



**THE INTERNATIONAL ADR
(ALTERNATIVE DISPUTE RESOLUTION)
MOOTING COMPETITION**

MOOT PROBLEM 2013

28 July – 3 August 2013

City University of Hong Kong, Hong Kong



香港城市大學
City University
of Hong Kong



法律學院
School of Law



CHINA INTERNATIONAL ECONOMIC AND
TRADE ARBITRATION COMMISSION



COLUMBIA LAW SCHOOL



United Nations
UNCITRAL

Regional Centre for Asia and the Pacific



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88 Circle Street
Angus Lane
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12 February 2013
Secretariat
China International Economic and Trade Arbitration Commission (CIETAC)
6/F, CCOIC Building,
No. 2 Huapichang Hutong,
Xicheng District, Beijing, 10035,
People's Republic of China

Dear Ms. Secretary,

Application for Arbitration

I am the legal counsel representing Energy Pro Inc. and am writing to submit on behalf of my client its Application for Arbitration against CFX Ltd. Furthermore, I have enclosed a certified copy of my power of attorney to represent Energy Pro Inc. in this arbitration.

The total value of relief claimed is USD 10,000,000 plus interests and costs. In terms of RMB, at the exchange rate of the day of this letter of 6.23 RMB per USD, the claim is RMB 62,300,000. The Bank of Syrus has already transferred the requisite arbitration fee in RMB to your account in Beijing.

The arbitration clause agreed between the parties provides that the seat of arbitration is Beijing, China applying the CIETAC Rules and that the arbitration shall be conducted in English.

If anything further is required, please do inform me.

Sincerely,

John Chase

Attachment:

Application for Arbitration from Energy Pro Inc.

Certified copy of the Power of Attorney



Application for Arbitration

Parties to the Arbitration

Claimant

Energy Pro Inc., a company incorporated under the Laws of Syrus
Business address: 28 Ontario Drive, Aero Street, Syrus
Head of Company: Andre Li, CEO
Tel. (009) 2965 364
E-mail: contact@syrus.net

Respondent

CFX Ltd, a company incorporated under the Laws of Catalan
Registered Address: 26 Amber Street, Circus Avenue, Catalan
Chairman of Board: Peter Yuen
Tel. (008) 5426 9877
E-mail: info@catalan.com

Arbitration Clause

The Arbitration agreement relied upon by Energy Pro Inc. to support this Application for Arbitration is found in Clause 20 of the Purchase Contract executed between Energy Pro Inc. and CFX Ltd which reads as follows:

“Any dispute arising from or in connection with this Purchase Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The arbitration shall take place in Beijing, China. The arbitration shall be in the English language.”

Facts

1. Around February 2010, Mr. Yuen established a company, CFX Ltd, which was registered in Catalan. On 15 April 2010, CFX Ltd entered into a technology licensing agreement with TurboFast Ltd (‘TurboFast’), a leading international wind turbine manufacturer based in Andelstein (the ‘Licensing Agreement’). The Licensing Agreement with TurboFast related to a 1.5 MW wind energy turbine, which had been developed by another wind energy company also based in Andelstein, Future Energy Inc. (‘Future Energy’).



