$56,371.22.

Change Order 11: Furnish and installation of two (2) 2,000 kW diesel fueled Baldor generator sets; \$1,979,314.00.

Change Order 12: Sandblast and recoat four (4) engine exhaust silencers, dedusting oil system modifications including heating system, atomizing system, pumping equipment, and associated electrical work, switchgear programming changes and fuel system changeover circuits, explosion proof refrigerant monitoring system changes, and digester gas volume and alarm programming changes; \$72,620.00.

339. These change orders significantly increased the amount that was paid by the RVSA to Reid for the construction of the Facility by nearly 42% from \$17,133,295 to \$24,217,513.79.

340. Based on information and belief Reid was also paid substantial sums of money by CAT/Foley in order to construct the repairs associated with the Caterpillar Engine explosions pursuant to the Repair Agreement that was executed between CAT/Foley and Reid.

341. Regardless of how much the scope of the work expanded, Reid never once raised a concern to the RVSA regarding the recommendations that were being made by the designers of the Facility.

342. It is now clear that the Facility, as it was designed by PS&S/Keyspan and intended to be used, does not reduce operating costs but actually increases them and is substantially over-sized relative to the RVSA's needs. The Facility's power generating capacity with its four (4) Caterpillar Engines for a total of 6.2 MW far exceeds the RVSA's electricity demand for its new upgraded wastewater treatment plant. In addition, the Facility's 9,700 lbs./hour sludge dryer is substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume.

343. Reid knew, or reasonably should have known, that the Facility that it was building was substantially over-sized relative to the RVSA's needs and yet never raised any concern to the RVSA.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT

344. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

345. Respondent, Reid, through its subcontracts with CAT/Foley and K-S conducted deceptive practices that are in violation of the New Jersey Consumer Fraud Act ("CFA" or the "Act"), N.J.S.A. 56:8-1 et seq.

346. Reid performed unlawful practices through its false promises, affirmative misrepresentations, and/or concealment of material relevant facts that it made regarding the number, size, type and operational capabilities of the Caterpillar Engines and the K-S sludge dryer that were appropriate for the Facility.

347. Reid acted in concert with other parties, including CAT/Foley and K-S, in order to perpetrate a fraud on the RVSA for purposes of economic gain in the form of continued increases in the size and scope of the Facility for which it was issued change orders increasing its original contract bid price by an additional \$7,084,218.79.

348. Reid knew, or should have known, that the Caterpillar Engines that it had subcontracted for with CAT/Foley for installation at the Facility are not typically used for the application proposed at the Facility and are not suitable to the RVSA's needs.

349. Reid knew, or should have known, that the power generating capacity of the Facility based upon the four (4) Caterpillar Engines that it purchased from CAT/Foley for installation in the Facility was excessive given the RVSA's power generating needs.

350. Reid knew, or should have known, that the sludge dryer that it had subcontracted for with K-S for installation in the Facility was substantially larger than is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume.

351. Reid knew, or should have known, that the installation of four (4) Caterpillar Engines and the K-S sludge dryer at the Facility rendered the Facility uneconomical to operate as a cogeneration facility.

352. The RVSA has an ascertainable loss in the form of the money spent to acquire the Caterpillar Engines, the sludge dryer, and loss of any economic benefit associated with the Facility.

353. There is more than a casual nexus between the unlawful conduct performed by Reid and the RVSA's ascertainable loss. The RVSA relied upon the information and expert knowledge

provided by Reid as its general contractor on the Facility regarding the number, size, type and operational capabilities of the Caterpillar Engines and K-S sludge dryer that were appropriate for the Facility. Because of that reliance, the RVSA has lost a considerable amount of money and has a Facility that is excessively overbuilt and from which it will not derive any economic benefit.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against Reid as follows:

- A. Awarding treble damages to the RVSA by reason of the violations of N.J.S.A. 56:8-2;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT TWO

COMMON LAW FRAUD

354. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

355. Respondent, Reid, knowingly conducted deceptive practices that constitute fraud.

356. Reid made material misrepresentations of fact to the RVSA and/or concealed material relevant facts relating to the number, size, type and operational capabilities of the Caterpillar Engines and the K-S sludge dryer that were appropriate for the Facility with the knowledge that those facts were false.

357. Reid made such material misrepresentations and/or concealed such facts with the intent that the RVSA would rely on those facts in deciding to issue change orders to Reid increasing the size and scope of the Facility.

358. The RVSA reasonably relied on the misrepresentations of fact and/or concealment of material relevant facts made by Reid in determining to issue change orders to Reid increasing the size and scope of the Facility.

359. The RVSA has been damaged as a result of its reliance on the misrepresentations of fact and/or concealment of material relevant facts made by Reid.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against Reid as follows:

- A. Awarding the RVSA compensatory and punitive damages;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT THREE

NEGLIGENT MISREPRESENTATION

360. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

361. Reid issued various incorrect statements that were negligently made regarding the number, size, type and operational capabilities of the Caterpillar Engines and the K-S sludge dryer that were appropriate for the Facility.

362. The RVSA justifiably relied upon such incorrect statements regarding the operational capabilities of the Caterpillar Engines and the K-S sludge dryer that were appropriate for the Facility in making its decision to build the Facility.

363. As a consequence of such reliance, the RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against Reid as follows:

- A. Awarding the RVSA damages relating to the negligent information and expert knowledge provided by Reid as its general contractor regarding the Facility;
- B. Awarding the RVSA attorney's fees, filing fees and reasonable costs of suit; and

C. Granting such other relief as the interests of justice may require.

COUNT FOUR

BREACH OF CONTRACT

364. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

365. Reid entered into the Contract with the RVSA for the construction of the Facility.

366. Reid failed to perform its obligations under its contract with the RVSA.

367. The Facility that Reid built for the RVSA is substantially larger than what is required for the RVSA's actual needs and for its intended use.