2. With a view to developing its business in Catalan, Energy Pro Inc. ('Energy Pro'), based in Syrus, approached TurboFast in June 2010 in order to discuss a possible co-operation with regards to manufacturing gearboxes for TurboFast's 1.5 MW wind turbines. By this time, however, TurboFast had already granted a licence for the assembly of its 1.5 MW turbines to CFX Ltd. Accordingly, TurboFast recommended that Energy Pro's representatives contact CFX Ltd directly in order to discuss a possible co-operation in manufacturing the 1.5 MW wind turbine gearboxes. Energy Pro made the first approach to CFX Ltd in mid 2010.
3. After discussions, CFX Ltd and Energy Pro (the 'Parties') decided to cooperate within a separate joint venture which would manufacture gearboxes for not only the 1.5 MW wind turbines, but also for sale in Catalan more generally.
4. On 17 December 2010, the Parties entered into a joint venture agreement to establish a "Syrus-Catalan Wind Turbine Gearbox Joint Venture Company" (the "JV") which would be based in Catalan and would operate there.
5. The joint venture agreement set out the principal terms of the JV (Claimant's Exhibit No. 1). It provided, *inter alia*, that:
 - a. The JV's main business would include the manufacture and assembly of the 1.5 MW wind turbine gearboxes for the Catalan market;
 - b. Energy Pro Inc. would supply raw materials to the JV for the manufacture of the gearboxes and subsequently will own all gearboxes produced by the JV; and
 - c. The Parties would enter into an exclusive purchase contract;
6. After extensive negotiations, on 10 April 2011, Energy Pro Inc. and CFX Ltd entered into an exclusive purchase contract (the 'Purchase Contract'). Although both Energy Pro Inc. and CFX Ltd were equity holders of the JV, yet Energy Pro Inc. was the owner of all the gearboxes manufactured under the JV as it supplied all the raw materials for the production of the said gearboxes. Hence, the Purchase Contract was concluded between Energy Pro Inc., instead of JV, as the seller and CFX Ltd as the buyer.
7. The essential features of the Purchase Contract are as follows (Claimant's Exhibit No. 2):
 - a. CFX Ltd committed to purchase from Energy Pro minimum quantities of 1.5 MW wind turbine gearboxes at fixed prices over a five year period;
 - b. Correspondingly, CFX Ltd's obligation to purchase was subject to Energy Pro Inc. being able to meet the established quality, technical and qualification requirements;



- c. Energy Pro Inc. had a right to suspend or terminate the Purchase Contract if CFX Ltd:

“substantially breaches a material obligation, representation or warranty including the failure to make any payment when it is due provided that the Seller issues Buyer a written notice of the breach and Buyer has failed, within 30 days after receipt of the notice to either: (i) commence and diligently pursue cure of the breach, or (ii) provide reasonable evidence that the breach has not occurred”

- d. The Purchase Contract also provided for a termination penalty, as follows:

“In the event Seller terminates the Purchase Contract as provided: (a) Seller shall be entitled to retain any part payment(s) made by Buyer; and (b) the Buyer shall pay to Seller a termination penalty equal to the difference between the total value of this Purchase Contract and the value of Gearboxes already delivered to the Buyer as of the termination date”

- e. Annex I of the Purchase Contract imposed an obligation on Energy Pro Inc. to conduct periodic manufacturing reviews in order to enable CFX Ltd to monitor the manufacturing process so as to ensure that the gearboxes would be suitable for the 1.5 MW wind turbines
8. On 17 September 2011 and 16 January 2012, meetings were held between the Parties to perform the 1st Design Review (the ‘DR1’) and 2nd Design Review (the ‘DR2’), as provided for in Annex I to the Purchase Contract. No objections were made by CFX Ltd in both reviews.
9. On 10 February 2012, CFX Ltd issued a purchase order for 100 gearboxes.
10. On 13 March 2012, CFX Ltd transferred the first part payment of USD 2 million to Energy Pro Inc. after receiving the gearboxes.
11. On 18 April 2012, Future Energy wrote to both CFX Ltd and Energy Pro that one of its engineers had wrongly certified the gearboxes appropriate for sale in Catalan (Claimant’s Exhibit No. 3).
12. On 16 May 2012, CFX Ltd sent an email to Energy Pro emphasizing outstanding concerns with the gearbox designs and the lack of approval by Future Energy of such designs (Claimant’s Exhibit No. 4).
13. On 18 May 2012, Mr. Li of Energy Pro Inc. reiterated to Mr. Yuen that it had duly performed all of its obligations and it cannot be held responsible for Future Energy’s negligence (Claimant’s Exhibit No. 5).