368. The RVSA has an ascertainable loss of in excess of \$36 million dollars that it spent to build the Facility.

WHEREFORE, Claimant, RVSA, demands an Award be entered in its favor and against Reid as follows:

- A. Awarding damages to the RVSA by reason of breach of contract;
- B. Awarding the RVSA attorney's fees, filing fees and costs of suit; and
- C. Granting such other relief as the interests of justice may require.

COUNT FIVE

NEGLIGENCE

369. RVSA restates by reference all the prior allegations of the claims and incorporates them as if fully set forth at length herein.

370. As the general contractor for the Facility, Reid owed a duty to the RVSA to adhere to the accepted standard of care relative to the number, size, type, and operational capabilities of the equipment that it installed at the Facility.

371. Reid breached this accepted standard of care in many respects including, but not limited to:

- a) improperly evaluating the design of the Facility;
- b) improperly evaluating the information supplied to it by PS&S/Keyspan;
- c) recommending gas generators that were inappropriate for the Facility;
- d) failing to recognize that the power generating capacity of the Facility based upon the four (4) Caterpillar Engines that it installed at the Facility was excessive given the RVSA's power generating needs;
- e) failing to recognize that the K-S sludge dryer that it installed at the Facility was substantially larger than what is necessary to accommodate the RVSA's current actual, as well as future anticipated sludge volume;
- f) failing to recognize that the installation of the four Caterpillar Engines and the K-S sludge dryer at the Facility rendered the Facility uneconomical to operate as a cogeneration facility; and,
- g) failing to properly design the engine exhaust breeching system for the Facility.

372. Reid was negligent in its role as general contractor for the Facility and as a result it breached its duty to the RVSA which resulted in significant damages the RVSA.

373. Reid failed to adhere to the accepted standard of care, failed to provide adequate service commensurate with industry standards and failed to exercise that degree of care that a reasonable general contractor would exercise with regard to the Facility.

374. Reid's negligence proximately caused substantial injuries and damages to the RVSA.

WHEREFORE, Claimant, RVSA demands an Award be entered in its favor and against Reid as follows:

- A. Awarding the RVSA all damages and costs relating to Reid's negligence;

- B. Awarding the RVSA attorney's fees and costs for this action; and
- C. Granting such other relief as the interests of justice may require.

WEINER LESNIAK LLP
Attorneys for Claimant,
Rahway Valley Sewerage Authority

By: 

Brian M. Hak, Esq.
A Member of the Firm

Dated: March 24, 2011

ORDER PREPARED BY THE COURT

FILED
JAN 25 2010
HON. LISA F. CRYSTAL, J.S.C.

Caterpillar and Foley Power Systems

Plaintiff

v.

Rahway Valley Sewerage Authority
And J.H. Reid General Contractor
Defendants.

Rahway Valley Sewerage Authority
Third Party Plaintiff,

v.

Paulis, Sokolowski & Sartor, LLC and
Consolidated Construction Management
Services, Inc.

Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

CIVIL ACTION

DOCKET NO. UNN L-785-09

CONSENT ORDER

THIS MATTER having come before the court by Richard J. Byrnes, Esq., Wilentz, Goldrnan & Spitzer, P.A., counsel for third party defendant, Consolidated Construction Management Services, with Arnold Gerst, Esq., Weiner Lesniak LLP, representing defendant/third party plaintiff, Rahway Valley Sewerage Authority, James H. Keale, Esq., Sedgwick, Detert, Moran & Arnold, LLP, representing plaintiffs, Caterpillar, Inc. and Foley Power Systems, Peter J. Smith, Esq., Connell Foley, LLP, representing J.H. Reid General Contractor, and Michael D. Suarez, Esq., Suarez & Suarez, representing third party defendant Paulis, Sokolowski & Sartor, LLC and it further appearing that the parties consent thereto:

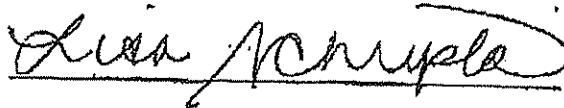
IT IS on this 25th day of January 2010

ORDERED that the within matter shall proceed to the alternative dispute resolution process of good faith negotiations as an initial step; mediation, if the good faith negotiation process does not resolve the various disputes; and then finally, binding arbitration as more fully outlined in the RVSA/CCMS and RVSA/PS&S agreements incorporated by reference therein; and it is further

ORDERED that motions for partial summary judgment are withdrawn without prejudice; and

ORDERED that this matter is scheduled for a case management conference on May 14, 2010; and

IT IS FURTHER ORDERED a copy of this order shall be served upon all interested parties within 7 (seven) days of the filing of this Order.




HON. LISA F. CRYSTAL, J.S.C.





Richard J. Byrnes, Esq., Wilentz, Goldman & Spitzer, P.A.,
Counsel for third party defendant, Consolidated Construction Management Services



Arnold Gerst, Esq., Weiner Lesniak LLP
Counsel for defendant/third party plaintiff, Rahway Valley Sewerage Authority


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Counsel for plaintiffs, Caterpillar, Inc. and Foley Power Systems


Peter J. Smith, Esq., Connell Foley, LLP
Counsel for J.H. Reid General Contractor


Michael D. Suarez, Esq., Suarez & Suarez
Counsel for third party defendant Paulis, Solkolowski & Sartor, LLC
DAVID C - RESCISZEWSKI