14. On 21 May 2012, CFX Ltd wrote to Energy Pro confirming that it would suspend performance of the Purchase Contract, pending further confirmation from Energy Pro that it would be able to comply with its own obligations under the Purchase Contract (Claimant's Exhibit No. 6).
15. On 20 June 2012 and 20 August 2012, Energy Pro issued and sent the first and second notice of default (the 'Default Notices') in accordance with the Purchase Contract, in relation to CFX Ltd's failure to make the second and third part payment (Claimant's Exhibit No. 7).
16. On 25 September 2012, John Chase, representing Energy Pro, served on CFX Ltd a pre-action demand letter demanding that CFX Ltd pay the required payments otherwise arbitration would be initiated against them.
17. On 28 December 2012, Energy Pro sent a notification of termination of the Purchase Contract (the 'Termination Notice') to CFX Ltd (Claimant's Exhibit No. 8).
18. On 1 January 2013, Energy Pro Inc. requested Future Energy Inc. to join as a third party to the arbitration between Energy Pro Inc. and CFX Ltd (Claimant's Exhibit No. 9).
19. On 3 January 2013, Future Energy Inc. had agreed to participate in the arbitration proceedings.
20. On 11 February 2013, Claire Perry, on behalf of CFX Ltd, sent a letter to Energy Pro, contending that the latter's termination was unlawful. The letter also included a request for reimbursement of the first part payment made on 13 March 2012.

Applicable Law

21. Based on the choice of law clause in the Purchase Contract, clause 29, the Purchase Contract is governed by and construed in accordance with the UNIDROIT Principles of International Commercial Contracts 2010 supplemented by matters which are not governed by the UNIDROIT Principles by the United Nations Convention on Contracts for the International Sale of Goods 1980 ('CISG'). Andelstein, Syrus and Catalan are all party to the CISG and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ('New York Convention')



Relief Requested

1. The Termination penalty of USD 8,000,000 as damages.
2. CFX Ltd shall pay the costs of arbitration, including Energy Pro Inc. expenses for legal representation, the arbitration fee paid to CIETAC and the additional expenses of the arbitration as set out in Article 50, CIETAC Arbitration Rules.
3. CFX Ltd shall pay Energy Pro Inc. interest on the amounts set forth in item 1 from the date those expenditures were made by Energy Pro Inc. to the date of payment by CFX Ltd.

Sincerely,

John Chase

12 February 2013



Claimant's Exhibit No.1

Joint Venture Agreement Excerpts

THIS AGREEMENT is made on the day of 17 December 2010

BETWEEN:

- (1) Energy Pro Inc. at 28 Ontario Drive, Aero Street, Syrus ('Energy Pro'); and
- (2) CFX Ltd at 26 Amber Street, Circus Avenue, Catalan ('CFX Ltd');

WHEREAS:

(A) Energy Pro and CFX Ltd have agreed to own and operate through a Syrus-Catalan Wind Turbine Gearbox Joint Venture Company and have for this purpose, secured this Company in Catalan. The respective ownership of the Company has been divided as follows:

1. Energy Pro: 80% Equity
2. CFX Ltd: 20% Equity

NOW IT IS HEREBY AGREED as follows:

1. Scope of the Business

- 1.1 The primary object of the Company is to carry on the business of manufacturing and the assembly of the 1.5 MW wind turbine gearboxes for the Catalan market
- 1.2 The Business shall be conducted in the best interests of the Company in accordance with the Memorandum and Articles of Association and the provisions of this Agreement.

5. Conduct of the Company's Affairs

- 5.1 The owner(s) shall exercise all rights available to them in relation to the Company and the Company shall do everything necessary to procure that during the term of this Agreement:
 - (a) the business of the Company consists exclusively of the business as defined in Clause 1 of this agreement;
 - (b) Energy Pro would supply raw materials for the manufacture of the gearboxes to the Company and subsequently owns all gearboxes produced by the Company;
 - (c) the books and accounts of the Company shall be kept in accordance with generally accepted accounting principles (GAAP) consistently applied and



monthly management accounts and operating statistics and such other trading and financial information in such form as may reasonably be required are furnished to the owners in a timely fashion; and

- (d) all bank accounts established from time to time by the Company shall be operated as the Board may resolve from time to time.

8. Exclusive Purchase Contract

- 8.1 Upon the successful setting up of this joint venture, both parties agree to enter into an exclusive purchase contract for the sale by Energy Pro ('Seller') of the gearboxes produced by this joint venture company to CFX Ltd ('Buyer'). If no date is fixed for the signing of the purchase contract then, in any event, it must be entered into not more than a year from the date of this joint venture agreement.

17. Entire Agreement

- 17.1 This Agreement contains all the terms and conditions agreed between the parties as to the subject matter of this Agreement and supersedes in all respects, all previous letters of intent, correspondence, undertakings, agreements and arrangements (if any) between the parties with respect to the same subject matter, whether written or oral.



Claimant's Exhibit No.2

Purchase Contract Excerpts

THIS PURCHASE CONTRACT is made on the day of 10 April 2011

BETWEEN:

- (1) Energy Pro Inc. at 28 Ontario Drive, Aero Street, Syrus ('Energy Pro') ('Seller'); and
- (2) CFX Ltd at 26 Amber Street, Circus Avenue, Catalan ('CFX Ltd') ('Buyer');

WHEREAS:

- (A) The Gearbox will be manufactured by the JV with the following specifications which has been agreed between Energy Pro Inc. and CFX Ltd:
 1. For use in a 1.5 MW wind turbine developed by Future Energy Inc. ('Future Energy')
 2. Model No. GJ 2635
 3. Rotor speed of 360 rpm
 4. Grey colour
- (B) The Buyer is desirous of purchasing the Gearbox from the Seller on the terms set out in this Purchase Contract

NOW IT IS HEREBY AGREED as follows:

1. Sale and Purchase

- 1.1 The Seller agrees to sell to the Buyer, and the Buyer agrees to buy from the Seller, the Gearbox on the terms and subject to the conditions set out in this Contract.
- 1.2 CFX Ltd commits to purchase from Energy Pro minimum quantities of 1.5 MW wind turbine gearboxes at fixed prices over a 5 year period
 - a. Minimum quantity: 100 gearboxes per year
 - b. Fixed price (for all 5 years): USD 10,000,000
 - i. In the first year, payment is to be divided into 3 part payments of USD 2,000,000 each for a total of USD 6,000,000. The dates for the 3 part payments are as follows: 13 March 2012, 20 June 2012 and 20 August 2012.



- ii. For the next four years, payment is made to be made in one yearly payment of a value of USD 1,000,000.
- iii. Before gearboxes are delivered to CFX Ltd, purchase orders need to be issued by CFX Ltd and then upon receiving confirmation from CFX Ltd that the gearboxes have been delivered in conformity with this Purchase Contract would then CFX Ltd be required to make the requisite payment.

10. Quality Standards

- 10.1 CFX Ltd's obligation to purchase is subject to Energy Pro Inc. being able to meet the established quality, technical and qualification requirements which has been specified under Clause (A) of this Purchase Contract
- 10.2 Before the gearboxes are delivered to CFX Ltd, Energy Pro Inc. must obtain from Future Energy Inc. certified approval that the shipped gearboxes are in conformity with the standards required under Clause (A) of this Purchase Contract

15. Suspension/Termination

- 15.1 Energy Pro Inc. has a right to suspend or terminate the Purchase Contract if CFX Ltd substantially breaches a material obligation, representation or warranty including the failure to make any payment when it is due provided that the Seller issues Buyer a written notice of the breach and Buyer has failed, within 30 days after receipt of the notice to either: (i) commence and diligently pursue cure of the breach, or (ii) provide reasonable evidence that the breach has not occurred
- 15.2 In the event Energy Pro Inc. terminates the Purchase Contract as provided: (a) Energy Pro Inc. shall be entitled to retain any part payment(s) made by CFX Ltd; and (b) CFX Ltd shall pay to Energy Pro Inc. a termination penalty equal to the difference between the total value of this Purchase Contract and the value of Gearboxes already delivered to CFX Ltd as of the termination date

20. Dispute Resolution

- 20.1 It is agreed between both Energy Pro Inc. and CFX Ltd that any dispute would be submitted to arbitration through the following clause:

Any dispute arising from or in connection with this Purchase Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The arbitration shall take place in Beijing, China. The arbitration shall be in the English language.



29. Law governing Purchase Contract

29.1 This Purchase Contract shall be governed by and construed in accordance with the UNIDRIOT Principles of International Commercial Contracts 2010 supplemented by matters which are not governed by the UNIDROIT Principles by the United Nations Convention on Contracts for the International Sale of Goods 1980.

32. Annex I

32.1 Energy Pro Inc. is to conduct two manufacturing reviews in order to enable CFX Ltd to monitor the production process.

32.2 The first review is to be held on 17 September 2011 and the second review is to be held on 16 January 2012.



Claimant's Exhibit No.3

Future Energy Inc.
69 Star Street
Sixth Avenue
Andelstein
Email: fenergy@fe.net
Tel: (006) 4895 6633
Fax: (006) 4785 2369

18 April 2012
28 Ontario Drive,
Aero Street,
Syrus

Dear Mr. Li,

1.5 MW Gearboxes for Catalan

Upon a double inspection of the records log and the specifications of the gearboxes required under the Purchase Contract signed between CFX Ltd and Energy Pro Inc., it has come to my notice that one of our engineers has wrongly certified the gearboxes which were delivered to you and ultimately to CFX Ltd as they are not in conformity with the specified technical requirements.

The Model No. under your Purchase Contract is GJ 2635 while the engineer approved the gearboxes based on the requirements for the Model No. GH 2635 and hence the gearboxes which have been shipped to CFX Ltd do not have the proper certification and will not meet the requirements for the 1.5 MW wind turbine.

We will take the appropriate action against the erring engineer. This is highly unfortunate. I will inform you of any further issues should they arise.

Sincerely,

Mr. Chan

Chief Engineer

Ps. An exact copy of this letter has been sent to Mr. Yuen of CFX Ltd



Claimant's Exhibit No.4

CFX Ltd
26 Amber Street,
Circus Avenue,
Catalan
Email: info@catalan.com
Tel: (008) 5426 9877

16 May 2012
28 Ontario Drive,
Aero Street,
Syrus

Dear Mr. Li,

1.5 MW Gearboxes for Catalan

I am sure by now you have received and read the letter from Mr. Chan at Future Energy Inc. The gearboxes we have received are completely useless.

It is clearly written under the Purchase Contract that you must obtain the certification of the gearboxes from Future Energy before shipping the gearboxes to us. However, I was shocked to find out that the gearboxes we have received are completely worthless while you have taken USD 2,000,000 from us.

Please remedy the situation as we have performed all of our obligations under the Purchase Contract yet Energy Pro Inc. has failed to fully perform its obligations under the Purchase Contract.

Sincerely,

Mr. Yuen



Claimant's Exhibit No.5

Energy Pro Inc.
28 Ontario Drive,
Aero Street,
Syrus
Email: contact@syrus.net
Tel: (009) 2965 364

18 May 2012
26 Amber Street,
Circus Avenue,
Catalan

Dear Mr. Yuen,

1.5 MW Gearboxes for Catalan

Thank you for your email.

The error caused by Future Entergy Inc. was extremely unfortunate. I am sorry that you have received gearboxes which are not in conformity with the requirements of the 1.5 MW wind turbines.

As you know, the error was caused by a negligent engineer at Future Energy Inc. While we sympathize with your situation, we do not feel responsible in any way. Consequently, there is nothing more we are required to do under the Purchase Contract. Indeed, we have fulfilled our duties completely under the Purchase Contract.

At best, due to the poor certification services we have received from Future Energy Inc., we would agree to another certification company picked solely by you.

Sincerely,

Mr. Li



Claimant's Exhibit No.6

CFX Ltd
26 Amber Street,
Circus Avenue,
Catalan
Email: info@catalan.com
Tel: (008) 5426 9877

21 May 2012
28 Ontario Drive,
Aero Street,
Syrus

Dear Mr. Li,

1.5 MW Gearboxes for Catalan

I am very disappointed in your letter of 18 May. I thought you would understand our situation and try to cure the problem but instead you are just shifting the blame.

Our legal counsel has advised us that you are fully responsible under the Purchase Contract. Although the negligence was caused by the engineer at Future Energy yet you have the obligation as the seller to obtain the necessary certification, which was not obtained for the 100 gearboxes we ordered.

As you insist that you have no responsibility, CFX Ltd suspends the Purchase Contract pending satisfactory proof that you have discharged your legal obligations under the Purchase Contract.

Sincerely,

Mr. Yuen



Claimant's Exhibit No.7

Energy Pro Inc.
28 Ontario Drive,
Aero Street,
Syrus
Email: contact@syrus.net
Tel: (009) 2965 364

20 August 2012
26 Amber Street,
Circus Avenue,
Catalan

Dear Mr. Yuen,

Default Notices

This is to inform you that you have defaulted on the second and third part payments as required under the Purchase Contract. Failure to remedy this fault may require more drastic action on our part.

Sincerely,

Mr. Li



Claimant's Exhibit No.8

Energy Pro Inc.
28 Ontario Drive,
Aero Street,
Syrus
Email: contact@syrus.net
Tel: (009) 2965 364

28 December 2012
26 Amber Street,
Circus Avenue,
Catalan

Dear Mr. Yuen,

Termination Notice

Due to the continued lack of performance from CFX Ltd of its contractual obligations under the Purchase Contract, together with the two default notices which it has failed to remedy, Energy Pro Inc. is left with no choice but to terminate this Purchase Contract. This letter is your notice of Termination under Clause 15 of the Purchase Contract.

Sincerely,

Mr. Li



Claimant's Exhibit No.9

Energy Pro Inc.
28 Ontario Drive,
Aero Street,
Syrus
Email: contact@syrus.net
Tel: (009) 2965 364

1 January 2013
Future Energy Inc.
69 Star Street
Sixth Avenue
Andelstein

Dear Mr. Wong,

Arbitration between Energy Pro Inc. & CFX Ltd

As you may know, your company, Future Energy Inc. is the independent certification company which approves the gearboxes for the 1.5 MW wind turbines in Catalan. On 18 April 2012, your Chief Engineer had informed Energy Pro Inc. and CFX Ltd that one of your engineers had wrongly certified the gearboxes as being in conformity with requirements of the GJ 2635 Model.

As a result of a series of unfortunate events afterwards, Energy Pro Inc. has initiated arbitration proceedings against CFX Ltd and I am writing to ask you to join this arbitration. Although Energy Pro Inc. had the burden to make sure that the gearboxes met the requirements for the GJ 2635 Model under the Purchase Contract yet the fault of passing non-conforming goods to CFX Ltd was due to the negligence of your engineer.

If you fail to join this arbitration and Energy Pro Inc. is held liable by the arbitral tribunal then we will have no choice but to litigate against your Company in Andelstein to recover the damages Energy Pro Inc. had to pay under the arbitration.

Sincerely,

Mr. Li



Claire Perry
88 Circle Street
Angus Lane
Syrus
Email: cperry@cp.net
Tel: (008) 6596 3634
Fax: (008) 4785 5152

18 February 2013
Secretariat
China International Economic and Trade Arbitration Commission (CIETAC)
6/F, CCOIC Building,
No. 2 Huapichang Hutong,
Xicheng District, Beijing, 10035,
People's Republic of China

Dear Ms. Secretary,

Application for Arbitration from Energy Pro Inc.

I am the legal counsel representing CFX Ltd and am writing to submit on behalf of my client its Statement of Defense against Energy Pro Inc. Furthermore, I have enclosed a certified copy of my power of attorney to represent CFX Ltd in this arbitration.

If anything further is required, please do inform me.

Sincerely,

Claire Perry

Attachment:

Statement of Defense from CFX Ltd

Certified copy of the Power of Attorney



Statement of Defense

1. Respondent has no independent knowledge as to the statements in paragraphs 1, 2, 18 and 19 of the application for arbitration.
2. Respondent accepts the statements in paragraphs 3 to 7, 9 to 17 and 20 of the application for arbitration.
3. Respondent accepts paragraph 8 except that it denies that there were no objections from CFX Ltd.
4. Respondent denies the relief requested in the application for arbitration.

Defense

1. Energy Pro Inc. in its application for arbitration has stated that both parties entered into the joint venture and Purchase Contract after extensive negotiations. However, Energy Pro Inc. has not provided the full picture of the negotiations. Co-operation with CFX Ltd on the 1.5 MW was Energy Pro's initiative and during the negotiations, most of the proposals put forward by CFX Ltd were either ignored or rejected. Therefore, the great majority of the contractual terms of both the JV and Purchase Contract were proposed and adopted by Energy Pro Inc.
2. It was Energy Pro's suggestion that a JV should be established which would handle the gearboxes production. CFX Ltd went along with the plan as Energy Pro was a powerhouse in the energy sector in Syrus. In the end, Energy Pro Inc. drafted both the JV and Purchase Contract and it was the one who proposed and made the Purchase Contract as a pre-condition to entering into the JV.
3. The only way CFX Ltd could ensure it was obtaining the best quality of gearboxes for the price required was through the insertion of an independent certification company, Future Energy Inc. The Purchase Contract expressly made it clear that Energy Pro Inc. has the burden to make sure that the gearboxes were in conformity with the specifications laid out in the Purchase Contract. As Energy Pro failed to uphold its obligations under the Purchase Contract, CFX Ltd was left with no choice but to suspend the Purchase Contract pending Energy Pro's ability to satisfy CFX Ltd that it has remedied the problem.
4. In addition, this is not the first time CFX Ltd has noticed Energy Pro Inc. not properly fulfilling its contractual obligations under the Purchase Contract. Although Energy Pro contends that no objections were made by CFX Ltd during the two design reviews, however the letter from Mr. Yuen to Mr. Li proves otherwise (Respondent's Exhibit No. 1).



5. Energy Pro Inc. has threatened Future Energy Inc. to initiate legal proceedings against Future Energy Inc. should it choose not to participate in the arbitration between Energy Pro Inc. and CFX Ltd. CFX Ltd submits that this is sufficient cause to bar the participation of Future Energy Inc. as its participation has been obtained through duress by Energy Pro Inc.. Moreover, it is not a signatory to the arbitration clause in the Purchase Contract hence Future Energy Inc. has no legal standing to participate in the arbitration proceedings.

Resignation of Ms. Arbitrator 1

1. It has come to CFX Ltd's attention through an email written by Ms. Arbitrator 1 to the President of the arbitral tribunal who has forwarded the same to the parties in dispute that Ms. Arbitrator 1 will resign after the completion of the oral hearings on the disputed issues and will not remain on the panel in determining the issue of quantum.
2. In the email from Ms. Arbitrator 1, she has explained that the time allocated originally was 2 days for quantum when she accepted her appointment from CIETAC after being nominated by Energy Pro Inc. However, after subsequent discussions with the arbitral tribunal and both counsels, it is likely that the issue of quantum would take 5 days. As such, Ms. Arbitrator 1 requested Energy Pro Inc. to deposit the additional fees required into her bank account.
3. Energy Pro Inc. had refused to do so and has informed the tribunal that it will not contest the resignation of Ms. Arbitrator 1 but will instead nominate another arbitrator to hear the issue of quantum.
4. CFX Ltd objects to the resignation of Ms. Arbitrator 1. She will be present during the oral hearings and will be in the best position to arbitrate on the issue of quantum. Moreover, her resignation and subsequent new appointment will result in the loss of great time and money for CFX Ltd. As such, CFX Ltd requests the Tribunal to rule that Ms. Arbitrator cannot resign and Energy Pro Inc. must pay her additional fees in accordance with CIETAC Rules 2012.

Relief Requested

1. Rule that Ms. Arbitrator 1 cannot resign and Energy Pro Inc. must pay her additional fees;



2. Energy Pro did not validly terminate the Purchase Contract and cannot claim the termination penalty;
3. Energy Pro Inc. must return the first part payment of USD 2,000,000 to CFX Ltd.

Sincerely,

Clair Perry

18 February 2013



Respondent's Exhibit No.1

CFX Ltd
26 Amber Street,
Circus Avenue,
Catalan
Email: info@catalan.com
Tel: (008) 5426 9877

18 January 2012
28 Ontario Drive,
Aero Street,
Syrus

Dear Mr. Li,

2nd Manufacturing Review

Based on the 1st Design Review that our chief engineer had attended he had informed me about the serious manufacturing flaws that were present in the gearboxes. On that occasion, based on the telephone call we had on 18 September 2011, you had given your word that things were in the development phase and everything would be on track by the 2nd Manufacturing Review.

However, my chief engineer has again raised the same apprehensions as last time in the 2nd Manufacturing Review. I cannot reemphasize the importance of Energy Pro Inc. fulfilling its contractual obligations under the Purchase Contract as we have put a lot of financial resources into this deal with you.

If things do not improve, we may have to change our course of direction with you.

Sincerely,

Mr. Yuen



Secretariat
China International Economic and Trade Arbitration Commission (CIETAC)
6/F, CCOIC Building,
No. 2 Huapichang Hutong,
Xicheng District, Beijing, 10035,
People's Republic of China
Email: info@cietac.org
Tel: (009) 5569 8769

(sent by fax)

22 February 2013
88 Circle Street
Angus Lane
Syrus

Dear Mr. Chase and Ms. Perry,

Notice on the Formation of Arbitral Tribunal Case No M2013/33

Concerning the captioned arbitration case between Energy Pro Inc. and CFX Ltd, Energy Pro Inc. appointed Ms. Arbitrator 1 as the arbitrator while CFX Ltd appointed Dr. Arbitrator 2 as the arbitrator. Both parties have jointly appointed Prof. Arbitrator as the presiding arbitrator.

The Secretariat has received the three arbitrators' Declarations of Independence and transferred them to the parties. According to the Arbitration Rules, the aforementioned three arbitrators formed the arbitral tribunal on 22 February 2013 to hear this case.

Sincerely,

Secretariat

China International Economic and Trade Arbitration Commission



Procedural Order No. 1

1. The tribunal decided during a conference call on 25 February 2013 that the presiding arbitrator was authorized to make procedural decisions subject to later confirmation by the full tribunal.
2. The agreed upon schedule will render it impossible for the tribunal to render an award within the six month time limit imposed by Article 46(1) of the CIETAC Arbitration Rules. The tribunal will, therefore request the Secretary General of CIETAC for an extension pursuant to Article 46(2).
3. Energy Pro Inc. initiated the arbitration to recover damages arising out of the termination of the Purchase Contract entered into between Energy Pro Inc. and CFX Ltd.
4. CFX Ltd Inc has raised several defenses on the merits of the dispute.
5. Taking into account the Application for Arbitration and the Statement of Defense, the Tribunal would be adjudicating on the four issues raised by the respective counsels:
 - a. Can Energy Pro Inc. bring Future Energy Inc. into the arbitration proceedings as it is a third party?
 - b. Can Ms. Arbitrator 1 resign during the arbitration proceedings?
 - c. Did Energy Pro Inc. validly terminate the contract?
 - d. Can Energy Pro Inc. claim the termination penalty?
6. Both the counsels for the respective parties have agreed that issues of quantum will be resolved at a later date; hence arguments should only be advanced on the issues identified in paragraph 5, as stated above.

Prof. Arbitrator

President of the Arbitral Tribunal

20 February 2013